

President Grieco called the meeting to order at 9:45 a.m. on January 18, 2019 in the Boardroom of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, President-Elect
Robert J. Buchanan, Vice President
Aaron V. Burrell
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Josephine A. DeLorenzo
Hon. Shauna L. Dunning
Andrew F. Fink III
Jennifer M. Grieco, President
Edward L. Haroutunian

James W. Heath, Treasurer
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. David A. Perkins
Barry R. Powers
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:

Joseph J. Baumann
Hon. Clinton Canady III
Lisa J. Hamameh

Kara R. Hart-Negrich
Michael S. Hohaus
Travis W. Weber

State Bar staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Communications and Member Services Division
Candace Crowley, Senior Consultant
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director, Outreach and Constituent Development
Danon Goodrum-Garland, Director, Professional Services Division
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Johnson-Wynn, Assistant General Counsel
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Media Manager
Alecia Ruswinckel, Assistant Director, Professional Standards Division
Kari Thrush, Assistant Director, Communications and Member Services Division
Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program

Guests

David Watson, Executive Director, ICLE

Consent Agenda

The Board received the minutes from the November 16 and December 4, 2018 Board meetings.
The Board received the minutes from the November 7 and December 11, 2018 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 2019 Financial Reports through November 2018.

The Board received some Model Jury Instructions.

Ms. Grieco asked the Board if there were any items that needed to be removed from the consent agenda. There were none.

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

AUDIT REPORT

Audit Committee Report, James W. Heath, Chairperson

The Board received a copy of the FY 2018 State Bar of Michigan Audited Financial Report.

Mr. Heath reported that the members of the audit committee met with the audit firm on December 19, 2018 to review and approve the audit. He introduced Mr. Roger Hitchcock, Audit Partner, and Jamie Rabe, Audit Manager, from the firm of Andrews Hooper Pavlik PLC, who reviewed the audit letter, the annual financial report, and responded to questions from the Board. Mr. Hitchcock reported that there are new reporting standards in the report due to the implementation of GASB 75, which is financial reporting for reflecting post-employment benefits other than pensions (OPEB). The auditors provided a clean "unmodified" opinion with no audit recommendations, and thanked the staff for their assistance and cooperation during the audit.

LEADERSHIP REPORTS

President's Report, Jennifer M. Grieco, President

Ad Hoc Work Group on Professionalism

Ms. Grieco reported on the Ad Hoc Work Group on Professionalism that will be chaired by Edward Pappas, former president of the State Bar. She stated that there were about 20 individuals who were appointed to the work group. The jurisdiction of the group is to implement the recommendations that came out of the SBM October 2018 Professionalism & Civility Summit with priority placed on encouraging bar associations, lawyer organizations, and judicial groups to conduct similar summits; consider the adoption of Michigan-specific civility guidelines for judges and lawyers; and review the Lawyer's Oath more frequently and develop a SBM clearing-house and professionalism tool kit.

Ms. Grieco reported that a sub-committee of the task force is already working on developing civility guidelines for judges and lawyers and those guidelines could be ready to be offered for the Representative Assembly agenda in April. In addition, she said that a civility clearinghouse and toolkit are already on the State Bar website and encouraged the Board to take a look at the resources listed.

Task Force on State Bar Operations, Structure, and Governance

Ms. Grieco reported on the Task Force on State Bar Operations, Structure, and Governance. She stated that the State Bar has retained a consultant, Mark Engle, from Association Management Consultants (AMC) and that the task force members have been appointed. She said that the task force will have its first meeting in March and that the consultant has begun to review the governance documents of the State Bar, minutes from both the Board and the Representative Assembly (RA), along with other pertinent documents. Ms. Grieco reported that the consultant plans to provide an interactive presentation to both the Board and the RA at their April meetings with a goal of presenting their final report to the RA in April 2020.

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

Interim Administrator/Receivership Program

Ms. Welch introduced Alecia Ruswinckel to introduce the proposed Interim Administrator/Receivership Program. Ms. Ruswinckel explained that the State Bar recognized the need for succession planning for attorneys a few years ago. As a result of recommendations from the 21st Century Practice Task Force, the SBM created a Receivership Workgroup that was tasked with recommending a comprehensive program that would protect the public and clients in the event that an attorney becomes unable to practice law with no succession plan in place. Ms. Ruswinckel explained the details of the Interim Administrator Program to the Board and responded to their questions, including the implementation timeline, training, compensation, financial responsibilities, potential policy issues, and in some cases, probate court oversight.

Ms. Welch stated that the RA is aware of this issue, having declined to approve a much less developed response to the problem several years ago. She stated that she and Mr. Gershel, grievance administrator of the Attorney Grievance Commission (AGC), have had conversations and that the AGC is ready for the SBM to take over this expanded program. Mr. Gershel and Ms. Welch have had conversations with the justices of the MI Supreme Court about this issue as well, as the Court's buy-in is essential.

Lawyer Referral Services Update

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the Lawyer Referral Services Program. The LRS portal was launched in mid-April with great feedback so far from attorneys. SBM will be able to review data that was not available in the past and focus on customer service providing appropriate information and recommendations. Ms. Vrooman said that the next phase is the consumer side of the portal and that while MI Legal Help is currently available, the program will work towards integrating the triage function of the portal with MI Legal Help.

