

President Einhorn called the meeting to order at 9:55 a.m. on July 25, 2014 in the Michael Franck Building in Lansing, MI.

Commissioners present:

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| Kathleen M. Allen | Felicia O. Johnson |
| Danielle Mason Anderson | C. Thomas Ludden |
| Dennis M. Barnes | E. Thomas McCarthy Jr. |
| David R. Brake | Maureen M. McGinnis |
| Danielle M. Brown | Lawrence P. Nolan, Secretary |
| Robert J. Buchanan | Jules B. Olsman |
| Lori A. Buiteweg, Vice President | Colleen A. Pero |
| Timothy J. Burns | Daniel Quick |
| Margaret A. Costello | Victoria A. Radke |
| Richard L. Cunningham | Hon. Michael J. Riordan |
| Brian D. Einhorn, President | Donald G. Rockwell, Treasurer |
| Stephen J. Gobbo | Thomas C. Rombach, President-Elect |
| Jennifer M. Grieco | Hope V. Shovein |
| Edward L. Haroutunian | Richard J. Siriani |
| Andrea Irons | Gregory L. Ulrich |

Commissioners absent and excused:

Commissioner Vanessa Peterson Williams was absent and excused.

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, Director, External Development
Peter Cunningham, Director, Governmental Relations
Cliff Flood, General Counsel
Danon Goodrum-Garland, Investigative Counsel
James Horsch, Director, Finance and Administration Division
Lyn Ingram, Legal Editor and Publications Development Manager
Nkrumah Johnson-Wynn, Service Counsel
Robert Mathis, Pro Bono Attorney
Anne Smith, Administrative Assistant
Kari Thrush, Manager, Membership Services and Events
Tish Vincent, Program Administrator, LJAP
Anne Vrooman, Director, Research and Development

Guests

Jeff Kirkey, ICLE
James W. Heath

Consent Agenda

The Board received the minutes from the June 6 and June 26, 2014 Board of Commissioners meeting and the minutes from the May 27, 2014 Executive Committee 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 2014 Financial Reports through May 2014.

The Board received the Client Protection Fund Claims and Unauthorized Practice of Law Complaints Proposed for Litigation.

The Board received the Annual Committee and Section Reports, and bylaw amendments from the International Law and Children's Law Sections.

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

SBM Board Officer Elections

Mr. Einhorn announced that President-Elect Rombach would succeed him as President of the State Bar of Michigan for 2014-2015.

Mr. Einhorn announced that Vice President Buiteweg succeeds Mr. Rombach as President-Elect of the State Bar of Michigan for 2014-2015.

A motion was made and seconded to elect Mr. Nolan as Vice President of the State Bar of Michigan for 2014-2015. The motion passed.

A motion was made and seconded to elect Mr. Rockwell as Secretary of the State Bar of Michigan for 2014-2015. The motion passed.

Mr. Einhorn indicated that an election for the position of Treasurer of the State Bar of Michigan would take place. Four candidates submitted their names for consideration for the position of Treasurer. Mr. Einhorn asked if there were any nominations from the floor and after hearing none, closed the nominations.

Ms. McGinnis nominated Ms. Grieco, Ms. Anderson nominated Mr. Siriani, Mr. Cunningham nominated Mr. Barnes, and Mr. Burns nominated Mr. Ulrich.

Mr. Einhorn appointed Commissioners Allen, Cunningham, McGinnis, and Riordan as tellers.

A motion was offered and seconded to conduct the election in two rounds with the two candidates receiving the most votes continuing to the second round. The motion was defeated.

The election then proceeded using the same procedure as in 2013, with the candidate receiving the least number of votes in each round not continuing to the next round, until a single candidate receives the required majority.

A motion was made and seconded to vote for the position of Treasurer for 2014-2015 by secret ballot, to destroy the ballots after each round, and to disclose the number of votes received by a candidate only if requested by the candidate. The motion passed.

Ms. Grieco was elected as Treasurer of the State Bar of Michigan for 2014-15.

COMMISSIONER COMMITTEES

Finance, Donald G. Rockwell, Chairperson

FY 2015 Proposed Budget

At Mr. Rockwell's request, Mr. Horsch presented the FY2015 Budget to the Board. A motion was offered and seconded to adopt the FY2015 budget. The motion passed.

FY 2014 Financial and Investment Update

Mr. Rockwell presented the Board with a FY 2014 Financial and Investment update.

Audit Committee, Donald G. Rockwell, Chairperson

Mr. Rockwell reported that Mr. Horsch had met with the new partner of the audit firm and that they are ready to conduct the audit.

