

President Fershtman called the meeting to order at 9:30 a.m. on Friday, January 20, 2012 at the State Bar of Michigan building.

Commissioners present:

Kathleen M. Allen	Donald E. McGinnis, Jr.
Dennis M. Barnes	Maureen M. McGinnis
David R. Brake	Lawrence P. Nolan
Robert J. Buchanan	Jules B. Olsman
Lori A. Buiteweg, Treasurer	David A. Perkins
Margaret A. Costello	Colleen A. Pero
Bruce A. Courtade, President-Elect	Michael J. Riordan
Richard L. Cunningham	Brandy Y. Robinson
Brian D. Einhorn, Vice President	Donald G. Rockwell
James N. Erhart	Thomas C. Rombach, Secretary
Julie I. Fershtman, President	Angelique Strong Marks
Stephen J. Gobbo	Julie A. Sullivan
Jennifer M. Grieco	Laurin' C Roberts Thomas
Edward L. Haroutunian	Gregory L. Ulrich
Felicia O. Johnson	Dana M. Warnez

Commissioners absent and excused:

Commissioner Richard J. Siriani was absent and excused.

State Bar Staff present:

Janet Welch, Executive Director  
Marge Bossenbery, Executive Coordinator  
Nancy Brown, Director, Member Services and Communications Division  
Gregory Conyers, Director, Diversity  
Candace Crowley, Director, External Development  
Dawn Evans, Director, Professional Standards Division  
Cliff Flood, General Counsel  
Mary Frook, Director, Human Resources Division  
Danon Goodrum-Garland, Investigative Counsel  
James Horsch, Director, Finance and Administration Division  
Nkrumah Johnson-Wynn, Service Counsel  
William Kramer, Director, Information Technology Division  
Elizabeth Lyon, Director, Governmental Relations  
Janiece Morrow, Administrative Assistant  
Anne Smith, Administrative Assistant  
Naseem Stecker, Media and Public Relations Manager  
Kari Thrush, Membership Services and Events Manager  
Anne Vrooman, Director, Research and Development

Guests

Hon. Al Butzbaugh, 2<sup>nd</sup> Circuit Trial Court  
Lynn Chard, Executive Director, ICLE  
Linda Rexer, Executive Director, Michigan State Bar Foundation  
C. Kim Shierk, Chair, Real Property Section

**Consent Agenda**

The Board received the minutes from the November 18, 2011 Board of Commissioners meeting and the Executive Committee meetings that were held on November 29 and December 13, 2011.

The Board received a list of the SBM President's recent activities.

The Board received a list of the SBM Executive Director's recent activities.

The Board received the Client Protection Fund Claims and the Unauthorized Practice of Law Complaints Proposed for Litigation.

The Board received the FY 2011 Financial Reports through November 30, 2011

The Board received a Section Bylaw amendment from the Labor and Employment Law section.

Motion offered and supported to approve the consent agenda. Motion approved.

President Fershtman offered a motion to move three items to the beginning of the meeting: a report for the SBM auditing firm, Andrews Hooper Pavlic PLC, a report from the Chair of the Real Property Law Section, C Kim Shierk, and an update on the Solutions on Self Help Task Force from Hon. Al Butzbaugh and Linda Rexer. Motion supported and approved.

**Comments on the FY2011 Audit from Andrews Hooper Pavlic PLC**

Ms. Buiteweg introduced Partner Jeffrey Fineis and Audit Manager Jamie Wilmoth from Andrews Hooper Pavlic PLC, who discussed the FY11 audit. Commissioners were provided with the audit report.

**State Bar of Michigan Section Report**

The Board received a report from C. Kim Shierk, Chair, Real Property Law Section.

**Solutions on Self-Help Task Force Update**

The Board received an update about the efforts of the Solutions on Self - Help Task Force from Hon. Al Butzbaugh and Ms. Linda Rexer.

