

President Grieco called the meeting to order at 9:50 a.m. on Friday, July 26, 2019 in the Board Room of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson
Dennis M. Barnes, President-Elect
Robert J. Buchanan, Vice President
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Josephine A. DeLorenzo
Hon. Shauna L. Dunnings
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Kara R. Hart-Negrich
James W. Heath, Treasurer

Michael S. Hohaus
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Valerie R. Newman
Hon. David A. Perkins
Daniel D. Quick
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Ryan Zemke

Commissioners absent and excused:

David C. Anderson
Joseph J. Baumann
Aaron V. Burrell

Edward L. Haroutunian
Barry R. Powers

State Bar staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Greg Conyers, Director of Diversity
Candace Crowley, Senior Consultant
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Cliff Flood, General Counsel
Kathryn Gardner, Unauthorized Practice of Law Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Darin Day, Director of Outreach
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Wynn Johnson, Assistant General Counsel
Rob Mathias, Pro Bono Services & Justice Initiatives Counsel
Alecia Ruswinckel, Assistant Division Director, Professional Standards Division
Jeanette Socia, Human Resources Director
Kari Thrush, Assistant Director, Communications and Member Services Division
Anne Vrooman, Director of Research & Development

Guests

Jennifer Bentley, Executive Director, Michigan State Bar Foundation

Vince Romano

David Watson, Executive Director, ICLE

Consent Agenda

The Board received the minutes from the June 14, 2019 Board meetings.

The Board received the recent activities of the president.

The Board received the recent activities of the executive director.

The Board received the Client Protection Fund Claims.

The Board received the Unauthorized Practice of Law complaints.

The Board received the FY 2019 Financial Reports through May 2019.

The Board received the Policy for Approval of Checks \$15,000 or Greater.

The Board received the Policy for the Transfer of Funds between Financial Institutions.

The Board received the Policy Concerning Transfers of Cash or Investments from Client Protection Fund

The Board received the Model Criminal Jury Instructions.

Ms. Grieco asked the Board if any items needed to be removed from the consent agenda.

Mr. Heath asked that the three financial policies be removed from the consent agenda and reviewed during the Finance Committee Report.

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

Ms. Grieco recognized newly appointed commissioner, Ms. Newman.

BOARD OFFICER ELECTIONS

Ms. Grieco informed the Board that Mr. McGill, Mr. Quick, and Ms. Washington, submitted letters of interest and resumes for the position of Treasurer of the State Bar of Michigan for the 2019-2020 Bar year.

Ms. Grieco stated that Ms. Washington wanted to speak to the Board.

Ms. Washington informed the Board she was withdrawing her name from consideration for Treasurer of the 2019-2020 Board of Commissioners.

Ms. Grieco stated that Mr. McGill wanted to speak to the Board

Mr. McGill informed the Board he was withdrawing his name from consideration for Treasurer of the 2019-2020 Board of Commissioners.

Mr. Heath nominated Mr. Quick for the position of Treasurer for the 2019-2020 Board year.

Ms. Grieco asked if there were any nominations from the floor for the position of Treasurer. Hearing none, a motion was offered and supported to close the nominations. The motion was approved.

A motion was offered and supported to elect Mr. Quick as Treasurer of the 2019-2020 Board of Commissioners. The motion was approved.

Ms. Grieco announced that Dennis M. Barnes would succeed her as President of the State Bar of Michigan for the 2019-2020 Bar year.

Ms. Grieco announced that Mr. Buchanan would succeed Mr. Barnes as President-Elect of the State Bar of Michigan for the 2019-2020 Bar year.

A motion was offered and supported to elect Ms. Warnez as Vice President of the State Bar of Michigan for the 2019-2020 Bar year. The motion was approved.

A motion was offered and supported to elect Mr. Heath as Secretary of the State Bar of Michigan for the 2019-2020 Bar year. The motion was approved.