Professional Standards, Lawrence P. Nolan, Chairperson

Institute of Continuing Legal Education

A motion was offered and seconded to appoint Ms. Miriam Blanks-Smart to the Executive Committee of the Institute of Continuing Legal Education. The motion passed.

Michigan Indian Legal Services

A motion was offered and seconded to re-appoint Mr. John R. Runyan and Mr. Thomas J. St. Dennis to the Board of Directors of the Michigan Indian Legal Services. The motion passed.

Recommendation to Increase Client Protection Fund Single Claimant and Aggregate Maximum

Mr. Nolan provided the Board with a recommendation from the Professional Standards Committee to increase the Client Protection Fund single claimant limit from \$75,000 to \$150,000 and to increase the aggregate maximum from \$300,000 to \$375,000.

A motion was offered and seconded to increase the CPF single claimant limit from \$75,000 to \$150,000. The motion passed.

A motion was offered and seconded to increase the aggregate maximum from \$300,000 to \$375,000. The motion passed.

A motion was offered and seconded for the changes to take effect on claims filed or after August 1, 2014. A roll call vote was taken and the motion was defeated by a vote of 16-14.

Ayes: Allen, Brown, Burns, Gobbo, Haroutunian, Irons, Olzman, Quick, Riordan, Rombach, Shovein, Siriani, Ulrich, Einhorn
Nays: Anderson, Barnes, Brake, Buchanan, Buiteweg, Costello, Cunningham, Grieco, Johnson, Ludden, McCarthy, McGinnis, Nolan, Pero, Radke, Rockwell
Abstentions: None

A motion was offered and seconded to make the changes effective immediately. The motion passed.

Programs and Services, Lori A. Buiteweg, Chairperson

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

The Board received information about the following two new member services.

ABA Book Discount Program

A motion was offered and supported to adopt the ABA Book Discount Program. The motion passed.

SoFi – Student Loan Refinancing Program

After discussion, the Board requested more information regarding the company be provided before action is taken. Motion to table was offered and seconded.

Public Policy, Image and Identity, Thomas C. Rombach, Chairperson

The Board members received the Justice Initiatives Report.

Court Proposals

Public Policy, Image and Identity, Thomas C. Rombach, Chairperson

The Board members received the Justice Initiatives Report.

Court Proposals

ADM File No. 2013-09 Proposed Amendment of Rule 3.216 of the Michigan Court Rules

The proposed amendment of MCR 3.216 would clarify that distribution of property is subject to domestic relations mediation.

A motion was offered and seconded to support the proposed amendment with the additional amendment adding “and separate maintenance” after the word “divorce” so that the final amended language reads “and actions for divorce and separate maintenance that involve the distribution of property.” The motion passed as amended.

ADM File No. 2013-11 Proposed Amendments of Rules 9.106 and 9.128 of the Michigan Court Rules

The proposed amendments of MCR 9.106 and MCR 9.128, requested by the Attorney Grievance Commission, would identify costs and restitution imposed on an attorney in a disciplinary proceeding as a fine, penalty, or forfeiture.

A motion was offered and seconded to oppose this amendment. The motion passed.

ADM File No. 2013-17 - Proposed Amendment of Rule 3.206 of the Michigan Court Rules

The proposed amendments of MCR 3.206 would limit the ability of a court to require one party to pay another party’s attorney fees during the proceeding to those cases that involve divorce or separation of married persons.

A motion was offered and seconded to oppose this amendment. The motion passed.

ADM File No. 2013-21 - Amendments of Rules 6.112 and 6.113 of the Michigan Court Rules

These amendments clarify how a prosecutor's notice of enhanced sentence required under MCL 769.13(1) is to be provided in courts in which arraignment has been eliminated under MCR 6.113(E).

A motion was offered and seconded to support this amendment. The motion passed

ADM File No. 2013-22 - Proposed Amendment of Rule 4.201 of the Michigan Court Rules

This proposed amendment would clarify that the typical procedure for setting aside a default judgment in MCR 2.603 applies in landlord/tenant cases that result only in a default money judgment.

A motion was offered and seconded to support this amendment. The motion passed

ADM File No. 2013-27 – Proposed Amendment of Rule 2.203 of the Michigan Court Rules

This proposal, submitted by the State Bar of Michigan Representative Assembly, would add explicit language allowing parties to be added to a counterclaim or cross-claim, and would require that a court clerk issue a summons for those added parties.

A motion was offered and seconded to support this amendment consistent with the Representative Assembly position. The motion passed.

