

President Einhorn called the meeting to order at 9:30 a.m., January 17, 2014 at the Michael Franck Building in Lansing, MI.

Commissioners present:

Kathleen M. Allen  
Danielle Mason Anderson  
Dennis M. Barnes  
David R. Brake  
Danielle M. Brown  
Robert J. Buchanan  
Timothy J. Burns  
Lori A. Buiteweg, Vice President  
Margaret A. Costello  
Richard L. Cunningham  
Brian D. Einhorn, President  
D. Randall Gilmer  
Stephen J. Gobbo  
Jennifer M. Grieco

Andrea Irons  
E. Thomas McCarthy, Jr.  
Lawrence P. Nolan, Secretary  
Colleen A. Pero  
Daniel D. Quick  
Victoria A. Radke  
Hon. Michael J. Riordan  
Donald G. Rockwell, Treasurer  
Thomas C. Rombach, President-Elect  
Hope V. Shovein  
Richard J. Siriani  
Gregory L. Ulrich  
Vanessa Peterson Williams

Commissioners absent and excused:

Commissioners Edward L. Haroutunian, Felicia O. Johnson, C. Thomas Ludden, Maureen M. McGinnis and Jules B. Olsman were absent and excused.

State Bar Staff present:

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

Guests

Jeffrey Fineis, Partner, Andrews Hooper Pavlik, PLC  
Dean Joan Howarth, Michigan State University School of Law  
Jamie Rabe, Audit manager, Andrews Hooper Pavlik, PLC  
Hon. Brian Zahra, Justice, Michigan Supreme Court

Consent Agenda

The Board received the minutes from the November 22, 2013 and December 2, 2013 board meetings, and the November 5, 2013 Executive Committee call.

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 November 30, 2013.

The Board received the Unauthorized Practice of Law Complaints for Litigation, the Client Protection Fund Claims and a District A Character and Fitness Committee Appointment.

The consent agenda was approved, after claims #2935 and #2936 from the Client Protection Fund Claims were removed from the agenda.

#### Michigan Bar Exam

Dean Joan W. Howarth and Justice Brian K. Zahra addressed the Board on the topic of the Michigan Bar Exam.

#### FY 2013 SBM Audit Report

Mr. Fineis and Ms. Rabe from the auditing firm Andrews Hooper Pavlic, PLC, reviewed the FY2013 Audit Report with the Board.

### COMMISSIONER COMMITTEES

#### **Finance**, Donald G. Rockwell, Chairperson

##### **FY2014 Financial and Investment Update**

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

#### **Audit Committee**, Donald G. Rockwell, Chairperson

##### **Proposal to Extend the Andrews Hooper Pavlic, PLC Agreement**

A motion was offered and seconded to extend the agreement with Andrews Hooper Pavlic PLC for auditing services for two years. The motion passed.

#### **Professional Standards**, Lawrence P. Nolan, Chairperson

Mr. Nolan led a discussion about claims #2935 and #2936.

A motion was offered and seconded to increase the amount of claims #2935 and #2936 from \$75,000 to \$150,000 due to the amount of the loss to the trust. A motion to table was offered. The motion to table passed.

#### **Programs and Services**, Lori A. Buiteweg, Chairperson

##### **Member Benefits Booklets**

Ms. Buiteweg referenced the "Benefits for State Bar of Michigan Members" booklet that they received. She indicated that an electronic version of the booklet would be sent to all members in the upcoming State Bar Today.

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

The Board members received the Justice Initiatives Report.

#### **Court Proposals**

##### **ADM File No. 2013-03 Proposed Amendment of Rule 2.302 of the Michigan Court Rules**

The proposed amendment would clarify that discovery is available in postjudgement proceedings in domestic relations matters.

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

##### **ADM File No. 2013-04 Proposed Amendment of Rule 3.705 of the Michigan Court Rules**

The proposed amendment of MCR 3.705(C) would prohibit publication of information on the Internet that could reveal the identity or location of the protected party.

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

**ADM File No. 2013-19 Proposed Amendment of Rule 3.602 of the Michigan Court Rules**

The proposed changes of MCR 3.602 would apply to all other forms of arbitration that are not described in the newly adopted Revised Uniform Arbitration Act, MCL 691.1681 et seq.

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

**ADM File No. 2012-11 Proposed Amendment of Rule 6.301 of the Michigan Court Rules**

This proposed amendment would add a harmless-error provision identical to that in the FR Crim P11(h)

A motion was offered and seconded to oppose this proposal. The motion passed. Ms. Buiteweg abstained.

**Legislation**

**Old Business**

**Criminal Expunction**

**HB 5018** (Leonard) Criminal procedure; expunction; requirement for attorney general review of a set-aside application; eliminate. Amends sec. 1 of 1965 PA 213 (MCL 780.621).

**HB 5019** (Johnson, J.) Juveniles; criminal procedure; requirement for attorney general review of a set-aside application; eliminate. Amends sec. 18e, ch. XIIIA of 1939 PA 288 (MCL 712A.18e).

