

President Buiteweg called the meeting to order at 9:50 a.m. on April 29, 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
Shauna L. Dunning
Robert C. Gardella
Jennifer M. Grieco, Secretary
Krista L. Haroutunian
James W. Heath
Fred K. Herrmann
Andrea Irons
Mark W. Jane

Thomas E. McCarthy Jr.
Joseph P. McGill
Lawrence P. Nolan, President-Elect
Jules B. Olsman
Hon. David A. Perkins
Colleen A. Pero
Daniel D. Quick
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Vice President
Brian D. Shekell
Gregory L. Ulrich
Dana M. Warnez
Erane C. Washington

Commissioners absent and excused:

Hon. Clinton Canady III
Edward L. Haroutunian
Richard J. Siriani

Hon. Maureen M. McGinnis
Shenique A. Moss

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
Kari Thrush, Manager, Members Services and Events
Anne Vrooman, Director, Research and Development

Guest

Jeff Kirkey, 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 January 22, 2016 Board of Commissioners meeting.

The Board received the minutes from the January 5, February 16, and March 22, 2016 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 2016 Financial Reports through March 2016.

The Board received the 2015 Report of the State of Michigan Retirement Plans.

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

COMMISSIONER COMMITTEES

Finance, Dennis M Barnes, Chairperson

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

Mr. Barnes presented the Board with a budget amendment to the FY 2016 budget. The amendment adds a capital project for \$70k to re-build the SBM e-commerce site, and amends the operating budget to increase the IT telephone budget by \$10k, increase the depreciation budget by \$10k, and decrease the IT consulting budget by \$20k. This amendment does not change the bottom line operating budget for FY 2016. A motion was offered and supported to approve the FY 2016 budget amendment. The motion was approved.

Mr. Barnes updated Commissioners on an item first reported at the January meeting regarding correspondence from IRS suggesting that SBM is a tax-exempt entity under section 501(c)(6) as a result of a determination letter issued in March 1956. The assertion is contrary to more recent IRS determinations that the Bar is an instrumentality of the state under section 115 of the IRC.

Mr. Barnes reported that in response to correspondence from the SBM that attached copies of IRS correspondence from 1946 to 1956 detailing the Bar's tax-exempt status as an instrumentality of the state, the IRS merely responded that its records did not actually specify SBM's federal tax status, and it invited SBM to request a private letter ruling if it was unsure of its tax-exempt status. As it is not uncertain regarding SBM's tax-exempt status as an entity of the State of Michigan pursuant to section 115 of the IRC, the Finance Committee concurs with the recommendation of the General Counsel that we take no further action.

Audit, Dennis M. Barnes, Chairperson

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

Professional Standards, Jennifer M. Grieco, Chairperson

Ms. Grieco informed the Board that there was no report.

Programs and Services, Donald G. Rockwell, Chairperson

50 Year Honoree Resolution

Mr. Rockwell reported that the Board received the 2016 Resolution honoring members for 50-Year of membership for action. A motion was offered and supported to approve the resolution. The motion was approved.

Mr. Rockwell reminded the commissioners that their registration for the 2016 Bar Leadership Forum is due and asked them that if they have not already completed the registration form to do so and return to Ms. Bossenbery.

New Member Benefit Programs

The Board considered the following New Member Benefits Programs:

- Hartville Pet Insurance Group provides health insurance for pets. A motion was offered and supported to adopt this benefit. The motion was approved
- Credible Finder provides a service that assists students locate creditors that will refinance student loans with lower interest rate. A motion was offered and supported to adopt this benefit. The motion was approved.
- Law Pay provides assistance to SBM members with processing credit card payments. A motion was offered and supported to adopt this benefit. The motion was approved.

Ms. Buiteweg suggested that a notice regarding the new member benefits be included in the next newsletter from the commissioners.

2016 SBM Awards Committee Recommendations

A motion was offered and seconded to award the Roberts P. Hudson Award to Linda K. Rexer. The motion was approved.