ADM File No. 2013-29 - Proposed Amendments of Rules 5.108, 5.125, 5.208, and 5.403 of the Michigan Court Rules

These proposed Chapter 5 rule amendments were submitted to the Court by the Probate and Estate Planning Section of the State Bar of Michigan so that the rules would comport to recent legislation regarding guardianships and conservatorships.

A motion was offered and seconded to defer comment and authorize the Civil Procedure & Courts Committee to submit its comment to the Court. The motion passed.

ADM File No. 2014-06 - Proposed Amendment of Rule 2.004 of the Michigan Court Rules

The proposed revisions of MCR 2.004 would change the service provisions with regard to an inmate's participation in a hearing or conference so that service would be required on MDOC's Central Records Section, instead of service on individual wardens or supervisors at the MDOC facilities; the proposed changes also would allow an inmate's participation by video or videoconferencing.

A motion was offered and seconded to support this amendment. The motion passed.

ADM File No. 2014-18 – Proposed Amendment of Rule 6.001 of the Michigan Court Rules

The proposed amendment of MCR 6.001(B) includes additional rules and subrules that are found in Chapter 6 that govern procedural issues relevant to criminal cases falling under the jurisdiction of district courts.

A motion was offered and seconded to support this amendment. The motion passed.

Model Criminal Jury Instructions, 15.1, 15.3, 15.4, 15.5, 15.6, 15.11, 15.12

The Committee proposes amendments to M Crim JI 15.1, 15.3, 15.4, 15.5, 15.6, 15.11, and 15.12, the operating while intoxicated instructions for MCL 257.625, to accommodate recent statutory amendments that involve driving under the influence of controlled substances. Amendments are underlined; strike-outs are deletions. Further revisions of Chapter 15 to address high bodily alcohol content and medical marijuana amendments will be proposed in the future.

A motion was offered and seconded to support this amendment. The motion passed.

Legislation

HB 5390 (Cotter) Civil procedure; garnishment; writ of garnishment regarding periodic payments; modify liability of garnishee. Amends sec. 4012 of 1961 PA 236 (MCL 600.4012).

A motion was offered and seconded to oppose this legislation. A roll call vote was taken and no action will be taken because there was not a 2/3 majority. The vote was 20– 4, with 4 abstentions.

Ayes: Allen, Anderson, Brake, Brown, Buchanan, Burns, Cunningham, Gobbo, Grieco, Johnson, Ludden, McGinnis, Olsman, Quick, Rockwell, Rombach, Shovein, Siriani, Ulrich, Einhorn

Nays: Barnes, Haroutunian, Nolan, Riordan

Abstentions: Buiteweg, Costello, McCarthy, Pero

A motion was offered and seconded to reconsider the vote on HB5390. A roll call vote was taken and no action will be taken because there was not a 2/3 majority. The vote was 20 – 5, with 4 abstentions.

Ayes: Allen, Anderson, Brake, Brown, Buchanan, Burns, Gobbo, Grieco, Johnson, Ludden, McGinnis, Olsman, Quick, Radke, Rockwell, Rombach, Shovein, Siriani, Ulrich, Einhorn

Nays: Barnes, Cunningham, Haroutunian, Nolan, Riordan

Abstentions: Buiteweg, Costello, McCarthy, Pero

HB 5472 (Rendon) Family law; child support; alternative contempt track docket for certain individuals behind in child support; create. Amends secs. 2 & 35 of 1982 PA 295 (MCL 552.602 & 552.635) & adds sec. 36.

The committee recommends no position at this time, and that staff facilitate conversation between the Family Law Section and Justice Policy Initiative.

Veterans Courts

HB 5529 (Jenkins) Courts; drug court; providing information to veteran regarding veteran benefits; require. Amends sec. 1074 of 1961 PA 236 (MCL 600.1074).

HB 5531 (Kurtz) Courts; other; veteran completing sobriety court program to meet with veteran service organization or county veteran counselor as part of program; require. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1085

A motion was offered and seconded to support this legislation. The motion passed.

HB 5545 (Leonard) Criminal procedure; expunction; criminal record expunction for certain offenses; allow under certain circumstances. Amends secs. 1, 3 & 4 of 1965 PA 213 (MCL 780.621 et seq.).

A motion was offered and seconded to support this legislation. The motion passed.

Magistrates

SB 0931 (Jones) Criminal procedure; warrants; district court magistrate to issue arrest warrant or search warrant electronically; allow. Amends secs. 1, 3 & 5 of 1966 PA 189 (MCL 780.651 et seq.).