LEADERSHIP REPORTS

President's Report, Jennifer M. Grieco, President

Lakeshore Legal Aid Appointment

A motion was offered and supported to re-appoint Robert Mossel to the Lakeshore Legal Aid Board of Directors for a three-year term. The motion was approved.

Professionalism Work Group

Ms. Grieco reported to the Board that the Professionalism Work Group has developed and continues to review ten professionalism principles that will be submitted to the Supreme Court for their consideration for adoption for courts in the state. These principles and commentary will be presented to the RA in September for their consideration.

Governance Task Force

Ms. Grieco provided the Board with an update on the Governance Task Force. She reminded the Board they had received a survey in June about SBM Governance and that the RA members, both current and past, received surveys in July. The Task Force will meet with the consultants on September 10 to review the results of the surveys and discuss next steps.

Ms. Grieco reported to the Board that a coalition was formed at the beginning of her term comprised of representatives from the State Bar of Michigan, the Oakland County Bar Association, Lakeshore Legal Aid, and the Straker Bar, dealing with the issue of human trafficking. A representative from the FBI, Nate Napper, from the Joseph Project, is also involved. The focus of the coalition is bringing lawyers together to provide pro bono work for victims of human trafficking. She told the Board they are hosting a training session on this issue on October 17 at the Western Michigan University Thomas M. Cooley Law School campus in Auburn Hills. The training session will be simulcast to the campuses in Grand Rapids and Lansing and that the Board would receive detailed information soon.

Ms. Grieco reminded the Board that the Implicit Bias Program is taking place in Lansing on September 11.

A motion was offered and seconded for the Board to go into a closed session. The motion was approved. The Board went into a closed session at 10:07 a.m. to discuss a personnel matter and returned to open session at 10:21 a.m.

Executive Director's Report, Janet K. Welch, Executive Director
FY 2020 Proposed Budget

Ms. Welch asked Mr. Horsch to review the preliminary FY 2020 budget. Mr. Horsch stated that the budget had been reviewed by the Finance Committee in early July and approved to move forward to the full Board for their review.

Mr. Horsch reviewed the highlights of the budget and answered questions. After review, a motion was offered and supported to adopt the FY 2020 Budget. The motion was approved.

2019-2020 SBM Committee Resolution

A motion was offered and supported to adopt the 2019-2020 SBM Standing and Special Committee Resolution. The motion was approved.

Civil Discovery Rules

Ms. Welch reported that the Supreme Court adopted the Civil Discovery Rules, which are effective January 1. Ms. Hennessey is working with ICLE to develop materials to distribute to Michigan attorneys.

Fleck v Wetch

Ms. Welch reported there is no opinion out of the 8th circuit on Fleck. Ms. Welch stated that she participated in a conference call this week with the leaders of integrated bars and shared her observations with the Board. She told the Board she is moderating a session on this topic at NABE and will have more information for the Board at the September meeting.

Ms. Welch informed the Board she had been invited to speak at the International Society of Legal International conference in Edinburgh, Scotland and has accepted that invitation.

Ms. Welch reported that the SBM experienced a security event with one of the email accounts in the Finance Department being hacked. This triggered an insurance report and the engagement of a team of forensic experts. Ms. Welch asked Mr. Horsch and Ms. Brown to update the Board on the security event. Mr. Horsch reported on the activities of the forensic team and said that additional controls have been put in place, the staff have been informed of increased security procedures, and that the SBM will follow up on recommendations from the security firm.

Task Force on Ethics and Regulation of Legal Marketing

Ms. Welch reported that the Task Force on Ethics and the Regulation of Legal Marketing is meeting for the first time next week and that a consultant has been hired to assist the task force in its efforts.

CloudLaw

Ms. Welch reported that in response to the action taken by the Board in June, SBM has had several conversations with the CloudLaw's primary investor and is working with the Illinois State Bar to develop their LRS program.

Representative Assembly (RA) Report, Richard L. Cunningham, Chairperson

Mr. Cunningham reported that RA committees are on track with their planning for the agenda for the September RA meeting. He stated that Mr. Burrell and his wife welcomed their first child earlier in the week and recognized Ms. Rebeck for her nomination as one of the Lawyers Weekly 2019 Women of the Year.

