

President Grieco called the meeting to order at 9:45 p.m. on November 16, 2018 in the Boardroom of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, President-Elect
Joseph J. Baumann
Robert J. Buchanan, Vice President
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Josephine A. DeLorenzo
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Edward L. Haroutunian
Kara R. Hart-Negrich

James W. Heath, Treasurer
Michael S. Hohausser
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. David A. Perkins
Barry R. Powers
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Travis W. Weber
Ryan Zemke

Commissioners absent and excused:

Aaron V. Burrell
Syeda F. Davidson

Shauna L. Dunnings
Daniel D. Quick

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
Katherine Gardner, UPL Attorney
Danon Goodrum-Garland, Director, Professional Services Division
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Wynn Johnson, 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

Guests

Jennifer Bentley

Consent Agenda

The Board received the minutes from both of the September 26, 2018 Board meetings.

The Board received the minutes from the September 11 and October 9, 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 2018 Financial Reports through July 2018.

The Board received the Financial Safety Margin Calculation

The Board received the District and Fitness Committee Appointments

The Board received Client Protection Fund Claims.

The Board received Section Bylaw Amendments from the Alternative Dispute Resolution, Animal Law, Labor and Employment, and Master Lawyer Sections.

Ms. Grieco asked the Board if there were any items that needed to be removed from the consent agenda.

Mr. Ulrich requested that the amendments to the Master Lawyers Section bylaws be removed.

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

A motion was offered and supported to have the amendments to the bylaws of the Master Lawyers Section be referred back to the section for the changes as proposed. The motion was approved.

LEADERSHIP REPORTS

President's Report, Jennifer M. Grieco, President

Professionalism Summit

Ms. Grieco provided the Board with an overview of what took place at the Promoting Professionalism in the 21st Century Summit in October. The Board received a report that contained a program summary that described the speakers, workshops, panels, and breakout sessions that took place. Ms. Grieco anticipates that this report will be distributed to bar and section leaders and courts.

Ms. Welch reported that she had met with the Executive Directors from the AGC, ADB, and JTC, along with Milt Mack, State Court Administrator, to follow up on the Summit recommendations, specifically on the involvement of judges.

Great Rivers Bar Leadership Conference

Ms. Grieco reported that the President, President-Elect, and Executive Director of the State Bar attended the Great Rivers Bar Leaders Conference in October. The conference consists of the state bars from Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Nebraska and Colorado state bars; of those bars, only Wisconsin and Michigan are funded by mandatory dues.

Executive Director's Report, Janet K. Welch, Executive Director
Janus\Fleck

Ms. Welch provided the Board with an overview of the current status of *Fleck v Welch*, challenging the mandatory status of the State Bar of North Dakota, and the possible implications for 32 mandatory bars. The Supreme Court has relisted this case five times.

SBM is leading an effort to collect relevant data from all 32 mandatory bars on their regulatory and nonregulatory activities to determine how to collaborate on responding to the ongoing challenges to the mandatory bar.

The Board members discussed possible content of an amicus brief in *Fleck*.

LRS Update

Ms. Welch provided the Board with an overview of SBM's LRS program and provided some background information about the commercial lead generators. Our revamping of the classic lawyer referral system, operating within the objectives of the regulatory scheme, will not achieve its potential without significantly more resources to publicize and market the program.

Issues Related to Online Dues Processing

Ms. Welch reported that the Bar experienced a number of glitches in the new e-commerce system designed to collect member dues online. All of the members who experienced problems have been contacted and their issues resolved.

Mr. Horsch provided the Board with an update on the current dues payments, 96% of which have been made online.

A Lawyer Helps Pro Bono Honor Roll

Ms. Welch asked Mr. Mathis to review the "A Lawyer Helps Pro Bono Honor Roll" proposal with the Board. Mr. Mathis referenced the memo regarding the proposal provided in the Board materials. He described the Voluntary Pro Bono Standard as adopted by the RA. The Circle of Excellence, which recognized firms and corporations that demonstrated full compliance with the Voluntary Standard, was phased out in 2018. Beginning in 2019, the Access to Justice Campaign will recognize, on tiered recognition lists, individuals, law firms, and corporate legal departments that make significant total donations, as well as law firms that achieve a per-attorney average donation, of at least \$300, starting with tiered levels of \$300, \$500, \$750 or \$1,000 per lawyer. Also beginning in 2019, the ALH Pro Bono Honor Roll proposal, if adopted, will recognize, on tiered recognition lists, both individual Michigan attorneys who provide 30 or more hours of pro bono legal services in a calendar year and also law firms and corporations that achieve a per-attorney average of at least 30 hours of pro bono legal services in a calendar year, per the Voluntary Standard. The recognition lists will use tiered levels of 30, 50, and 100 hours. An online application will be available for individual attorneys, law firms, and corporations to submit pro bono service hours to the State Bar. A motion was offered and supported to adopt the proposal. The motion was approved.

