

The meeting was called to order by President Diehl at 9:30 a.m. on Friday, April 22, 2005, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

Lori A. Buiteweg	Ronald D. Keefe, Secretary
Kimberly M. Cahill, Vice President	Jeffrey Kirkey
Bruce A. Courtade	Craig H. Lubben
Thomas W. Cranmer, President-Elect	Richard D. McLellan
Nancy J. Diehl, President	Hon. William B. Murphy
Kim Warren Eddie	Lambro Niforos
Brian D. Einhorn	Edward H. Pappas, Treasurer
Elias J. Escobedo, Jr.	Randolph P. Piper,
Julie I. Fershtman	Kurt E. Schnelz
Edward L. Haroutunian	Hon. Cynthia D. Stephens
Elizabeth A. Jamieson, Assembly Chairperson	Charles R. Toy
W. Anthony Jenkins	Gregory L. Ulrich
	Rodger D. Young

Commissioners Michael S. Hohausser, Allyn D. Kantor, D. Andrew Portinga, Angelique Strong Marks, Scott C. Strattard and Debra A. Walling were absent and excused.

State Bar Staff Present:

John T. Berry – Executive Director
Nancy Brown – Director, Communications
Martha Burkett – Lawyers & Judges Assistance Program Administrator
Gregory Conyers – Program Administrator
Candace Crowley – Justice Initiatives Manager
Kathleen Fox – Director, Human Resources
James Horsch – Director, Finance and Administration
William Kramer – Manager of Information Technology Services
Victoria Kremiski – Deputy Regulation Counsel
Anne Lamrouex – Media Coordinator
William Livingston – Lawyers & Judges Assistance Program Administrator
Elizabeth Lyon – Public Policy Program Analyst
Susan McMann – Sections and Committees Coordinator
Glenna Peters – Executive Coordinator
Anne Smith – Administrative Assistant
Lesa Smith – Program Administrator
Naseem Stecker – Media Specialist
Janet K. Welch – General Counsel

Present for such portions of the meeting as pertained to specific agenda items were Lynn Chard, Executive Director, ICLE; Section Chair John Mills, Family Law Section; Committee Chairs Thomas H. Howlett, Law & The Media Committee; and Fred Baker, Publications & Website Advisory Committee.

CONSENT AGENDA

A motion was made and seconded to remove item IV. President's Report from the Consent Agenda. The Calendar of Events will be modified to change the location of the Macomb County Bar Association Dinner on March 3, 2005, from Troy to Macomb County.

A motion was made, seconded and carried to approve the remaining items on the Consent Agenda.

Minutes

The Board approved the minutes of the January 21, 2005 Board meeting.

The Board accepted the minutes of the following Executive Committee meetings:

- January 31, 2005
- February 7, 2005
- February 28, 2005
- March 28, 2005
- April 4, 2005

President's Report – Nancy J. Diehl, President

The Board received the written President's recent activities report, as amended.

Executive Director's Report – John T. Berry, Executive Director

The Board received the written Executive Director's recent activities report and the UPL Litigation Status Report.

Finance and Human Resources – Edward H. Pappas, Chairperson

The Board received the following:

- A) Year to date financial results through February 28, 2005
- B) Year-end forecast
- C) Update financial reports from December 31, 2004 and January 31, 2005
- D) Update on dues processing

Justice Initiatives – Richard D. McLellan, Chairperson

The Board received a written report on the activities of the Standing Committee on Justice Initiatives (SCJI) and related entities.

Proposed Section Bylaw Changes

The Board approved the following proposed bylaw change for the Law Practice Management Section:

Section 4.2 Composition

- (a) The voting members of the Council shall be composed of the following persons
 - (i) the officers of the Section;
 - (ii) the last retiring Chair of the Section; and, **any former chairs of the section who maintain active council members;**
 - (iii) eighteen (18) members at large **which may include up to two affiliate members** elected to the Council by the membership of the Section, or elected by the Council to fill a vacancy pursuant to 4.8.

The Board approved the proposed bylaw changes for the Workers' Compensation Law Section:

ARTICLE II – MEMBERSHIP

SECTION 1. Each member of the Section shall pay to the Treasurer of the Section dues of thirty (\$30.00) dollars. **Dues may be increased or decreased by no more than five (\$5.00) dollars annually by a resolution of the Council with 2/3 majority approval to become effective the following January. Any increase in dues shall be announced at the annual meeting of the Section before becoming effective.** (Language that follows remains the same).