Mr. Cunningham reported that over 200 surveys were sent to current and past RA members regarding the Governance Task Force and that 82 people had responded.

Mr. Cunningham stated there was one applicant for the position of Clerk for the 2019-2020 Bar year and that person is Nick Ohanesian. He said that the election for the Clerk will take place at the September RA meeting.

Young Lawyers Section (YLS) Report, Kara R. Hart-Negrich, Chairperson

Ms. Hart-Negrich provided the Board with an update on recent activities of the YLS

COMMISSIONER COMMITTEES REPORTS

Finance Committee, James W. Heath, Chairperson

Mr. Heath reviewed the highlights of the FY 2019 financial reports through May 2019.

Mr. Heath reported to the Board on the proposed Policy for Approval of Checks \$15,000 or Greater.

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

Mr. Heath reported to the Board on the proposed Policy on the Transfer of Funds between Financial Institutions.

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

Mr. Heath reported to the Board on the proposed Policy Concerning Transfers of Cash or Investments from Client Protection Fund.

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

Audit Committee

Mr. Heath told the Board that staff will be meeting with the auditors from Andrews Hooper Pavlik PLC to discuss planning for the FY 2019 audit. He also stated that the SBM will be preparing a RFP for an auditing firm for next year.

Professional Standards, Dana M. Warnez, Chairperson

Institute of Continuing Legal Education (ICLE) Appointment

A motion was offered and supported to re-appoint Katie Lynwood to the ICLE Executive Committee. The motion was approved.

Michigan Indian Legal Services (MILS) Appointments

A motion was offered and supported to appoint Zachary W. Fallstich and Stanette J. Amy to the MILS Board of Trustees. The motion was approved.

Communications and Member Services, Robert J. Buchanan, Chairperson

Event Summary

The Board received a copy of the summaries for the Bar Leadership Forum and the Upper Michigan Legal Institute.

Requests for New Sections

Immigration Law Section

The Board received a request for the SBM to form an Immigration Law Section.

A motion was offered and supported to form the Immigration Law Section. The motion was approved.

Senior Lawyers Section

The Board received a request for the SBM to form a new Senior Lawyers Section. A motion was offered and supported to approve this request. The motion was approved.

In the materials submitted by the organizing group of the Senior Lawyers Section, the group requested financial support from the SBM.

A motion was offered and supported to decline the request. The motion was approved.

Commissioners asked staff to review and potential revise the criteria and process for establishing new State Bar sections.

Michigan Legal Milestones Dedication

The Public Outreach & Education Committee recommends that the 42nd Michigan Legal Milestone, to be dedicated in 2020, commemorate the career of Attorney General Frank Kelley. A motion was offered and supported to support this recommendation. The motion was approved.

The Public Outreach & Education Committee recommends that the 43rd Michigan Legal Milestone, to be dedicated in 2021, commemorate the passage of Senate Bill 31 of 1857, which provides for payment to court-appointed attorneys and thus, greater access to equal justice. A motion was offered and supported to support this recommendation. The motion was approved.

Insurance Services

The Board received information regarding endorsed insurance products for members of the State Bar of Michigan. This item was tabled by the Communications and Member Services Committee, and the Board took no action.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File No. 2002-37: Proposed Amendments of E-Filing Rules

The proposed amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of MCR 2.226 and 8.125 would continue the process for design and implementation of the statewide electronic-filing system.

A motion was offered and supported to support this Court Rule and submit to the Court the comments provided by Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and Family Law Section. The motion was approved.

ADM File No. 2018-12: Proposed Amendment of MCR 2.612

The proposed amendment of MCR 2.612 would clarify that writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. This language was previously included in the court rules before they were rewritten in 1985.

A motion was offered and supported to support the proposed amendment with the amendment proposed by the Civil Procedure & Courts Committee, changing “are abolished” to “remain abolished.” The motion was approved.

