

President Buiteweg called the meeting to order at 9:00 a.m. on June 10, 2016 in the Grand Pavilion Room of the Grand Hotel on Mackinac Island, Michigan

Commissioners present:

Dennis M. Barnes, Treasurer
Danielle M. Brown
Lori A. Buiteweg, President
Timothy J. Burns
Hon. Clinton Canady III
Shauna L. Dunnings
Robert C. Gardella
Jennifer M. Grieco, Secretary
Edward L. Haroutunian
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
Colleen A. Pero
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Vice President
Brian D. Shekell
Richard J. Siriani
Gregory L. Ulrich
Dana M. Warnez
Erane C. Washington

Commissioners absent and excused:

Danielle Mason Anderson
Robert J. Buchanan
Hon. Maureen M. McGinnis

Shenique A. Moss
Hon. David A. Perkins
Daniel D. Quick

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
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
Robert Mathis, Pro Bono Service Counsel
Anne Vrooman, Director, Research and Development

Guests:

Lynn Chard, Executive Director, Institute for Continuing Legal Education
Bruce Courtade, Past President, State Bar of Michigan
Julie Fershtman, Past President, State Bar of Michigan

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 April 29, 2016 Board of Commissioners meeting.

The Board received the minutes from the April 12, 2016 Executive Committee meeting.

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 April 2016.

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

COMMISSIONER COMMITTEES

Finance, Dennis M Barnes, Chairperson

The Board was provided with a detailed written FY 2016 financial and investment report from Mr. Barnes. He asked the Board members if there were any questions and there were none.

Audit, Dennis M. Barnes, Chairperson

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

Professional Standards, Jennifer M. Grieco, Chairperson

ABA House of Delegated Appointments

Ms. Grieco reported that the Professional Standards Committee recommends the re-appointment of W. Anthony Jenkins and the appointment of James W. Low to two-year terms on the ABA House of Delegates that end at the end of the 2018 ABA Annual Meeting.

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

Programs and Services, Donald G. Rockwell, Chairperson

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

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

The Board members received a written Justice Initiatives Report, a written Public Policy report, and a copy of the recently released Administrative Order 2016-2 concerning the Indigent Defense Commission.

Court Rules

ADM File No. 2013-39 - Proposed Amendment of Rule 6.112 of the Michigan Court Rules

The proposed amendments of MCR 6.112 are intended to clarify to the procedure for amending a notice of intent to seek an enhanced sentence by requiring such amendment to be approved by the court, and would eliminate the provision that makes the harmless error standard inapplicable when a notice of intent to seek an enhanced sentence is not filed timely.

A motion was offered and supported to support the proposed amendment to the court rule. The motion was approved.

ADM File No. 2013-18 - Proposed Amendments of Rules 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901 of the Michigan Court Rules

The proposed amendments of MCR 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901 would permit courts to expand the use of videoconferencing technology in many court proceedings.

The committee recommends that this item be tabled until the July Board meeting.

ADM File No. 2014-03 - Proposed Adoption of Administrative Order No. 2016-XX

The proposed new administrative order is aimed at providing a clearer and simplified version of the anti-nepotism policy to be used by courts in Michigan.

A motion was offered and supported to support the adoption of the Administrative Order with the exclusion of subsection 1.C. The motion was approved.

Legislation

HB 4674 (Leonard) Mental health; code; assisted outpatient treatment program; modify. Amends secs. 100a, 100c, 401, 404, 420, 422, 423, 425, 426, 427, 429, 431, 434, 435, 438, 447, 448, 449, 451, 452, 454, 455, 463, 468, 469a, 472a, 474, 474a & 475 of 1974 PA 258 (MCL 330.1100a et seq.); adds sec. 400b & repeals secs. 116a, 424, 428 & 433 of 1974 PA 258 (MCL 330.1116a et seq.).

A motion was offered and supported that the bill is Keller-permissible because it affects the functioning of the courts by allowing the courts more opportunity to utilize assisted outpatient services and affects the availability of legal services in providing greater access to the mental health treatment courts. The motion was approved.

A motion was offered and supported to support the bill. The motion was approved.

Model Criminal Jury Instructions

M Crim JI 15.21 and 15.22

The Model Criminal Jury Instructions committee proposes instructions for “driving while license suspended causing death or serious injury” violations under MCL 257.904(4) and (5). The instructions, M Crim JI 15.21 and 15.22, are entirely new.

A motion was offered and supported to support the criminal jury instruction. The motion was approved.

M Crim JI 36.1 through 36.6

The Model Criminal Jury Instructions committee proposes instructions for “human trafficking” violations under MCL 750.462a through 750.462f. The instructions, M Crim JI 36.1 through 36.6, are entirely new.

A motion was offered and supported to support the criminal jury instruction. The motion was approved.

