

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES

President Warnez called the meeting to order at 9:30 a.m. on Friday, January 21, 2022, via videoconference.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Yolanda Bennett
Kristina A. Bilowus
Aaron V. Burrell
Erika L. Bryant
Hon. B. Chris Christenson
Thomas P. Clement
Sherrice Detzler
Robert A. Easterly
Hon. Kameshia D. Gant
Lisa J. Hamameh, Treasurer
James W. Heath, President-Elect
Thomas H. Howlett
Sarah E. Kuchon

Suzanne C. Larsen
James W. Low
Gerrow D. "Gerry" Mason
Joseph P. McGill, Secretary
Valerie R. Newman
Nicholas M. Ohanesian
Samantha J. Orvis
Hon. David A. Perkins
Daniel D. Quick, Vice President
Hon. Kristen D. Simmons
Delphia T. Simpson
Thomas G. Sinas
Danielle Walton
Dana M. Warnez, President
Hon. Erane C. Washington
Mark A. Wisniewski

Commissioners absent:

E. Thomas McCarthy Jr.
Colemon L. Potts
Takura N. Nyamfukudza

State Bar staff present:

Janet Welch, Executive Director
Margaret Bossenbery, Executive Coordinator
Nancy Brown, Assistant Executive Director
Gregory Conyers, Program Director, Diversity Development Program
Peter Cunningham, Director, Governmental Relations, and Assistant Executive Director
Darin Day, Program Director, Outreach
Michelle Erskine, Research Assistant & Event Specialist
Katherine Gardner, UPL Counsel
Tatiana Goodkin, Chief Financial Officer
Kathryn Hennessey, General Counsel and Assistant Executive Director
Robert Mathis, Pro Bono Services & Justice Initiatives Counsel
Molly Ranns, Director, Lawyers & Judges Assistance Program
Carrie Sharlow, Administrative Assistant
Janna Sheppard, Administrative Assistant
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Public Policy Counsel
Anne Vrooman, Program Director, Research & Development

Consent Agenda:

The Board received the minutes from the November 19, 2021, Board meeting.

The Board received the minutes from the November 9 and December 7, 2021, 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 2021 draft financial reports through November 2021.

The Board received Model Criminal Jury Instructions.

The Board received section bylaw amendments from the Criminal Law Section.

Ms. Warnez asked the Board if any items needed to be removed from the consent agenda. There were none.

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

A motion was offered to go into closed session to review the Executive Director Search Work Group Report. The motion was seconded and approved.

The Board went into closed session at 9:40 a.m.

The Board returned to open session at 10:10 a.m.

Ms. Warnez excused herself from the meeting and “passed the gavel” to Mr. Heath to run the meeting in her absence. Ms. Warnez indicated that she would return later in the morning.

Mr. Heath asked Ms. Hamameh to introduce Jamie Rabe from Andrews Hooper Pavlik, PLC ,to present to the Board the results of the FY 2021 Audit Update and Report.

LEADERSHIP REPORTS

President and Executive Director’s Report: Dana M. Warnez, President and Janet K. Welch, Executive Director

Mr. Heath asked the chairs of the following work groups to provide an update to the Board.

Work Group Reports

Governance

Ms. Warnez stated that the work group has a course of action planned and anticipate having a proposal ready to present to the RA members at the April 9 meeting.

Sections

Ms. Warnez stated that the work group has a meeting scheduled next week.

Executive Director (ED) Search

Ms. Warnez joined the meeting and stated that based on the discussion of the ED Search Committee and at the direction provided by the Board of Commissioners, she moved that Mr. Peter Cunningham be hired as the next executive director of the State Bar of Michigan. The motion was supported and unanimously approved.

A motion was offered and supported giving Ms. Warnez and Mr. Heath the authority to negotiate the terms of the contract with Mr. Cunningham. The motion was approved.

Michigan Supreme Court — Proposed Licensing Fee Increase

Ms. Welch reported that since the last Board meeting the Supreme Court published for comment in response to the SBM's recommendation for an \$80 licensing fee increase for active attorneys a proposal to increase the licensing fee by \$50. She stated that the SBM will take advantage of the opportunity to comment by drafting a letter advocating for the increase of \$80. She said that she, along with Mr. Cunningham, Ms. Hennessey, and Ms. Raymer, were working on the draft. She stated that Ms. Warnez and Mr. Ohanesian will be the signatories on the letter and have reviewed the draft.

Attorney Well-Being Task Force

Ms. Ranns provided the Board with an update on the work of the Attorney Well-being Task Force chaired by Justice Megan Cavanagh. She stated that a consultant has agreed to assist with getting the Task Force off the ground and is doing this work at no cost to the Bar.

SOLACE Program

Mr. Mathis and Ms. Ranns provided the Board with a visual update and overview of the SOLACE Program. They presented examples of requests for assistance from the SBM members and their families who received assistance from the volunteers in the SOLACE program. Ms. Warnez asked if they would share the slide they used in their presentation with the entire Board and they said they would.