ARTICLE VI – SECTION MEETINGS

SECTION 1. The annual meeting of the Section shall be held ~~during the Annual Meeting of the State Bar of Michigan, in the same city or place as such annual meeting of the State Bars of Michigan, with such program and order of business as may be arranged by the Council.~~ **during the spring Section meeting to be held at such time and place as shall be determined by the Council. The time and place of the annual meeting shall be announced to the membership through the Section's Newsletter and/or other appropriate means of communications not less than 60 days prior to the meeting. The program and order of business shall be determined by the Council.**

Proposed Special Purpose Bar Association Bylaw Amendments

The Board approved the proposed constitution and bylaws of the Asian-American Bar Association as presented in the Board agenda materials.

A motion was made, seconded and carried to go into Executive Session. Staff members who remained for the session were John Berry, Janet Welch and Glenna Peters.

A motion was made, seconded and carried to return from Executive Session.

LEADERSHIP REPORTS

President's Report – Nancy J. Diehl

Ms. Diehl reported on her recent Bar activities (provided in detail under Consent Agenda Item IV) and specifically mentioned that all Commissioners were encouraged to attend the Golden Celebration honoring those with 50 years of practice at the Dearborn Inn on May 17th.

Ms. Diehl mentioned that in an ongoing effort to improve communications with commissioner liaisons and sections and committees, a letter of invitation to attend Board meetings and provide verbal reports (rather than written reports) had been extended earlier in the year. She was pleased to report that as a result, several were joining today's Board meeting and would be providing reports later in the meeting.

Ms. Diehl further reported that the Strategic Plan process would continue after lunch.

Executive Director's Report – John T. Berry

Mr. Berry and Commissioner Cahill reported on the ABA Bar Leadership Institute they attended in Chicago March 9-11, 2005.

Will Kramer reported that wireless Internet technology is now available at the State Bar, and also that an e-commerce vender had been procured.

Jim Horsch for an update on dues processing. Mr. Horsch referred to the summary that was included in the board agenda packet under Consent Agenda VI.

Mr. Berry and Jim Horsch outlined the FY 2005-06 budget process, roles and calendar, which was included in the board agenda packet and approved by the Executive Committee.

Victoria Kremski provided an update on the Law Practice Management Program.

Mr. Berry reported that he was continuing the interview process for open positions. Nancy Brown introduced Anne Lamrouex, new media coordinator at the State Bar.

Representative Assembly Chairperson's Report – Elizabeth A. Jamieson

Ms. Jamieson reported on the success of the MRPC/MSILS panel discussions that have been held in a number of locations throughout the State.

Ms. Jamieson further reported on the outcome of the Assembly meeting held on April 16th, noting that follow-up was now taking place and the result of their action would be submitted to the Court by June 1, 2005.

SPECIAL PRESENTATIONS

Lawyers and Judges Assistance Program Update – Presented by Bill Livingston and Martha Burkett.

Section/Committee Reports – The following sections/committees presented verbal reports:

Family Law Section – John Mills, Chair

Law & The Media Committee – Thomas H. Howlett, Chair

Publications & Website Advisory Committee – Fred Baker, Chair

(NOTE: Environmental Law Section – Chaired by Grant Trigger planned to attend but was unable to do so due to a last minute emergency).

COMMISSIONER COMMITTEES

Finance and Human Resources – Edward H. Pappas, Chairperson

Commissioner Toy, Reserve Policy Subcommittee Chair, reviewed the Financial Safety Margin Policy with the Board. A motion was made and seconded to approve their recommendation of the Financial Reserve Policy (now referred to as the Financial Safety Margin Policy). Information was distributed to the Board that defined an adequate financial safety margin targeted to be no less than 33% of annual budgeted expenses. Calculations would occur on August 31 of each year to ensure compliance with the policy. Motion carried.

The Board Expense Policy Proposal was deferred to the June Board meeting, pending further committee discussion.

Commissioner Jenkins, Auditor Selection Subcommittee Chair, reviewed the auditor selection process with the Board. A motion was made and seconded to approve their recommendation to reappoint Plante & Moran, PLLC, as auditors for the fiscal year 2004-05. Commissioner Young asked for a list of audit firms who were involved in the RFP process, which will be provided by Jim Horsch. Following discussion, the motion carried.