SBM Holiday Building Closure Update

Ms. Welch reported that during the holiday closure of the SBM building she responded to about 44 calls. She said that while most of the calls were not emergencies, there were a few that requested a referral for a lawyer. In the future, the SBM might consider having the LRS available for assistance during that time.

Goals and Priorities for FY 2019

This report will be deferred to the April meeting.

Cloud Law and *Fleck v Wetch*

This item will be discussed in closed session.

The Board went into a closed session at 10:40 a.m. to discuss CloudLaw and litigation on the *Fleck v Wetch* decision.

The Board returned to open session at 11:50 a.m.

A motion was offered and supported to file an amicus brief in the *Fleck* decision in the U.S. Court of Appeals for the 8th Circuit. The motion was approved.

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

Mr. Cunningham reported that preparation is underway for the April 13 meeting including preparation of an agenda. He stated that agenda that will include a report on the Interim Administrator/Receivership, the amicus brief in the *Fleck* decision, and the Governance Task Force.

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

In Ms. Hart-Negrich's absence, Ms. Davidson provided the Board with an update on some of the recent activities of the YLS Council and its members.

Ms. Davidson stated that the YLS Council is planning to issue a challenge to the BOC again this year, but are unsure what the challenge will be. The event will take place on April 12 and more information will be sent to the Board members.

COMMISSIONER COMMITTEES REPORTS

Finance Committee Report, James W. Heath, Chairperson

Mr. Heath reviewed the highlights of the FY 2019 financial reports through November 2018. He also reported that the committee reviewed bid waiver exceptions and discussed new policy regarding money transfers that will be brought before the Board in April.

Professional Standards, Dana M. Warnez, Chairperson

Ms. Warnez reported that there is no new business to come before the Board. She stated that the committee members met this morning to complete their orientation to the committee.

Communications and Member Services, Robert J. Buchanan, Chairperson

Mr. Buchanan stated that there were three items for the Board's consideration today.

TALI Software

Mr. Buchanan provided the Board with information about a new member benefit called TALI, which is a conversational time-tracking program and is described in the board materials.

A motion was offered and supported to approve offering this benefit to SBM members. The motion was approved

Master Lawyer Section Transition

Mr. Buchanan reported to the Board that the committee is recommending that the State Bar re-tool the way the SBM serves the Master Lawyers Section and also recommends that the State Bar dissolve the Master Lawyers Section at the end of the current bar year. A memo from Ron Keefe, past president of the State Bar, supporting this recommendation was included in the board materials.

A motion was offered and supported that the Master Lawyers Section be dissolved with the provision that staff will continue providing support as described in the memo. The motion was approved.

NEXT Conference/Annual Meeting

Mr. Buchanan reported that the Board had received a memo via email describing the scaled back version of the NEXT Conference/annual meeting. The memo describes the challenges the State Bar faces each year with the annual meeting and provides a road map on how to scale it down to events which are required by the bylaws and rules governing the State Bar.

A motion was offered and supported to adopt the scaled back version of the NEXT Conference as described in the memo that was distributed to the Board. The motion was approved.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File No. 2017-27: Proposed Amendment of MCR 6.425

The proposed amendment of MCR 6.425 would make the rule consistent that requests for counsel must be filed within 42 days, as opposed to simply “made” or “completed and returned.” It would also remove the requirement for a sentencing judge to articulate substantial and compelling reasons to deviate from the guidelines range, pursuant to *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).

A motion was offered and supported to adopt the Criminal Jurisprudence & Practice Committee position, which states: Keep the “filed with the court” language proposed by the court; incorporate the prisoner mailbox rule into this rule; explicitly provide the defendant with the opportunity to file the request at sentencing; and delete the “substantial & compelling” language to be consistent with the Court’s ruling in *People v. Lockridge*. The motion was approved.

ADM File No. 2018-04: Proposed Amendments of MCR 7.212 and 7.312

The proposed amendments of MCR 7.212 and 7.312 would require amicus briefs to indicate certain information regarding the preparation of the brief and disclosure of monetary contributions. The proposal would be similar to Supreme Court Rule 37.6.

The Board decided to take no position on this proposed amendment.

Proposed Amendment to MCR 5.117 to Allow Limited Scope Representation in Probate Proceedings

A motion was offered and supported to adopt the amendment to Rule 5.117 as proposed by the Affordable Legal Services Committee. The motion was approved.

Other

Non-Fee-Generating Cases – Letter from Legal Services Association of Michigan (LSAM)

A motion was offered and supported that that the issue is *Keller*-permissible as it pertains to the availability of legal services to society. The motion was approved.

A motion was offered and supported to support the categories of “Non-fee-generating cases” as expressed in the letter from LSAM dated September 12, 2018. The motion was approved.

Mr. Barnes reported that the State Bar staff will send a letter from the SBM to LSAM informing them of the decision of the Board.

OTHER REPORTS

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA Mid-year meeting will take place in January in Las Vegas with only one day scheduled for the meeting of the House of Delegates. He stated that there is one issue that is front and center with the delegation and that is a proposal to increase the pass rate of law schools to 75 percent within two years of graduation.

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 12:48 p.m.