

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES**

President Quick called the meeting to order at 9:30 a.m. on Friday, November 17, 2023, in the Boardroom at the Michael Franck building in Lansing, Michigan.

Commissioners present:

David C. Anderson
Yolanda M. Bennett
Erika L. Bryant, Secretary
Aaron V. Burrell
Hon. B. Chris Christenson
Ponce D. Clay
Tanya N. Cripps-Serra
Robert A. Easterly
Nicole A. Evans
Sherrie L. Detzler
Hon. Kameshia D. Gant
Lisa J. Hamameh, Vice President
Thomas H. Howlett, Treasurer
Suzanne C. Larsen
Joshua Lerner

James W. Low
Silvia A. Mansoor
Gerard V. Mantese
Gerrow D. "Gerry" Mason
Joseph P. McGill, President-Elect
Thomas P. Murray Jr.
Takura N. Nyamfukudza
Nicholas M. Ohanesian
Hon. David A. Perkins
Daniel D. Quick, President
John W. Reiser III
Hon. Kristen D. Simmons
Delphia T. Simpson
Danielle Walton

Commissioners absent:

Valerie R. Newman
Colemon L. Potts

Matthew B. VanDyk
Hon. Erane C. Washington

Guests

Thomas P. Clement

State Bar staff present:

Peter Cunningham, Executive Director
Drew Baker, General Counsel
Margaret Bossenbery, Executive Coordinator
Alecia Chandler, Professional Responsibility Programs Director
Gregory Conyers, Program Director, Diversity Development Program
Darin Day, Program Director, Outreach
Katherine Gardner, Unauthorized Practice of Law Counsel
Tatiana Goodkin, Chief Financial Officer Development Manager
Robert Mathis, Pro Bono Services & Justice Initiatives Counsel

Kim Panter, IT Project Coordinator
Molly Ranns, Director, Lawyers & Judges Assistance Program
Kristin Sewell, Program Director, Research & Development
Janna Sheppard, Administrative Assistant
Jeanette Socia, Director of Human Resources
Marjory Raymer, Director of Communications
Laurin Thomas, Public Services Counsel
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Director, Governmental Relations
Meng Xiong, IT Director

Consent Agenda

The Board received the minutes from the September 21, 2023, Board meetings.
The Board received the minutes from the October 5, 2023, 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 2023 draft financial reports through September 30, 2023.
The Board received Client Protection Fund claims.
The Board received Character and Fitness Committee appointments.
The Board received Unauthorized Practice of Law Claims.
The Board received Model Criminal Jury Instructions.

Mr. Quick swore in the four Commissioners who were not present at the September meeting.

Mr. Quick asked if any items needed to be removed from the consent agenda. There were none. A motion was offered to approve the consent agenda. The motion was seconded and approved.

President and Executive Director's Report: Dan Quick, President and Peter Cunningham, Executive Director.

Mr. Quick thanked all members for their continued work commitment and contributions over the past several years. He would like the Board meetings to have more commissioner engagement, and today's agenda includes some topics that will hopefully give commissioners the opportunity to meaningfully engage.

Mr. Quick reported that the officers met in August and discussed many key ideas they would like to focus on during the current bar year and beyond. These ideas include an increased use of metrics to evaluate SBM programming, education, and advocacy for the concept of 'rule of law,' increased support for pipeline programs to create pathways into legal careers, the impact of artificial intelligence on the legal field, and increasing the Bar's communication capacity.

Mr. Quick informed the Board about a recent decision in the Fifth Circuit Court of Appeals where Randy Boudreaux sued the Louisiana State Bar Association, an integrated bar association, alleging *Keller* violations. The Fifth Circuit decision upheld *Keller* and attempted to provide clear guidance as to what activities are germane under *Keller* and which are not. This lawsuit will provide SBM with another opportunity to revisit the policies and procedures in place regarding *Keller* and how the Fifth Circuit decision applies to the activities of the State Bar of Michigan.