Mr. Pappas referenced the information included in the agenda packet regarding the line of credit with JP Morgan Chase Bank, NA (formerly Bank One), and noting the Executive Committee's approval to renew the line of credit, increase it from \$500,000 to \$1,000,000, and extend it until January 31, 2007. Chair Pappas also noted that they would present a bank loan repayment recommendation to the Board at its June meeting.

Justice Initiatives – Richard D. McLellan, Chairperson

Mr. McLellan referred to his written report in the board materials. He also reported on ABA Day in Washington, D.C. Attendees include John Berry, Kim Cahill, Judge Kurt Wilder and Greg Conyers. They are set to meet with twelve Michigan legislators and will be supported by the Dykema D.C. office for the April 27th visits.

Lesa Smith reported on the 2004-05 ATJ Campaign and referenced a written report that was included in the Board agenda packet. She noted that commissioner participation in the 100% appeals would be requested soon.

Professional Standards – Ronald D. Keefe, Chairperson

Mr. Keefe reported that the committee recommended the following for appointment to the ABA House of Delegates: Reginald M. Turner (reappointment), Kimberly M. Cahill, and Greg Ulrich to serve as alternate. A motion was made and seconded to approve the recommendations. Motion carried.

Programs and Services – Kimberly M. Cahill, Chairperson

Ms. Cahill reported that due to difficulties with the OfficeMax program, termination of the agreement was in process.

Ms. Cahill also referenced upcoming meeting dates for the Golden Celebration in Dearborn on May 17, 2005, BLF/UMLI on Mackinac Island June 10-11, 2005, and the Solo and Small Firm Institute at the Dearborn Inn October 20-21, 2005.

Public Policy, Image and Identity – Thomas W. Cranmer, Chairperson

Mr. Cranmer deferred to Janet Welch, who provided a report on the Section Summit that was held at the Bar on March 3, 2005, and the Section Leaders Advisory Council meeting. Ms. Welch noted that 34 sections were represented at the summit and there was much positive feedback.

Michigan Court Rules

A motion was made, seconded and carried to approve the following Board actions:

ADM File No. 2004-13 - Proposed Amendment of Rule 2.504 of the Michigan Court Rules

The proposed amendment of MCR 2.504(A) would clarify that any second voluntary dismissal pursuant to subrule (A)(1) constitutes an adjudication on the merits, even where the plaintiff obtains a court order finalizing the dismissal and whether or not the plaintiff is ordered to pay costs.

Oppose

ADM File No. 2004-47 - Proposed Amendment of Rule 7.302 of the Michigan Court Rules

The proposed amendment of MCR 7.302(C)(4) would allow a party to seek leave to appeal in the Michigan Supreme Court from the denial of a motion for rehearing of a Court of Appeals decision to remand a case to the trial court. The proposed amendment also adds language that clarifies that a 28-day time limit applies to application for leave to appeal in appeals from orders terminating parental rights.

Support

ADM File No. 2004-52 - Proposed Amendment of Rule 6.120 of the Michigan Court Rules

The December 7, 2004 amendments of the rule reflect the recommendations of the Committee on the Rules of Criminal Procedure as requested by the Court in *People v Nutt*, Mich 565 (2004). (Rule 6.120 is Joinder and Severance; Single Defendant.)

No position

ADM File No. 2004-55 - Proposed Amendment of Rule 3.211 of the Michigan Court Rules

In subrule (D), the proposed amendments require that all support orders be entered on a standard form approved by the State Court Administrative Office. SCAO regularly updates the form by adding provisions required by new federal and Michigan statutes. Using the SCAO form order will reduce paperwork and allow the order format to change without further amending this court rule. The current version of this form is available on the Court's website. In relettered subrule (F), the proposed amendments allow personal information concerning a party to be provided to the friend of the court in a document separate from the court order. This will assure that the friend of the court has all the information that it needs, and that certain confidential information will be provided to the friend of the court without being included in the court order, which is a public document. A draft of the proposed Judgment Information form is available on the Court's website. The Court invites comments on both the Uniform Support Order form and the draft Judgment Information form.

Defer

Legislation

HB 4327 (Waters) Record Expungement - Criminal procedure; expunction; record expungement for certain offenders; provide for. Amends sec. 1 of 1965 PA 213 (MCL 780.621) & repeals sec. 4 of 1965 PA 213 (MCL 780.624).