Diversity, Equity, and Inclusion (DEI) Commission

Ms. Welch stated that the Court has created a DEI commission, and its structure is familiar to the Justice for All Commission and the SBM has a central role in participating and planning its membership. She said that the commission is cochaired by Justice Elizabeth Welch and Judge Cynthia Stephens and that they are wasting no time in getting the members identified. Ms. Welch stated that the commission is an important endeavor and fits well within the SBM Strategic Plan.

Representative Assembly (RA) Report: Nicholas M. Ohanesian, Chairperson

Mr. Ohanesian reported that the officers and the committees are moving forward with the planning of the April meeting. He stated that the Nominating Committee is busy filling vacancies, and the Rules and Calendar committees are waiting for proposals. He reported the Special Governance Committee had its first meeting and that a second meeting is in the works. He said that he anticipates having a proposal for the RA to review and vote on at its April meeting.

Young Lawyers Section (YLS) Report: Kristina Bilowus, Chairperson

Ms. Bilowus provided the Board with an update on the many outreach programs and meetings they plan for the Young Lawyers Section and law school students.

COMMISSIONER COMMITTEES

Finance: Lisa J. Hamameh, Chairperson

Ms. Hamameh reviewed the FY 2021 financial results through November 2021 with the Board.

Audit: Lisa J. Hamameh, Chairperson

Ms. Hamameh reported that the committee met on December 8 to review the auditor's report that the Board heard about earlier.

She stated that the audit committee has met to discuss the SBM's Auditor Rotation Policy. She said that the Board may recall there is a limit to the number of years we can have the same audit firm. Ms. Goodkin did research and prepared a memo which you all received. She stated that the finance staff and the committee support amending the policy and rescind the requirement for mandatory auditor rotation. A motion was offered and supported to adopt the changes proposed by the committee. The motion was approved.

Professional Standards: Joseph P. McGill, Chairperson

Pro Hac Vice Rules

A motion was offered and supported to approve the proposed revision of the Pro Hac Vice Rules for temporary admission to the Bar. The motion was approved.

Amicus brief

The SBM has been asked to submit an amicus brief in the *Shephard v Bloom* case which is pending before the Michigan Supreme Court. A motion was offered and supported to allow State Bar staff to move forward with preparing and submitting an amicus brief limited to the ethical aspect of the case. The motion was approved.

Communications and Member Services (CAMS): Daniel D. Quick, Chairperson

Ms. Warnetz stated that in Mr. Quick's absence due to an ongoing trial, Ms. Bryant will provide the report from the CAMS Committee.

Bar Leadership Forum (BLF) and Upper Michigan Legal Institute (UMLI) update

Ms. Bryant stated that the committee has been discussing the future of the BLF and UMLI meetings. She stated there is no action to take today, but if the committee decides to make any changes, they will be brought to the Board for consideration at a future meeting.

Ms. Bryant provided the Board with an update about the SBM's social media strategy. She stated that the numbers on SBM's Facebook, LinkedIn, and Twitter platforms were all higher in November and December as compared to October and the total number of followers increased on every platform.

Ms. Bryant reminded the Board members to mark their calendars for the National Mock Trial taking place in Michigan on May 5–7, 2022.

Ms. Bryant stated that the next items need action taken. She reported there have been discussions about three sections out of compliance with SBM rules and have been flagged for dissolution. She stated those three sections were the Law Practice Management and Legal Assistants, Latin American Bar Activities, and Senior Lawyers sections. The Board agreed to give each section until the end of March to come into compliance or face dissolution.

Ms. Bryant reported that regarding the Law Practice Management and Legal Assistants Section, they did conduct a valid council election and informed staff. A motion was offered, and supported to approve the continuation of this section. The motion was approved.

The Latin American Bar Activities Section has been dormant since at least 2016 and there has been no response to staff appeals since 2021. A motion was offered and supported to dissolve this section. The motion was approved.

The Senior Lawyers Section reported that they experienced various technical issues in the way their annual meeting was held. A motion was offered that they be notified to reconvene this meeting by Zoom and submit a council roster by March 1 and that the Board waives any conflicts in their bylaws that would prohibit their meeting by Zoom so they can come into compliance. The motion was approved.

Public Policy: James W. Heath, Chairperson

Legislation continued from November 2021 meeting

HB 5309 (LaFave) Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify. Amends secs. 937, 940 & 946 of 1961 PA 236 (MCL 600.937 et seq.) & adds sec. 945.

Keller vote taken at the November 2021 meeting.

A motion was offered and supported to support HB 5309. The motion failed by a roll call vote, 16 - 13 with 5 commissioners not voting.

Commissioners Voting in Support: Bilowus, Bryant, Burrell, Christenson, Detzler, Easterly, Gant, Heath, Kuchon, Larsen, Newman, Orvis, Simpson, Sinas, Wisniewski, Warnez.

Commissioners Voting in Opposition: Anderson, Danielle, Anderson, David, Bennett, Clement, Hamameh, Howlett, Low, Mason, McGill, Ohanesian, Simmons, Walton, Washington.

Commissioners Absent and not Voting: McCarthy, Nyamfukudza, Perkins, Potts, Quick.