A motion was offered and seconded to award the Frank J. Kelley Distinguished Public Service Award to William Forsyth and Wayne F. Pratt. The motion was approved.

A motion was offered and seconded to award the Champion of Justice Awards to Hon. Ulysses Whitaker Boykin, Hon. Nanci J. Grant, Roland Hwang, Marla Mitchell-Cichon, and H. Rhett Pinsky. The motion was approved.

A motion was offered and seconded to award the Kimberly M. Cahill Bar Leadership Award to the Macomb County Bar Foundation. The motion was approved. Ms. Warnez abstained.

A motion was offered and seconded to award the John W. Reed Lawyer Legacy Award to Professor George Roumell Jr. The motion was approved.

Mr. Rockwell informed the Board that the nomination for the Liberty Bell Award will be presented to the Board at its June 2016 meeting.

2016 John W. Cummiskey Award Nominee

A motion was offered and seconded to award the 2016 John W. Cummiskey Award to Leo Goddeyne. The motion was approved.

Proposed policy to Limit the Number of Awards Banquet Awards Recipients

Mr. Rockwell informed the Board that the State Bar Awards Committee has discussed limiting the number of SBM Award recipients. The proposal that is included in the board book was not reviewed by the Programs and Services Committee and no action is proposed at this time. The proposal will be reviewed at a future meeting with the possibility of action being taken by the end of this year.

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

The Board members received a written Justice Initiatives Report and a written Public Policy report.

Court Rules

ADM File No. 2016-06 - Proposed Amendments of Rules 3.925, 8.119, and 8.302 and Proposed New Rule 5.133 of the Michigan Court Rules

The proposed amendments of MCR 3.925, 8.119, and 8.302 and proposed new MCR 5.133 are an expected progression in the development of policies and procedures arising from a larger project that was initiated, in part, through the Access to Records Committee in 2009. These policies and procedures are intended to standardize management of court records and to provide a uniform basis for developing parameters on the use of technology in creating, accessing, routing, maintaining, and disposing of court records. These particular amendments will assist in implementing the goals of 2013 PA 199 and 201 and improving the policies and procedures adopted by the Court in 2012 under Administrative File No. 2006-47.

A motion was offered and supported to support the proposed amendments and include the comments from the Criminal Jurisprudence and Practice Committee and Civil Procedure and Courts Committee including their concerns over the mandatory disposal of records. The motion was approved.

Legislation

Age of Juvenile

HB 4947 Juveniles; criminal procedure; age of juvenile court jurisdiction and location of juvenile detention in some instances; modify. Amends secs. 1, 3 & 11, ch. XIIA of 1939 PA 288 (MCL 712A.1 et seq.).

HB 4948 Criminal procedure; sentencing; sentencing juveniles prosecuted in the same manner as adults; revise code of criminal procedure to reflect increase in age limit and factors for consideration. Amends sec. 27, ch. IV of 1927 PA 175 (MCL 764.27).

HB 4949 Juveniles; criminal procedure; age of juvenile court jurisdiction in juvenile diversion act; modify. Amends secs. 2 & 8 of 1988 PA 13 (MCL 722.822 & 722.828).

HB 4950 Juveniles; criminal procedure; age of juvenile jurisdiction in youth rehabilitation services act; modify. Amends sec. 2 of 1974 PA 150 (MCL 803.302).

HB 4951 Mental health; other; age of juvenile in disposition of persons found not guilty by reason of insanity; modify. Amends sec. 1060a of 1974 PA 258 (MCL 330.2060a).

HB 4952 Criminal procedure; sentencing; sentencing juveniles prosecuted in the same manner as adults; revise the code of criminal procedure to reflect increase in age limit and factors for consideration. Amends sec. 15b, ch. IV of 1927 PA 175 (MCL 764.15b).

HB 4953 Juveniles; criminal procedure; definition of adult in Michigan indigent defense commission act; modify. Amends sec. 3 of 2013 PA 93 (MCL 780.983).