ADM File No. 2018-18: Proposed Amendment of MCR 3.106

The proposed amendment of MCR 3.106 would require trial courts to provide a copy of each court officer’s bond to SCAO along with the list of court officers.

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

ADM File No. 2018-16: Proposed Amendment of MCR 3.201 and Proposed Addition of MCR 3.230

The proposed amendment of MCR 3.201 and proposed addition of MCR 3.230 would provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, et seq.) to establish a parent’s paternity or support obligation through a summary action.

A motion was offered and supported to support the proposed amendments to Rule 3.201 and the proposed addition of Rule 3.230 with amendments proposed by the Access to Justice Policy Committee, requiring that: (1) the agency file a domestic violence screening tool completed by each party and that the court be required to hold a hearing if domestic violence is indicated, and (2) the IV-D agency must file a waiver signed by each party that they were informed of their right to opt out of the process. The motion was approved.

ADM File No. 2018-02: Proposed Amendment of MCR 3.501

The proposed amendment of MCR 3.501 would require 50 percent of unclaimed class action funds be disbursed to the Michigan State Bar Foundation or other distribution as deemed appropriate by the court. This proposal is a slightly modified version of a proposal submitted to the Court by the Michigan State Planning Body and Legal Services Association of Michigan.

A motion was offered and supported to take no position on the policy presented in the Rule, but recommend the language presented by the Civil Procedure & Courts Committee, clarifying the language in the proposed Rule 3.501, while not responding to Justice Markman’s questions.

ADM File No. 2017-02: Proposed Amendment of MCR 6.508

The proposed amendment of MCR 6.508 would enable a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, and it was reasonably likely the defendant and court would have accepted the plea (which would have been less severe than the judgment or sentence issued after trial) but for the improper advice.

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

ADM File No. 2019-03: Proposed Amendment of MCR 8.110

The proposed amendment of MCR 8.110 would provide additional opportunity for input by judges in the process for chief judge selection in courts, would clarify that vacation leave time may be taken by notifying the chief judge, and would make vacation leave policies more uniform from one court to another. Under the proposed amendment, a chief judge could require a judge to forego vacation, judicial, or education, or professional leave to ensure docket coordination and coverage.

This item was tabled by the Public Policy Committee, and the Board took no action.

ADM File No. 2018-30: Proposed Amendment of MCR 8.115

The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another and broaden the ability of litigants to use their devices in support of their court cases when possible.

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

ADM File No. 2018-28: Proposed Amendment of Court of Claims LCR 2.119

The proposed amendment of LCR 2.119 for the Court of Claims would require a moving party to affirmatively state that he or she has sought concurrence in the relief sought on a specific date, and opposing counsel denied concurrence in the relief sought.

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

Legislation

HB 4378 (Pagan) Civil rights; public records; identity of parties proceeding anonymously in civil actions alleging sexual misconduct; exempt from disclosure under freedom of information act. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

A motion was offered and supported that this bill is Keller permissible. The motion was approved.

A motion was offered and supported to support this legislation with an amendment that the bill also apply to survivors of human trafficking. The motion was approved.

Judge Dunnings abstained.

HB 4535 (Berman) Law enforcement; law enforcement information network (LEIN); access to law enforcement information network (LEIN); allow for defense attorneys under certain circumstances. Amends sec. 4 of 1974 PA 163 (MCL 28.214) & adds sec. 4a.

A motion was offered and supported that this bill is Keller permissible. The motion was approved.

A motion was offered and supported to support this legislation in concept of defense attorneys have access to LEN information, with one possible solution to just amend “may” to “shall” in Section 4. The motion was approved.

SB 0231 (Runestad) Civil procedure; service of process; proof of service; provide for verification of service. Amends sec. 1910 of 1961 PA 236 (MCL 600.1910).

A motion was offered and supported that this bill is Keller permissible. The motion was approved.

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

OTHER REPORTS

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA Annual meeting is taking place in San Francisco in August.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

There were none.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at. 12:38 p.m.