The committee recommended that action on this legislation be deferred.

**New Business**

**Human Trafficking Expunction**

**HB 5025** (Heise) Criminal procedure; expunction; victim of human trafficking to set aside certain prostitution convictions; allow under certain circumstances. Amends secs. 1, 2 & 4 of 1965 PA 213 (MCL 780.621 et seq.).

**SB 0591** (Proos) Criminal procedure; expunction; setting aside criminal conviction on grounds of being a victim of human trafficking; allow under certain circumstances. Amends secs. 1, 2 & 4 of 1965 PA 213 (MCL 780.621 et seq.).

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

**Human Trafficking**

**HB 5012** (Kowall) Crimes; prostitution; minors engaged in prostitution; create presumption of coercion under certain circumstances. Amends sec. 451 of 1931 PA 328 (MCL 750.451).

**HB 5026** (Heise) Juveniles; other; court jurisdiction over dependent juveniles in danger of substantial physical or psychological harm; allow. Amends sec. 2, ch. XIIIA of 1939 PA 288 (MCL 712A.2)

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

**HB 5055** (Johnson, J.) Criminal procedure; warrants; defraying of costs incurred by local unit of government in executing bench warrants; allow. Amends sec. 1f, ch. IX of 1927 PA 175 (MCL 769.1f).

A motion was offered and supported to oppose this legislation. The motion passed.

**HB 5078** (Haveman) Criminal procedure; sentencing guidelines; sentencing guidelines commission; reestablish. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding secs. 32 & 33 to ch. IX.

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

**HB 5127** (Geiss) Criminal procedure; sentencing; assessment fee for conviction of a misdemeanor or felony; create, and earmark into a safe and secure schools fund. Amends sec. 1j, ch. IX of 1927 PA 175 (MCL 769.1j).

A motion was offered and supported to oppose this legislation. The motion passed.

**SB 0558** (Schuitmaker) Mental health; other; program to divert persons with serious mental illness from justice system to treatment; establish. Amends 1974 PA 258 (MCL 330.1001 - 330.2106) by adding sec. 207a & repeals sec. 207 of 1974 PA 258 (MCL 330.1207).

A motion was offered and supported to support this legislation. The motion passed. Ms. Johnson abstained.

**H.R. 2509 and S. 1224: Civil Justice Tax Fairness Act of 2013**

These two identical bills amend the Internal Revenue Code to allow: (1) an exclusion from gross income for amounts received (whether by judgment or settlement, as lump sums or periodic payments) on account of a claim of unlawful discrimination; (2) income averaging for backpay and frontpay amounts received from such claims; and (3) an exemption from the alternative minimum tax (AMT) for any tax benefit resulting from the income averaging of amounts received from an unlawful discrimination claim.

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

**Preliminary Examinations**

**HB 5154** (Leonard) Criminal procedure; preliminary examination; certain rules and procedures for conducting a preliminary examination; revise. Amends secs. 4, 7, 11a, 11b & 13, ch. VI of 1927 PA 175 (MCL 766.4 et seq.).

A motion was offered and supported to support this legislation in principle and allow staff to work to achieve the following provisions:

- (1) allow a complaining witness to testify at a pre-preliminary examination conference but require meaningful discovery to be provided to defense counsel sufficiently in advance of the hearing before requiring cross-examination to be conducted;
- (2) allow testimony from a witness outside the courtroom for bind over purposes, but allow admissibility at trial of only video-recorded testimony;
- (3) allow the defense counsel to call witnesses at the preliminary examination;
- (4) eliminate the loss-prevention officer from those who could testify to hearsay;
- (5) allow severance of co-defendant's preliminary examination if court finds reasons on the record.

The motion passed.

**HB 5155** (Walsh) Courts; district court; probable cause conferences in felony and misdemeanor cases; clarify district court's jurisdiction. Amends secs. 8311 & 8511 of 1961 PA 236 (MCL 600.8311 & 600.8511) & repeals sec. 2167 of 1961 PA 236 (MCL 600.2167).

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

**HB 5069** (Heise) Property; other; liability for damages if landlord enters premises; provide exception if occupant is squatting. Amends secs. 2918, 5711 & 5714 of 1961 PA 236 (MCL 600.2918 et seq.).

The committee recommended that action on this legislation be deferred.

**HB 5082** (Heise) Family law; parenting time; parenting coordinator; create. Amends 1970 PA 91 (MCL 722.21 - 722.31) by adding sec. 7c.

A motion was offered and supported to support this legislation. A roll call vote was taken:

AYES: Allen, Anderson, Barnes, Brake, Brown, Buchanan, Buiteweg, Burns, Gilmer, Gobbo, Grieco, Irons, McCarthy, Nolan, Pero, Radke, Riordan, Rockwell, Rombach, Shovein, Siriani, Ulrich, Einhorn

NAYS: Costello, Quick, Williams

The motion passed.

**SB 0519** (Proos) Civil procedure; other; fines, costs, and other indebtedness to courts; require SCAO to establish a database, and require civil litigants to check database before paying or collecting on a judgment. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1477.