Ms. Buiteweg asked Mr. Cunningham to provide the Board with an overview of recently released Michigan Supreme Court Administrative Order No. 2016-2 regarding the first set of standards that the Michigan Indigent Defense Commission (MIDC) released. Mr. Cunningham reminded the Board that the SBM supported these standards when they were posted for comment last December. Mr. Cunningham informed the Board that the Supreme Court conditionally accepted the standards and identified three areas that were of “questionable constitutionality” and which needed to be addressed before December 31, 2016 before the standards could go into effect. There are three

areas of the law that would need to be changed, each of which pertained to the separation of powers. Mr. Cunningham indicated that the MIDC plans to work with the Governor, the Court, and the Legislature to introduce legislation very quickly to move the standards forward and that he would keep the Board informed of developments.

President's Report, Lori A. Buiteweg, President

Ms. Buiteweg introduced Lynn Chard, Executive Director of the Institute of Continuing Legal Education, and Bruce Courtade and Julie Fershtman, Past Presidents of the State Bar of Michigan

SBM Strategic Planning Committee Update

Ms. Buiteweg reported that the Strategic Planning Committee met on June 6 at the State Bar building and that Jennifer Lewin from the American Bar Association facilitated the meeting. Ms. Buiteweg informed the Board that the results of the meeting provided a good structure for the committee to proceed. The committee meets again in August and she hoped that the committee will have a Strategic Plan proposal to submit to the Board for action by the end of her term.

Board Officer Election Procedure, Matrix, and 2016 Timeline

Ms. Buiteweg informed the Board that one Commissioner submitted his name for consideration for the position of Treasurer of the SBM Boards in 2016. That Commissioner is Mr. Buchanan. The election for the officers of the State Bar will take place at the July 22, 2016 Board meeting.

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

FY 2017 Preliminary Budget – Key Budget Assumptions

Ms. Welch discussed the process in developing the preliminary budget and asked Mr. Horsch to address the key budget assumptions.

SBM Election Update

Ms. Welch asked Ms. Bossenbery to update the Board on the 2016 Election. Ms. Bossenbery stated that the deadline for members to vote in the 2016 SBM elections is midnight on Wednesday, June 15. She reported that voter participation is consistent with past years although there have been challenges with electronic ballots reaching members because of increased security firewalls. In a related topic, Ms. Welch mentioned that the State Bar has been approached by the Supreme Court Clerk's office on the possibility of requiring members to have an official email address on file. Mr. Herrmann expressed an interest in being involved in that conversation.

Futures Update

Ms. Welch said that she would address futures update as part of the Litigation Status report during the closed session.

SBM Website Intrusion Incident

Ms. Welch informed the Board that the State Bar's website had been hacked in late May. She assured the Board that the Bar's confidential information was not impacted. The SBM learned of the situation when a staff person attempted to enter the website and received a "phishing" message that the website had a virus and to call a number to make a report. The staff person contacted the SBM IT department and IT staff began its investigation. Access to the member directory and SBM Connect was immediately shut down. An initial concern was for those individuals who accessed the website prior to the SBM becoming aware of the intrusion, but after researching that concern it was

determined that members' computers were not compromised. Ms. Welch indicated that there was not any negligence on the part of the SBM, but that additional security measures have been added and the website is better protected now. Mr. Flood filed a report with the FBI.

SBM Legal Milestone

Ms. Welch asked Mr. Flood to introduce a proposed revision to the SBM Annual Standing and Special Committee resolution that would amend the jurisdiction statement for the Law Related Education Committee to reflect that any future Legal Milestones designation would require Board approval. This is consistent with the action the Board approved in January that states that any significant honor emanating from a standing or special committee of the State Bar requires Board approval.

A motion was offered and supported to make the change to the resolution. The motion was approved.

Litigation Status Report

At 9:40 a.m., a motion was offered and supported for the Board to go into closed session. The motion was approved to discuss possible litigation. The Board returned to open session at 11:10 a.m.

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

In Mr. Quick's absence, Mr. Herrmann reported that the Michael Franck Award is being awarded to Lynn P. Chard and the Unsung Hero Award is being awarded to Tessa K. Hessmiller and Jerrold Schrottenboer.

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

Mr. Jane reported that the Young Lawyers Summit was well attended and that Ms. Buiteweg's keynote address was well received by the attendees.

Mr. Jane noted that the YLS Council defeated the Board of Commissioners in the "Gaming Event" held on April 29, but that everyone seemed to enjoy themselves.

Ms. Buiteweg observed that the YLS Summit had a great program and was well-organized. She also heard that the orientation session that was held on Friday was very helpful and informative for new SBM members.

Comments from Commissioners

Ms. Buiteweg stressed the value of Commissioners' interaction with the leaders of the local bars and sections of the State Bar at the BLF events.

Adjournment

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