Introduction of New Employee

Ms. Welch asked Ms. Goodrum-Garland to introduce Ms. Katherine Gardner, SBM's new UPL Counsel, to the Board members.

Letter from Legal Services Association of Michigan

Ms. Welch informed the Board that the co-chairs of the Access to Justice Policy Committee received a letter from the Legal Services Association of Michigan (LSAM). LSAM forwarded the letter to SBM for a response. Ms. Welch said that no action is required at this time, but asked the Board for input on how to respond to the letter. The Board requested that SBM refer the letter to all relevant sections and that staff create a template for relevant section liaisons to respond. Mr. Haroutunian asked that the definition of "Low-Income Consumer" be clarified.

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

Mr. Cunningham reviewed the items that were addressed at the RA's September 26, 2018 meeting. The RA adopted a resolution in support of the creation of a Task Force on Structure and Governance of the State Bar. The Board approved the same resolution at its September 26, 2018 meeting.

The RA passed an amendment to its Permanent Rules of Procedures to allow for the RA to conduct virtual meetings. A motion was offered and supported to approve an amendment to Article IV, Section 6 of the Bylaws of the State Bar of Michigan to allow for the RA to conduct virtual meetings. The motion was approved.

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

Ms. Hart-Negrich provided the Board with an update on some of the recent activities of the YLS and reported that as required in their bylaws, an YLS bylaw review committee has been created. She reported that the Annual YLS Summit will take place in June in Detroit.

Michigan State Bar Foundation

Ms. Jennifer Bentley provided the Board with an update on the Access to Justice Campaign, which is a partnership with the State Bar of Michigan and Legal Aid providers in Michigan. After a review of the Campaign and national research on best practices, during the past year, it was decided to institute a collaborative centralized campaign that will raise money for fifteen statewide programs, down from the forty-five programs. She stated that there will be an email sent from President Grieco and Mr. Pappas, Chair of the State Bar Foundation, to all SBM members asking for year-end donations. Ms. Bentley indicated that there will be three donor lists published that will show firms, members and corporate donations and that additional information can be found at atjfund.org/champions.

COMMISSIONER COMMITTEES REPORTS

Finance, James W. Heath, Chairperson

Mr. Heath reported that at the committee meeting this morning, Mr. Horsch provided the members with an overview of the responsibilities and duties of the committee members and thanked the former Chair, Ms. Warnez, and returning members, Mr. Hohausser, Ms. Rebeck, and Mr. Ulrich, for their assistance as well. Mr. Heath reviewed the FY 2018 financial reports and asked Mr. Horsch to review the FY 2018 financial results and trends. Mr. Horsch provided a PowerPoint presentation of the information.

Audit, James W. Heath, Chairperson

Mr. Heath reported that the auditors have completed their review of the financial status of the Bar and that the Audit Committee will meet with them in December to review the final audit report. He stated

Professional Standards, Dana M. Warnez, Chairperson

Ms. Warnez reported that the Professional Standards Committee met and were provided with an overview of the committee's duties as it relates to Character and Fitness, the Judicial Qualifications Committee, and the Client Protection Fund. She stated that other than the action item already approved on the consent agenda, there were no further items to come before the Board.

Communications and Member Services, Robert J. Buchanan, Chairperson
2018 SBM NEXT Conference Summary

Mr. Buchanan stated that there was an event summary of the NEXT Conference 2018 included in the Board materials.

Communications & Member Services Committee Jurisdiction Revision

Mr. Buchanan told the Board that in July 2018, the Board had approved in principle a revision to the jurisdiction statement of the Communications and Member Services Committee, and now asked the Board to approve language changes to that statement, confirming the committee's jurisdiction over all requests to establish new State Bar sections, all requests to amend existing section bylaws and dues structures, and all proposals to discontinue existing State Bar sections. A motion was offered and supported to approve the revised jurisdiction statement. The motion carried.