HB 4954 Criminal procedure; sentencing; sentencing juveniles prosecuted in the same manner as adults; revise the code of criminal procedure to reflect increase in age limit and factors for consideration. Amends sec. 11, ch. II of 1927 PA 175 (MCL 762.11).

The Public Policy Committee voted that the bills were not Keller permissible, and recommended no action be taken on the bills.

Probate Court Jurisdiction

SB 0632 Courts; jurisdiction; jurisdiction on appeals from orders and judgments of the probate court; provide to the court of appeals. Amends secs. 308, 846, 866 & 867 of 1961 PA 236 (MCL 600.308 et seq.) & repeals secs. 861 & 863 of 1961 PA 236 (MCL 600.861 & 600.863).

SB 0633 Courts; jurisdiction; appellate review of certain court orders by probate court; preclude. Amends sec. 1303 of 1998 PA 386 (MCL 700.1303).

HB 5502 Courts; jurisdiction; jurisdiction on appeals from orders and judgments of the probate court; provide to the court of appeals. Amends secs. 308, 846, 866 & 867 of 1961 PA 236 (MCL 600.308 et seq.) & repeals secs. 861 & 863 of 1961 PA 236 (MCL 600.861 & 600.863).

HB 5503 Courts; jurisdiction; appellate review of certain court orders by probate court; preclude. Amends sec. 1303 of 1998 PA 386 (MCL 700.1303).

A motion was offered and supported that this legislation is Keller permissible because it affects the functioning of the court. The motion was approved.

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

Military Spouse License to Practice Law

HB 5288 Occupations; attorneys; individuals licensed to practice law as a military spouse; require certain notifications to board of law examiners. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 947a.

HB 5289 Occupations; attorneys; license to practice law for military spouse; provide for under certain conditions. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 947.

A motion was offered and supported that the bills are Keller permissible in that the regulation and discipline of attorneys. The motion was approved.

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

SB 0742 Occupations; attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify. Amends secs. 931, 937, 940 & 946 of 1961 PA 236 (MCL 600.931 et seq.) & adds 945.

A motion was offered and supported that this legislation is Keller permissible because regulation and discipline of attorneys.

A motion was offered and supported to support this bill. Position adopted by roll call vote.

Commissioners voting in favor of the position: Anderson, Barnes, Brown, Buchanan, Buiteweg, Burns, Dunning, Gardella, Haroutunian, Heath, Herrmann, Irons, McCarthy, McGill, Moss, Nolan, Olsman, Pero, Radke, Riordan, Rockwell, Shekell, Ulrich, Warnez, Washington.

Commissioners voting against the position: Grieco, Jane, Quick.

Model Criminal Jury Instructions

M Crim JI 11.3, 11.6

The Committee proposes amending the definition of a pistol in M Crim JI 11.3 and deletion of M Crim JI 11.6 in accord with the decision in *People v Humphrey*, __ Mich App __; __ NW2d __ (2015) (Docket No. 320353), holding that inoperability of a firearm is not a defense to firearms violations.

A motion was offered and supported the criminal jury instructions with the amendment proposed by the Criminal Jurisprudence and Practice Committee. The motion was approved.

M Crim JI 19.1

The Committee proposes amendments to the kidnapping instruction, M Crim JI 19.1, to comport with amendments to MCL 750.349 that added the intent to engage a minor in child sexually abusive activity to the statute. Deletions are in strikethrough; added language is underlined.

A motion was offered to support this Criminal Jury Instruction. The motion was approved.

President's Report, Lori A. Buiteweg, President

21 Century Practice Task Force Update

Ms. Buiteweg provided the Board with an update on the work of the 21st Century Practice Task Force. Ms. Buiteweg reported that a Steering Committee has been appointed and met on March 21. The committee looked at implementation of the recommendations included in the report and discussed what agency or entity should follow up on the recommendations and brainstormed on collaboration efforts between the agencies and potential challenges they may face. Ms. Buiteweg indicated that many of the recommendations landed in the purview of the BOC and RA and will be discussed during the upcoming year.