A motion was offered and supported to reconsider the approval of the consent agenda. Motion approved. An error was noted on the November 18 minutes. The minutes reflected that the Board supported ADM 2010-20, when in fact the Board voted to unanimously oppose this policy. A motion was offered and supported to adopt the minutes as amended. Motion approved. Ms.Fershtman also noted that Ms. Buiteweg's title was incorrect and that will also be corrected.

**COMMISSIONER COMMITTEES**

**Finance, Lori A. Buiteweg, Chairperson**

Ms. Buiteweg presented the Board with a FY 2012 Financial and Investment update.

**Professional Standards, Thomas C. Rombach, Chairperson**

No report was provided.

**Programs and Services, Brian D. Einhorn, Chairperson**

No report was provided.

**Public Policy, Image and Identity**, Bruce A Courtade, Chairperson

The Board received written reports from Justice Initiatives and Governmental Consulting Services.

**Court Proposals**

**1. ADM File No. 2010-25 - Proposed Amendment of Rule 7.210 of the Michigan Court Rules**

The proposed amendment would require trial courts to become the depository for exhibits offered in evidence (whether those exhibits are admitted or not), instead of requiring parties to submit exhibits offered in evidence when a case is submitted to the Court of Appeals on a claim of appeal.

The Civil Procedure & Courts Committee and the Criminal Jurisprudence & Practice Committee recommended opposition. The Appellate Practice Section and the Criminal Law Section recommended support.

A motion was offered and supported to support the proposed amendment. A roll call vote was taken: 14 ayes, 12 nays and one abstention. Motion approved.

**Legislation**

**Juvenile Competency**

**SB 0246** (Schuitmaker) Juveniles; criminal procedure; juvenile competency standards; revise. Amends sec. 1, ch. XA of 1939 PA 288 (MCL 712A.1) & adds secs. 18n, 18o, 18p, 18q, 18r & 18s to ch. XA.

**SB 0247** (Schuitmaker) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends secs. 498d, 498e & 498h of 1974 PA 258 (MCL 330.1498d et seq.) & adds secs. 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072 & 1074.

**HB 4555** (Lipton) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends secs. 498d & 498h of 1974 PA 258 (MCL 330.1498d et seq.) & adds secs. 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072 & 1074.

**HB 4556** (Lipton) Juveniles; criminal procedure; juvenile competency standards; revise. Amends sec. 1, ch. XA of 1939 PA 288 (MCL 712A.1) & adds secs. 18n, 18p, 18o, 18q, 18r & 18s to ch. XA.

A motion was offered and supported to support this bill package, provided the amendments advocated by the Criminal Law Section regarding a qualified person performing a competency exam are adopted. Motion approved.

**SB 0464** (Schuitmaker) Criminal procedure; other; development of investigative protocols and abuse and neglect interview protocols for vulnerable adults; require by certain local agencies. Amends sec. 11b of 1939 PA 280 (MCL 400.11b).

The Board agreed to take no position on this bill based on a Keller analysis.

**SB 0688** (Schuitmaker) Crimes; perjury; unsworn declaration made under penalty of perjury; include as a statement punishable as perjury. Amends sec. 423 of 1931 PA 328 (MCL 750.423).

The Civil Procedure & Courts Committee recommended amendment to the bill. The Justice Policy Initiative recommended support.

**SB 0689** (Schuitmaker) Civil procedure; evidence; uniform unsworn foreign declarations act; create. Amends sec. 2102 of 1961 PA 236 (MCL 600.2102) & adds ch. 21A.

The Civil Procedure & Courts Committee recommended an amendment to the bill. Elizabeth Lyon noted that amendments were already being incorporated into substitute drafts of the bills.

A motion was offered and supported to support the bills. Motion approved.

**SB 0707** (Schuitmaker) Civil procedure; discovery; uniform interstate depositions and discovery act; adopt. Amends sec. 1852 of 1961 PA 236 (MCL 600.1852) & adds ch. 22.