Licensing Renewal update and Rule 21

Mr. Cunningham reported that the license renewal for 2023-2024 is nearing the end of the period for members to pay without incurring late fees. As of today, 65% of members have renewed their licenses, which is almost exactly where we were at this time last year.

Member enrollment in the Interim Administrator Program has exceeded budget projections, which was set at 1,500 enrollees. As of the close of business yesterday, 1,763 members have elected to enroll, with another third of the SBM members still needing to complete their license renewal.

Michigan Commission on Well-Being in the Law (WBIL)

The Court issued an order creating the new Commission during the last Board meeting. Ms. Ranns was named a co-chair of the Commission, along with Justice Megan Cavanagh. Mr. Cunningham is also on the Commission. The WBIL executive committee is in the process of reviewing applications for acceptance of members to the commission.

Under the order, the SBM Board of Commissioners can nominate a commissioner to serve on the WBIL Commission. Ms. Hamameh volunteered, and with no objections, Mr. Quick reported that Ms. Hamameh will be nominated.

DEI Commission Update

Mr. Cunningham reported that the Michigan Supreme Court's Diversity, Equity, and Inclusion Commission will be publicly releasing a draft of their strategic plan within the coming weeks. The Commission will hold a public meeting via Zoom on December 15, 2023, to allow for public feedback on the strategic plan before final adoption in January 2024. Ms. Bryant has been the nominee from SBM and has agreed to continue in this role for the upcoming term.

Staff Updates

Mr. Xiong introduced Ms. Kim Panter, IT Project Coordinator. Ms. Panter started working at the Bar in September. She has several years of experience in project management in both the private and public sectors.

Ms. Chandler introduced Ms. Rachel Harris, CPF Claims Administrator. Ms. Harris joined the team in mid-October. Ms. Harris was a claims adjuster with Farmers Insurance Company. Ms. Harris also worked at the Kalamazoo County Probate Court as a Deputy Probate Register. She

Ms. Raymer shared that SBM won the Luminary Award at NABE Communications Section meeting for our webpage design of the most recent Demographics Report. The new design was launched last year.

Open Discussions: Challenges & Opportunities for the Profession and Justice System

Task Force on Artificial Intelligence

Mr. Quick announced that he has asked Mr. McGill to lead a task force examining the impact artificial intelligence has on the legal profession. Mr. McGill has created a jurisdictional statement and will be adding members to the task force/workgroup. Mr. Mason and Mr. Mantese expressed their interest in assisting. If anyone is interested in getting involved, please contact Mr. McGill.

Legal Deserts/Rural Attorneys

Mr. Cunningham attended the National Consortium of State Court Administrators, and the Conference of Chief Justices in Ann Arbor. The conference brought together state court administrators, judges, bar leaders, and other justice system stakeholders from throughout the Midwest to discuss ideas on how to address the problem "legal deserts." Legal deserts are rural areas of states that lack enough legal resources, including attorneys, to meet the legal needs of the community. Ideas presented at the conference included: increased self-help resources, improved broadband and virtual court access, other technological innovations, and incentivizing attorneys to relocate to rural areas. Mr. Cunningham reported that a group of stakeholders from Michigan that included representatives from SCAO, PAAM, MIDC, Legal Aid, and Bar leaders is meeting to

determine strategies for addressing legal deserts in Michigan. Ms. Larsen has agreed to help with this effort.

Creditor/Debtor Caseloads

Mr. Quick shared that Michigan is ahead of many other states on this topic. The Justice for All Commission recently issued a report which deals with the creditor/debtor caseload in our courts. These cases present significant access to justice challenges with many individuals being unrepresented and having a high incidence of default judgements. Focus on these types of cases will help make courthouses more accessible, make *pro se* processes more available and in plain English for individuals to follow, have navigators available to assist individuals to work through the process and dealing with court rule reform, if necessary.