A motion was offered and supported to oppose this legislation. The motion passed.

**SB 0520** (Emmons) Crime victims; restitution; restitution orders for crime of nonpayment of support; clarify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

A motion was offered and supported to oppose this legislation. The motion passed. Mr. Richard Cunningham abstained.

**SB 0521** (Emmons) Family law; child support; authority of friend of the court to issue subpoenas for show cause and notice to appear; allow, and provide for other general amendments. Amends secs. 31, 32, 33, 37, 44 & 45 of 1982 PA 295 (MCL 552.631 et seq.) & adds sec. 36.

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

### **Proposed Amendment to the Federal Rules of Civil Procedure**

The Board received a memo from Mr. Peter Cunningham and Mr. Flood regarding proposed amendments to the Federal Rules of Civil Procedure. The US Courts Committee is reviewing the proposed amendments and because of time constraints the comments that are anticipated to come from that committee will not be submitted in time for the entire Board to review and approve. Mr. Rombach said that he wanted to give the Board advance notice that this will be coming and asked for support for the Executive Committee to take action. It was determined that the full Board would get the opportunity to review and submit comments before approval is given.

### **President's Report**, Brian D. Einhorn, President

#### **Proposed Changes to Administrative Order 2004-1**

A work group was appointed by Mr. Einhorn to review Administrative Order 2004-1. The work group, consisting of Mr. Buchanan, Mr. Burns, Ms. Costello, Mr. Einhorn, Ms. Grieco, Mr. Rombach, Mr. Ulrich, staffed by Ms. Welch, met in early January. Paragraph 2-D of ADM 2004-1 provides that the State Bar cannot comment or take action on legislation until the legislation is posted on the SBM website for 14 days. The committee proposed to the Board that the time be changed from 14 days to 18 hours and that once passed by the Board that the proposal be sent to the Michigan Supreme Court for their action.

A motion was offered and seconded to make this change. Discussion followed.

A motion was offered and supported to amend the original proposal time frame from 18 hours to 72 hours. The motion passed.

A vote was taken on the original proposal to send this proposal to the Michigan Supreme Court. The motion passed.

#### **Proposed Amendments to SBM Bylaw Revisions**

Mr. Einhorn appointed a committee consisting of Ms. Costello, Mr. Rombach, Mr. Ulrich, and himself, along with SBM staff Ms. Welch, Mr. Flood and Mr. Peter Cunningham to review the Bylaws Governing the State Bar of Michigan. The committee met in January and discussed proposed changes to the bylaws that come before the Board for consideration.

A motion was offered and supported to approve the proposed changes with the following amendments:

- Section 7, Board of Commissioners—Meetings, paragraph 4, line 4, the time required to call for a meeting is changed from 18 hours to 24 hours.
- Section 9, Executive Committee – paragraph 3, line 4, change the word “hold” to “held.”
- Article 10 Second 2 email address would be added.

The motion passed as amended.

### **Executive Director's Report**, Janet K. Welch, Executive Director

#### **Michigan Supreme Court Update**

Ms. Welch informed the Board that the State Bar has been invited to participate in an initiative that the Michigan Supreme Court and the State Court Administrative Office have undertaken regarding Trial Court Performance Standards. Ms. Welch will continue to provide the board with updates as the committee moves forward.

SBM Building Closure

Ms. Welch informed the Board that the closure of SBM operations from December 24 through January 2 went smoothly.

ADM 2012-25 (Proposed New SBR 16.1 regarding the Unauthorized Practice of Law)

Ms. Welch asked Ms. Evans to discuss with the Board the memo she wrote in response to the Michigan Supreme Court's request for additional information regarding ADM 2012-25 (Proposed New SBR 16.1 regarding the Unauthorized Practice of Law). Ms. Evans drafted a response letter and is asking the Board to approve its contents so that it can be sent to the Court.

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

Access to Information Policy

Ms. Welch informed the Board that the State Bar received its first request for information under the SBM's Access to Information Policy. The request is from Greg McNeilly for any records concerning the State Bar's letter to the Secretary of State on campaign finance disclosure.

Representative Assembly (RA) Report, Kathleen M. Allen, Chairperson

Ms. Allen informed the Board that the Nominating/Awards committee is working to fill the vacancies on the RA. They are also accepting nominations for the Unsung Hero and the Michael Franck Awards. Ms. Allen asked the Board members to review the criteria of the awards and submit the names of qualified candidates they might know.

April 26 RA Meeting

Ms. Allen reported that progress is being made in developing the agenda for the April 26, 2014 meeting and that proposals are still being accepted.

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 and reminded the Board about the annual bowling challenge that is taking place after the April 25 Board meeting.

Comments from Commissioners

The Board recognized Mr. Einhorn's birthday.

Mr. Nolan announced that former State Bar President Wally Riley provided him with copies of a book that contains Special Sessions of the Michigan Supreme Court to be distributed to members who were interested.

Mr. Einhorn announced that there would not be a March Board meeting.

Adjournment

The meeting was adjourned at 2:00 p.m.