

**State Bar of Michigan
Representative Assembly
September 15, 2011**

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Thursday, September 15, 2011, at the Dearborn Hyatt Regency in Dearborn, Michigan. Call to order by Chairperson Victoria A. Radke.

1. Clerk Dana M. Warnez declared a quorum (50) was present.
2. Upon a motion made and seconded, as the calendar was adopted, as proposed.
3. As provided in Rule 4.8, the Summary of Proceedings of the April 9, 2011, meeting was deemed approved.
4. Jeff Nellis, Chair, Nominating and Awards Committee, addressed the Assembly in regards to filling vacancies for the current meeting. Upon a motion made and seconded, Rebecca Simkins (3rd Circuit); Peter Armstrong (20th Circuit); Nels Christopherson (25th Circuit); Pamela Munderloh (29th Circuit); and Shenique Moss (30th Circuit) were appointed to fill immediate vacancies within their respective Circuits.
5. Stacy Combs and Past Representative Assembly Chair, Robert Gardella, presented the *UnSung Hero Award* to Karen Gullberg Cook who works in the area of Child Welfare Law. Ms. Cook accepted the award and addressed the Assembly.
6. Lawrence T. Garcia, presented the *Unsung Hero Award* to Mayra Lorenzana-Miles of Turfe & Garcia, PLLC. Ms. Miles accepted the award and addressed the Assembly.
7. Michael Hale, presented the *Michael Franck Award* to Dr. Clark C. Johnson of Michigan State University College of Law. Dr. Johnson accepted the award and addressed the Assembly.
8. Victoria A. Radke, Chair of the Representative Assembly, informed the Assembly about an upcoming issue for the 2011-2012 year, the work of the ad hoc Unauthorized Practice of Law.
9. W. Anthony Jenkins, President of the State Bar of Michigan was unable to attend the meeting. President Elect, Julie Fershtman addressed the Assembly, focusing her remarks on the State Bar's diversity efforts.
10. Janet Welch, Executive Director of the State Bar of Michigan, addressed the Assembly on developments in the economics of law practice.
11. Elizabeth Lyon, Director of Governmental Relations for the State Bar of Michigan updated the Assembly on public policy developments.

12. Daniel Quick, member of the Assembly and Civil Procedure and Courts Committee, addressed the Assembly concerning MCR 7.301(B) – Term of the Supreme Court, proposing to change the starting date of the Supreme Court from the current August 1 to January 1. After discussion a motion was made and supported to postpone this issue until the April 21, 2012 meeting.
13. Martin Krohner, member of the Assembly, along with Past President Nancy Diehl and Valerie Newman of the State Appellate Defender’s Office, addressed the Assembly in regard to the Establishment of an Eyewitness Identification Task Force. Upon a motion made and supported, it was proposed that the State Bar of Michigan appoint an Eyewitness Identification Task Force including State Bar members in the criminal defense, prosecution, judicial and law enforcement communities, to develop and promote legislative and/or court rule changes that advance the improvement and reliability of eyewitness identification procedures. After discussion the motion passed.
14. Daniel Quick, member of the Assembly and Civil Procedure and Courts Committee, addressed the Assembly concerning MCR 2.302 – Discovery Only Depositions proposing the amendment of Michigan Court Rules to clarify the provisions regarding discovery only depositions by amending MCR 2.302(B) as follows:

Rule 2.302 General Rules Governing Discovery

(A) [Unchanged.]

(B) Scope of Discovery.

(1) – (3) [Unchanged.]

(4) Trial Preparation; Experts; Fees and Expenses. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subrule (B)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a) Expert Expected to Testify.

(i) A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter about which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and ~~a summary of~~ the grounds for each opinion.

(ii) A party may take the deposition of a person whom the other party expects to call as an expert witness at trial. In the

absence of a stipulation or an order under this subrule (B)(4)(a)(ii), the deposition may be used for any purpose permitted under the Michigan Rules of Evidence. On written stipulation or on order, the deposition of an expert may be available for limited purposes, including that the deposition is for discovery only and may be used only for impeachment. The stipulation or order must specify the purposes for which the deposition may be used and provide for the allocation of the fees and expenses attributable to the deposition.

(iii) On motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions ~~(pursuant to~~ under subrule [B][4][c]) concerning fees and expenses as the court deems appropriate.

(b) Expert Not Expected to Testify. A party may not discover the identity of and facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, except

(i) as provided in MCR 2.311, or

(ii) where an order has been entered on a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Fees and Expenses. ~~Unless manifest injustice would result~~

(i) If a deposition is taken under a stipulation or order under subrule (B)(4)(a)(ii), the stipulation or order controls payment expenses and expert fees. the court shall require that the party seeking discovery under subrules (B)(4)(a)(ii) or (iii) or (B)(4)(b) pay the expert a reasonable fee for time spent in a deposition, but not including preparation time; and

(ii) In other cases, with respect to discovery obtained under subrule (B)(4)(a)(ii) or (iii), the court may require, and with respect to discovery obtained under subrule (B)(4)(b) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses and expert fees reasonably incurred by the latter party in obtaining facts and opinions from the expert. Otherwise, the assessment or allocation of fees and expenses shall be reserved for determination after entry of judgment.

(d) Deposition for Use at Trial. A party may depose a witness that he or she expects to call as an expert at trial. The deposition may be taken at any time before trial on reasonable notice to the opposite party, and may be offered as evidence at trial as provided in MCR 2.308(A). The court need not adjourn the trial because of the unavailability of expert witnesses or their depositions.

(5)-(7) Unchanged.

Upon motion made, support and discussion the motion passes.

15. Chair, Victoria Radke announced a contested race for the election of Clerk. A motion was made and supported to hold the voting before the lunch break. Kathleen Allen was moved for nomination by Bruce Courtade and seconded. Martin Krohner was moved for nomination by Michael Blau and seconded. Daniel Quick was moved for nomination by Lauren Rousseau and seconded. Members voted and tellers tallied the votes. Upon a motion made and seconded, nominations were closed.
16. Hon. Thomas P. Boyd, Chief Judge of the 55th District Court and Hon. David F. Viviano from the 16th Circuit Court addressed the Assembly on the new Jury Reform Court Rule. They presented background on the jury reform movement, some general observations about the Michigan reforms as proposed, and provided insights into the changes that were recently adopted. The judges then took questions from the Assembly.
17. Chair, Victoria Radke announced the election of Kathleen M. Allen as the 2011-2012 Clerk of the Assembly.
18. Chair Victoria Radke presented certificates to the outgoing Assembly members whose terms of service expired at the end of the September 2011 Annual Meeting.
19. Chair, Victoria Radke presented plaques to the 2010-2011 Committee Chairs for their work over the past year.
20. Stephen J. Gobbo was sworn in as 2011-2012 Chairperson of the Assembly by Hon. John Chmura.
21. Chairperson Gobbo presented a plaque to Victoria Radke for all her work over the past year as Assembly Chairperson.
22. The meeting was adjourned at 3:22 p.m.