Michigan Bar Journal Plain Language Column

Mr. Buchanan reviewed the SBM's overview of the State Bar's policy on SBM Awards and asked the Board to approve the continuation of the plain language column editing award that is included each month in the *Michigan Bar Journal*. A motion was offered and supported to approve the continuation of the *Michigan Bar Journal's* Plain Language column editing contest. The motion was approved.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File No. 2016-27: Proposed Amendment of MRPC 7.2

The proposed amendment of MRPC 7.2 would require media lawyer advertisements to identify the name and contact information of at least one lawyer providing services. This proposal is being republished in light of the ABA's recent adoption of revisions of the model rules regarding attorney advertising.

A motion was offered and supported to support the language adopted by the Court on May 30, 2018 as preferred over the language proposed on September 27, 2018. The motion was approved.

ADM File No. 2016-05: Proposed Amendment of MCR 2.513

The proposed amendment of MCR 2.513 would explicitly provide that a court must orally recite its preliminary and final jury instructions for the jury (in addition to providing them in writing). The proposed amendment would clarify that even though a juror is entitled to a written set of instructions, the judge must still orally instruct the jury. This proposed amendment would conform the rule to the opinion issued by the Court in *People v Traver*.

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

ADM File No. 2018-21: Proposed Administrative Order to Require Courts to Establish Security Committees

This administrative order would direct courts to establish a standing courthouse security committee to be chaired by the chief judge or his/her designee. The attached appendix is a proposed model local administrative order developed by the SCAO.

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

ADM File No. 2002-37: Proposed Amendments of MCR 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618

The proposed amendments are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

A motion was offered and supported to encourage the Court in its work developing and implementing a statewide electronic-filing system, take no position on the proposed amendments, to forward the comments received from the committees and sections to the Court, and to authorize the Alternative Dispute Resolution and Probate & Estate Planning sections to advocate their positions. The motion was approved.

Legislation

HB 6110 (Iden) Occupations; individual licensing and regulation; use of criminal record to determine eligibility for occupational licensing; restrict. Amends title & secs. 1, 2, 3, 4, 5, 6 & 7 of 1974 PA 381 (MCL 338.41 et seq.).

A motion was offered and supported that this bill is Keller permissible in the regulation and discipline of attorneys, lawyer competency, and integrity of the legal profession. The motion was approved.

A motion was offered and supported to request an amendment that the bill not apply to the licensing of attorneys. The motion was approved. Mr. Weber abstained.

HB 6277 (LaFave) Courts; judges; judges to fully instruct jury of its authority; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 29b to ch. VIII.

A motion was offered and supported that this bill is Keller permissible in affecting the functioning of the courts. The motion was approved.

A motion was offered and supported to oppose the bill. The motion was approved. Mr. Weber abstained.

SB 1092 (Jones) Courts; juries; postponement of jury service; allow for farmers during certain months. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335).

A motion was offered and supported that this bill is Keller permissible in affecting the functioning of the courts. The motion was approved.

A motion was offered and supported to oppose the bill. The motion was approved. Mr. Weber abstained.

SB 1103 (Jones) Civil procedure; small claims; general amendments related to e-filing provisions; provide for. Amends secs. 8401a, 8402, 8403, 8404, 8405, 8406, 8409, 8412, 8420 & 8423 of 1961 PA 236 (MCL 600.8401a et seq.).

A motion was offered and supported that this bill is Keller permissible in affecting the functioning of the courts. The motion was approved.

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

OTHER REPORTS

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA Mid-year in taking place in January in Las Vegas with only one day scheduled for the meeting of the House of Delegates. He reported on the activities of the Legal Assistance for Military Personnel committee that he is a member of and mentioned that there are three Gold Star families around the board table.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Mr. Haroutunian asked Ms. Welch about the status of CloudLaw and Ms. Welch reported that there are no new developments.

Mr. Ulrich inquired about the possibility of providing new digital recording equipment to the chairs of the Character and Fitness panels. Ms. Goodrum-Garland reported that she would look into the request.

Mr. Buchanan reminded the Commissioners that each Board member had received the 2019 Award nomination brochure and asked that each Board member reach out to those sections and affinity bars that they are affiliated with and ask for nominations.

Comments or Questions from the Public

There were none.

Adjournment

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