Board Officer Election Procedure, Matrix, and 2016 Timeline

Ms. Buiteweg informed the Board that the deadline to submit a letter of interest and matrix for the position of Treasurer of the State Bar for 2016-17 is June 8, 2016. Materials should be sent to the President and the Executive Director.

SBM Strategic Planning Committee Update

Ms. Buiteweg reported that the Strategic Planning Committee is meeting on June 6 at the State Bar building. Ms. Buiteweg indicated that she would like to expand the membership of the committee and asked and invited all members of the Executive Committee, as well as Ms. Warnez and Ms. Brown, to become members of the Strategic Planning Committee. Ms. Buiteweg asked Ms. Vrooman if she had any information that would she would like to share with the Board.

Ms. Vrooman informed the Board that Ms. Jennifer Lewin from the American Bar Association will facilitate that meeting and that Ms. Lewin works with many state bars on strategic planning. She also informed the Board that a new member survey will be sent to SBM members within the next couple of weeks and that the last one was taken in 2011. The information received will be part of the information considered by the Strategic Planning Committee.

Rules Regarding Composition of SBM Committee Update

Ms. Buiteweg asked Mr. Rockwell to inform the Board about the committee that was formed to review and make recommendations about the procedures for SBM re-apportionment. Mr. Rockwell indicated that he is preparing a memo that will include all of the current SBM rules governing re-apportionment and the actual practice we incorporate into the process. He will also ask for dates when committee members are available to meet and Mr. Rockwell will report on the progress at a future meeting.

Regulatory Objectives Committee Update

Ms. Buiteweg informed the Board that one of the recommendations included in the Task Force Report was the formation of a Regulatory Objectives Committee. Ms. Buiteweg reported to the Board that she appointed the following members to the committee: Renee Knake, Victoria Vulevich, Amy Timmer, Mark Armitage, Alan Gershel, William Dunn, Christopher Hastings, Mwanaisha Sims, Hon. Cynthia Diane Stephens, Linda Rexer, Donald Campbell, Marcia Goffney, and Kenneth Mogill. Ms. Goodrum-Garland and Ms. Nkrumah Johnson-Wynn will act as staff liaisons. The committee is in the process of scheduling its first meeting.

2016 ABA Day

Ms. Buiteweg reported to the Board that she, along with former State Bar President, Reggie Turner; Hon. Ward L. Clarkston, Shiawassee County; Robert Mossel and Bradley Gayton, Ford Motor Company; Pamela C. Enslin, Kalamazoo attorney and member of the ABA Board of Governors; Thomas Linn, Chair Emeritus, Miller Canfield Paddock & Stone; and Peter Cunningham, met with representatives of Michigan's Congressional delegation during ABA Days to advocate for funding for the Legal Services Corporation and reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP). She reported that the meetings were positive and expressed confidence that the effort advanced Congressional leaders' understanding of the importance of legal aid.

Ms. Buiteweg asked Mr. Cunningham to provide the Board with his thoughts on any action that might occur as a result of their meetings. Mr. Cunningham reported that it is unclear if Congress is going to be able to complete a budget before the November election, and instead may just do a continuation budget this year. The JJDP is being tied to several other pieces of criminal justice reform legislation, and at this point it does not appear that there are enough votes to move the more comprehensive legislative package. Mr. Cunningham concurred with President Buiteweg on the long-term utility of the meetings in advancing support for LSC funding.

Ad Hoc Committee on Fee Structures

Ms. Buiteweg reminded the Board that in September 2015, the Board sent a letter to the Michigan Supreme Court indicating that the 21st Century Practice Task Force would take an in-depth review on alternative billing arrangements including enhanced fees for results obtained. The Board asked the Supreme Court to allow time for the Task Force to make a recommendation. A recommendation on this issue was not included in the report, so Ms. Buiteweg convened a committee to look at the issue, come to a consensus, and provide a recommendation to the Board. Ms. Buiteweg informed the Board that the committee has met once, plans to meet again, and will report to the Board at a future meeting.