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

**SB 0743** (Jones) Children; abduction; uniform child abduction prevention act; create. Creates new act. The Domestic Violence Committee recommended opposition.

Action on this bill was deferred.

### **Court Rules**

#### **ADM File No. 2005-11 – Proposed Alternative Amendments of the Code of Judicial Conduct**

Two alternative proposals are published for comment. Alternative A combines Canon 4 and Canon 5 so that the obligations imposed with regard to extrajudicial activities are the same for both law-related and non law-related functions. Alternative B is modeled loosely on the ABA Model Code of Judicial Conduct. The most recent iteration of the ABA Model Code splits the existing language of Michigan's Canon 4 through Canon 6 into 15 separate rules. For purposes of the proposed language of Alternative B, however, the separate model rules are combined in the proposed revised text of Michigan's current two Canons, and would retain nearly all the language that currently exists in Canon 4 and Canon 5. But the proposal is similar to the ABA Model Code in that proposed Canon 4 would begin with a description of the underlying foundational requirements for any extrajudicial activities (i.e., participation in the activity must not undermine the judge's independence, integrity, or impartiality) and other general requirements, and then would set out the allowed fundraising and other financial activities in Canon 5.

Either proposal would eliminate the language of Canon 7 that prohibits a judge from accepting a testimonial, and would clarify Canon 2 so that activities allowed under Canon 4 and Canon 5 would not be considered a violation of the principle of use of the prestige of office. Both proposals contain proposed language that is intended to clarify the scope of activities in which a judge may participate, especially if those activities also serve a fundraising purpose. In Alternative A, this language is included at Canon 4D; in Alternative B, this language is included at Canon 5A (3).

The Criminal Jurisprudence & Practice Committee recommended support and amendment. The Judicial Ethics Committee recommended amendment.

Action on this proposed court rule amendment will be deferred for action by the Executive Committee in anticipation of forthcoming recommendations from Sections and Committees.

#### **ADM File No. 2010-26 - Proposed Amendment of Rule 7.210 and Rule 7.212 of the Michigan Court Rules**

The proposed amendments of MCR 7.210 and MCR 7.212 would extend the time period in which parties may request that a court settle a record for which a transcript is not available and would clarify the procedure for doing so.

Action on this proposed court rule amendment will be deferred for action by the Executive Committee in anticipation of forthcoming recommendations from Sections and Committees.

## LEADERSHIP REPORTS

### President's Report, Julie I. Fershtman, President

Ms Fershtman informed the Board that her health continues to improve.

Ms. Fershtman asked the Board to contact her if there were items they would like to see on her blog.

Ms. Fershtman informed the Board that she, along with Ms. Welch, Mr. Courtade, and Mr. Ulrich, are attending the ABA Midyear meeting and HOD meeting.

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

Ms. Welch stated that all listed items can be deferred to the April meeting in the interests of time.

Ms. Welch informed the Board about interaction with and communications between the State Bar and the Michigan Department of Treasury concerning letters about unclaimed property received by many members of the bar.

### Representative Assembly Report (RA), Stephen J. Gobbo, Chairperson

Mr. Gobbo provided the Board with information concerning the activities of the officers of the RA and what is potentially on the agenda for the April 21, 2012 RA meeting, including the definition of the Practice of Law, a presentation from the Solutions on Self Help Task Force, and an old item that the Assembly will address regarding the terms of the Supreme Court as well as the Parliamentarian.

### American Bar Association (ABA) Report, Reginald Turner, State Delegate

The Board was provided with a written ABA report.

### Young Lawyers Section Report (YLS), Brandy Y. Robinson, Chairperson

No report was provided.

### Comment

Mr. Gobbo reminded the Board about the deadline for nominations for the awards for the RA.

Mr. Courtade encouraged the Board to submit nominations for the SBM awards.

Mr. Perkins encouraged the Board to go and see the movie Red Tails over the weekend.

### Adjournment

The meeting was adjourned at 12:30 p.m.