SB 0932 (Jones) Courts; judges; district court magistrates to decide motions to set aside default and requests to withdraw admission in civil infraction cases; allow under certain circumstances. Amends secs. 8511, 8512, 8512a & 8513 of 1961 PA 236 (MCL 600.8511 et seq.).

A motion was offered and seconded to support this legislation. The motion passed.

President's Report, Brian D. Einhorn, President

Mr. Einhorn reminded the Board that at its June 5 meeting it voted to send a letter to the Ford Motor Company regarding the use of the term "ambulance chaser" in a television commercial. The Board asked to see the letter prior to the letter being sent and Ms. Welch provided the Board with three options. She requested comments about the letters and Mr. Einhorn indicated that any Board member who would like to provide input to the letter should contact Ms. Welch or him.

Executive Director's Report, Janet K. Welch, Executive Director
SBM Standing and Special Committee 2014 – 2015 Resolution and Matrix

A motion was offered and seconded to approve the FY2014-2015 Resolution and Matrix with the addition of three new committees, the Continuing Legal Education Advisory Committee, the Law School to Practice Committee and the Discipline System Advisory Committee, and the elimination of two committees, the Criminal Jury Instructions and the Lawyer Referral Service Committees. The motion passed.

Commissioner Committee and Liaison Appointment Process

Ms. Crowley informed the commissioners that they will receive an e-mail 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.

ZeekBeek Update

The Board was to receive an update on ZeekBeek, but time did not permit. Mr. Einhorn appointed a work group to provide oversight on this program that includes Commissioners Haroutunian, Ulrich, and Burns, and a representative from the Young Lawyers Section. A meeting will be scheduled with the work group, SBM staff and the representatives from ZeekBeek.

Representative Assembly (RA) Report, Kathleen M. Allen, Chairperson
Meeting on September 18, 2014

Ms. Allen provided the Board with an update on the proposal that was submitted for review at the September 18, 2014 meeting.

Nomination for the 2014-2015 Representative Assembly Clerk

Ms. Allen reported that RA members have until the end of the day to submit their names for consideration for the position of 2014-15 Clerk of the RA.

American Bar Association (ABA) Report

There was no report.

Young Lawyers Section Report (YLS), Hope V. Shovein, Chairperson

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

State Bar Response Work Group Report

A motion was offered and seconded to approve the draft recommendations subject to the changes noted by Ms. Buiteweg, that once revised, the final report will be sent electronically to the Board for their approval and that a signature line may be added. A roll call vote was taken and the motion passed by a vote of 18–10, with one abstention.

Ayes: Allen, Anderson, Brake, Buchanan, Buiteweg, Burns, Costello, Grieco, Johnson, McCarthy, McGinnis, Nolan, Olsman, Radke, Shovein, Siriani, Ulrich, Einhorn

Nays: Barnes, Brown, Cunningham, Gobbo, Haroutunian, Ludden, Pero, Quick, Riordan, Rockwell

Abstention: Rombach

Discussion continued about the endnotes. A motion was offered and seconded to include end note 1 in the body of the document. The motion passed. Discussion continued about Endnote 2 and 3. It was decided that the work group will look at the endnotes, make changes, and include the changes in the final version that the Board will receive for an electronic vote.

A motion was offered and seconded to allow the Justice Initiatives Committee to issue a response the Michigan Supreme Court reflecting the thoughts of the committee. The motion passed.

Comments from Commissioners

There were none.

Adjournment

The meeting was suspended at 3:45 p.m., to be resumed for the purpose of a vote on the final version of the SBM Response to the report of the Task Force on the Role of the State Bar.

The Board received the final version of the SBM Comments on the Report of the Michigan Supreme Court Task Force on the Role of the SBM that will be sent to the Michigan Supreme Court.

On July 30, 2014 a motion was offered and seconded to approve the document. The motion was passed by an electronic vote:

Ayes: Allen, Anderson, Barnes, Brake, Buchanan, Buiteweg, Burns, Costello, Cunningham, Gobbo, Grieco, Haroutunian*, Irons, Johnson, McCarthy, McGinnis, Nolan, Olsman, Quick, Radke, Rockwell, Shovein, Siriani, Ulrich, Einhorn

Nays: Brown, Ludden, Pero, Riordan

Abstentions: Rombach, Williams

* Mr. Haroutunian asked that his vote be recorded as preferring to leave Rule 1 of the Supreme Court unchanged and to make the threshold vote on Keller permissibility 75% rather than two-thirds.

Meeting adjourned, July 31, 2014.