Ms. Buiteweg informed the Board that she is participating on a State Court Administrative Office Committee that is reviewing court rule changes to bring the rules in line with the Uniform Collaborative Law Act.

Executive Director's Report, Janet K. Welch, Executive Director
FY 2017 Budget Process, Roles, and Calendar

Ms. Welch reported to the Board that the budget process is the same as in recent years and is described in their materials. The current plans are for the FY 2017 budget to be brought to the Board at its July meeting. Ms. Welch, however, called attention to the note at the end of the budget process document indicating that the SBM is engaged in a strategic planning process as well as consideration of the recommendations contained in the Futures Report. To the extent that either results in consensus on substantial changes in SBM spending for FY 2017, the budget approval process could be moved back until September.

ZeekBeek Update

Ms. Welch reported to the Board that she was asked by the National Conference of Bar Presidents to present on the SBM efforts to create a credible online directory as a good source for the public to find lawyers and to make that really robust by bringing in all states, in partnership with Zeekbeek. Ms. Welch indicated that she will be reporting to the Board on a regular basis on the progress of this project.

Ms. Welch responded to a question on how the SBM plans to evaluate and measure the success of the online directory. She indicated that while money was not the impetus for the project and the online directory is not generating any, the SBM monitors how many members enhance their profile as well as the traffic to the site. Nancy Brown reported that the SBM has over 2,000 members who signed a user agreement to date and that that number is increasing at a steady pace.

Michigan Supreme Court Update

Ms. Welch indicated that there was no new information to report.

Friedrichs v. California Teachers Association

Mandatory state bars have been following this case closely, as it presented the question whether *Abood v. Detroit Board of Education* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment. *Abood* is the principal precedent relied upon in *Keller v. State Bar of California*. The impact of overturning *Abood* on mandatory state bars was a point of controversy in the oral argument in January. After the argument and before the death of Justice Scalia it had been widely expected that *Abood* would be overruled.

Ms. Welch reported that on March 29, the U.S. Supreme Court deadlocked 4-4, thereby affirming the 9th circuit decision upholding the right of the teachers' union to collect fees from teachers who are not members and object to paying for the unions' collective bargaining activities. The objecting teachers said they expect this case will be reheard when a new justice is confirmed.

Ms. Welch also noted that the State Bar of California is in the process of a statutorily required governance review. The California Bar's budget is set by the legislature; among its other duties, the bar runs the state's attorney disciplinary system. One proposal that has been advanced would bifurcate the bar structure to a voluntary/mandatory model.

Personnel Update

Ms. Welch asked Ms. Crowley to introduce Mr. Darin Day, SBM's new Director of Outreach and Constituent Development.

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

Mr. Quick reported that at its April 30 meeting the Assembly will discuss the SBM dues structure, review and take action on proposed court rules, hear a presentation about the 21st Century Practice Task Force Report from co-chairs Bruce Courtade and Julie Fershtman, and decide on a proposal dealing with attorney advertising, moved by Commissioner Olsman.

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

Mr. Jane provided the Board with an update on the activities of the YLS and reported that the YLS Council has supported quite a few programs since last Board meeting. He indicated that the YLS Executive Council had recruited its first member from Marquette.

Mr. Jane reminded the Board that the "Gaming Challenge" event between the Board of Commissioners and the Young Lawyers Executive Council will take place after today's Board meeting, beginning at 3:30 p.m.

Mr. Jane reported that the Young Lawyers Summit is taking place on June 4 in Novi and that Ms. Buiteweg is the keynote speaker.

Comments from Commissioners

Mr. Buchanan informed the Board that Mr. Olsman received the Champion of Justice Award from the Michigan Association of Justice.

Ms. Buiteweg informed the Board that the President of the American Bar Association, Paulette Brown, is going to be in Michigan at the end of May.

Ms. Buiteweg mentioned that she gave a presentation to the Michigan Supreme Court Historical Society earlier this month.

Adjournment

The meeting was adjourned at 11:40 p.m.