Bail Bonds Legislation

HB 5436 (Fink) Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends sec. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g, ch. V.

HB 5437 (Yancey) Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.

HB 5438 (VanWoerkom) Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).

HB 5439 (Young) Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

HB 5440 (LaGrand) Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 7677.69) by adding sec. 6f, ch. V.

HB 5441 (Johnson) Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).

HB 5442 (Meerman) Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure.

Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).

HB 5443 (Brann) Criminal procedure: bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

Keller vote taken at the November 2021 meeting.

A motion was made and supported to support bail/bond legislation that aligns with the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration, namely, HB 5436- HB 5439 and HB 5441-HB 5443 — and to oppose HB 5440, as it was not based upon any task force recommendation and to further authorize sections to advocate their public policy positions on this legislative package.

The motion was approved by a Roll Call Vote.

Commissioners Voting in Support: Anderson, Danielle; Anderson, David; Bennett; Bilowus; Bryant; Burrell; Christenson; Clement; Detzler; Easterly; Gant; Hamameh; Heath; Howlett; Kuchon; Larsen; Low; McGill; Newman; Ohanesian; Orvis; Simmons; Simpson; Sinas; Washington; Warnez.

Commissioners Voting in Opposition: Mason; Walton; Wisniewski.

Current Legislation

HB 5340 (Whiteford) Courts: other; family treatment court; create. Amends sec. 1082 of 1961 PA 236 (MCL 600.1082) & adds ch. 10D.

A motion was offered and supported that this legislation was *Keller* permissible. The motion was approved.

A motion was made and supported to support HB 5340 in concept and identified two areas of particular concern with the current bill language: Judges should have the discretion to admit a violent offender as a participant in the proposed family treatment court; and participants should not be required to waive their right to counsel before entry into the proposed family treatment court. The motion was approved.

HB 5482 (Howell) Courts: drug court; eligibility for drug treatment courts; modify. Amends sec. 1066 of 1961 PA 236 (MCL 600.1066).

HB 5483 (LaGrand) Courts: other; eligibility for mental health court participants; modify. Amends sec. 1093 of 1961 PA 236 (MCL 600.1093).

HB 5484 (Yancey) Courts: drug court; termination procedure for drug treatment courts; modify. Amends sec. 1074 of 1961 PA 236 (MCL 600.1074).

A motion was offered and supported this legislation was *Keller* permissible. The motion was approved.

A motion was offered and supported to support HB 5482, HB 5483, and HB 5484 as drafted, and to recommend an amendment to MCL 600.1064(1) to align that provision's language related to drug treatment court eligibility requirements for violent offenders with the language proposed in HB 5482. The motion was approved.

HB 5541 (Fink) Occupations: attorneys; requirements for admission to State Bar; modify. Amends secs. 931, 934 & 946 of 1961 PA 236 (MCL 600.931 et seq.) & adds sec. 935.

A motion was offered and supported this legislation was *Keller* permissible. The motion was approved.

A motion was offered and approved to support HB 5541 as drafted. The motion was approved.

HB 5593 (Calley) Criminal procedure: mental capacity; community mental health oversight of competency exams for defendants charged with misdemeanors; provide for. Amends 1927 PA 175 (MCL 760.1–777.69) by adding sec. 20b to ch. VIII.

A motion was offered and supported this legislation was *Keller* permissible. The motion was approved.

A motion was offered to support providing defendants in need with mental health referrals and treatment, but to oppose the legislation as drafted for the reasons stated by the Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee. The motion was approved.

Court Rules

ADM File No. 2021-41 — Proposed Amendments of MCR 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Proposed Additions of MCR 6.105, 6.441, and 6.450.

The proposed amendments would make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

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

ADM File No. 2021-05 — Proposed Amendments of MCR 6.302 and 6.310.

The proposed amendments of MCR 6.302 and 6.310 would require a court to specify the estimated sentencing guideline range as part of a preliminary evaluation of the sentence and to clarify that a defendant may withdraw a plea when the actual guidelines range differs from initially estimated.

A motion was offered and supported to support the proposed amendments with additional language added to MCR 6.302 to state explicitly that the defendant be allowed to withdraw his/her plea should the guideline range differ from the one stated on the plea agreement. This would make the court rule more consistent with MCR 6.310. The motion was approved with Commissioner Walton in opposition.

ADM File No. 2019-16 — Proposed Amendment of MCR 7.212.

The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays.

A motion was offered and supported to support the proposed amendments as drafted and to recommend that committees and sections be authorized to submit their positions to the Court. The motion was approved.

ADM File No. 2021-45 — Amendment of MCR 7.306.

The amendment of MCR 7.306 creates procedure specific to original actions relating to cases filed involving the Independent Citizens Redistricting Commission.

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

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Ms. Warnez recognized this is the final meeting where Ms. Welch is the executive director and asked if she would like to address the Board. Ms. Welch stated that although she was not included in the discussions of the search deliberations, she knew that the committee and the Board had excellent candidates to choose from. She stated that she is confident that Mr. Cunningham will do a wonderful job and that the Bar is in good hands.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 12:30 p.m.