Active Opposition to Lengthening the Time to Expunge a Felony

HB 4258 (Miller) Fingerprint Signature - Law; contracts; use of fingerprint as a legal signature; allow for a person who is unable to sign. Amends sec. 3q of 1846 RS 1 (MCL 8.3q).

Defer

SB 193 (George) 8th Judicial Circuit - Courts; district court; election districts within the eighth judicial district; eliminate. Amends sec. 8117 of 1961 PA 236 (MCL 600.8117).

Support in Principle

HB 4160 (Pastor) Small Claims Suit Recovery - Civil procedure; civil actions; limitation on recovery amount allowed in small claims suits; revise. Amends sec. 8401 of 1961 PA 236 (MCL 600.8401).

Defer

HB 4169 (Pastor) Required Attorney Fee - Civil procedure; costs and fees; threshold for requiring attorney fee to be paid by party that rejected mediation; revise. Amends secs. 4921 & 4969 of 1961 PA 236 (MCL 600.4921 & 600.4969).

Active Opposition

HB 4213 (Meyer) Juvenile Competency - Juveniles; criminal procedure; forensic examinations of juveniles to determine competency; allow. Amends 1939 PA 288 (MCL 701.1 - 712A.32) by adding sec. 17e to ch. XIA.

-TIE BAR WITH –

HB 4214 (Meyer) Juvenile Competency - Juveniles; criminal procedure; forensic examinations of juveniles to determine competency; allow. Amends secs. 1001a, 1020, 1022, 1024, 1026, 1028, 1030, 1031, 1032, 1034, 1036, 1038, 1040, 1042, 1044 & 1050 of 1974 PA 258 (MCL 330.2001a et seq.).

-TIE BAR WITH -

HB 4215 (Meyer) Juvenile Alibi Defense - Juveniles; criminal procedure; provisions relating to the alibi defense; expand to include juveniles. Amends secs. 20, 20a, 21, 21a & 36, ch. VIII of 1927 PA 175 (MCL 768.20 et seq.).

Support in Principle the provisions of access to alibi and insanity defense to juveniles.

Support in Principle the mechanism to present those defenses to the trier-in-fact.

HB 4265 (Plakas) Vehicular Homicide - Criminal procedure; statute of limitations; statute of limitations for vehicular homicide; extend. Amends sec. 24, ch. VII of 1927 PA 175 (MCL 767.24)

Oppose in Principle

HB 4339 (Clack) Truancy - Juveniles; truancy; family division of the circuit court to notify secretary of state of truancy disposition; provide for. Amends 1939 PA 288 (MCL 710.21 - 712A.32) by adding sec. 2f to ch. XIA. TIE BAR WITH: HB 4338'05

Oppose in Principle

SB 33 (Switalski) Civil Procedure Transcript Fee Increase - Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

Defer

Miscellaneous

Letter re. Michigan Association of Professional Court Reporters - A letter of support addressing continuing education for all court reporters has been requested.

Defer until proposal is published by the Supreme Court

Proposed Michigan Public Defense Act of 2005 - Several individuals who serve on the Standing Committee on Justice Initiatives also serve on the Michigan Public Defense Task Force and have assisted in the drafting of the proposed Michigan Public Defense Act of 2005. Through SCJI, these individuals have asked for State Bar support in continuing the momentum of this legislation. SCJI has recommended a reaffirmation of the Representative Assembly's April 2002 adoption of the eleven criminal defense assigned counsel guidelines for improving public defense services, as proposed by the Michigan Public Defense Task. Additionally, SCJI is recommending support for SBM participation in the formulation of legislation that actualizes these principles.

Reaffirm the Representative Assembly's April 2002 adoption of the eleven criminal defense assigned counsel guidelines for improving public defense services, as proposed by the Michigan Public Defense Task Force. Support the State Bar's participation in the formulation of legislation that actualizes these principles.

OTHER REPORTS

Young Lawyers Section Report – Angelique Strong Marks, Chairperson

In Angelique Strong Marks' absence, Commissioner Jeff Kirkey reported on the section's recent and upcoming activities.

ABA Report – W. Anthony Jenkins, State Delegate

Commissioner Jenkins presented a report on current ABA House of Delegate activities, noting that there is an ongoing study regarding governance.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Ms. Diehl asked for comments or questions, but there were none.

Comments or questions from the Public

Ms. Diehl asked for comments or questions from the public, but there were none.

Old/New Business

There was none.

The meeting was adjourned at 1:45 p.m. Following adjournment, the Board met to discuss follow-up on the Strategic Plan.