Mr. Quick summarized the work of the Justice for All Commission's Regulatory and Reform Committee recently issued a report with two recommendations. The next steps will be to include implementation strategies and to focus on higher areas of need. One way is to help in a way that does not erode the justice system.

Pipeline Programs

Mr. Quick shared the main concepts of pipeline programs that provide opportunities to guide younger individuals toward a career in the legal system. SBM has a solid framework to provide access/pathway/ladder to the legal community (beginning as early as elementary school) to get the next generation interested in the profession. There are opportunities for SBM to both directly offer pipeline programs, such as the Face of Justice Program, or to be a clearinghouse/hub that helps facilitate all the various pipeline programs out there.

Mr. Conyers briefly summarized the work of the Face of Justice program which is a program offered to high school students and college students by SBM's Office of Diversity and Inclusion. They have worked with over 350 attorney mentors to showcase the variety of faces in the justice system.

Strategic Planning Committee: Thomas P. Clement, Chairperson

Mr. Clement provided a recap of their first meeting of the year. The focus of the meeting was to recap the 2022-2023 Bar year, review the current strategic plan, and set goals for the upcoming year.

The strategic plan activity report should be available in early 2024. They identified goals for the FY 2024 Bar year, which include the leadership academy, increasing of the number of attorneys who participate in the Lawyer Referral Service, identify areas for use of net promoter score, and to identify SBM programs to review.

Representative Assembly (RA) Report: Yolanda M. Bennett, Chairperson

Ms. Bennett shared that all the committee seats have been filled, as well as chair assignments. There is an upcoming meeting to update the goals for 2023-2024. Ms. Bennett plans to continue to diversify the RA, continue work on the RA Reform Committee, under the continued guidance of Mr. Ohanesian. If anyone has ideas for the upcoming Bar year, please contact Ms. Bennett.

Young Lawyers Section (YLS) Report: Tanya N. Cripps-Serra, Chairperson

Ms. Cripps-Serra expressed concern with the recent low Bar passage rates. The passage rate from the February 2023 Bar exam was only 35%, which is the second lowest rate since 2012. The passage rate for the July 2023 exam was up to 55%, so it is trending in the right direction. She hopes to expand new lawyer groups coming due to Michigan's recent adoption of the Unified Bar Exam. Ms. Detzler agreed to help with this endeavor.

The YLS recently held their monthly meeting at Little Caesars headquarters in Detroit. Many great ideas were shared for the upcoming year, including planning a reunion of the former chairs of the YLS.

On December 16, 2023, YLS will be providing a legal outreach opportunity for those needing legal assistance during the holidays.

The Law Student Outreach Committee will be offering boot camps and workshops on how to engage younger lawyers and law students to get involved.

The YLS Officers are looking into modifying their bylaws. They are interested in changing the definition of a young lawyer to 35 years of age and less than 10 years of practice. The Bylaws Committee is also looking at the entire set of bylaws to determine if any other areas need updating. In addition, they will also be conducting an overhaul of their website.

COMMISSIONER COMMITTEES

Public Policy: Joseph P. McGill, Chairperson

Mr. McGill provided the report for the Public Policy committee.

Court Rules

1. ADM File No. 2020-08: Proposed Rescission of Administrative Order No. 2020-17 and Proposed Amendment of MCR 4.201 Amendment of MCR 4.201

The proposed rescission of AO 2020-17 reflects the Court's review of the public comments received in this same ADM File regarding additional amendments of MCR 4.201. The proposed amendment of MCR 4.201 would ensure that courts with a local court rule under MCL 600.5735(4) implement their local court rule in accordance with the other provisions of MCR 4.201.

A motion was offered and seconded to support ADM File No. 2020-08 as drafted. The motion was approved.

2. ADM File No. 2022-19: Proposed Amendments of MRPC 1.15 and 1.15A and Proposed Additions of MRPC 1.15B and 1.15C

The proposed amendments of MRPC 1.15 and 1.15A and proposed additions of MRPC 1.15B and 1.15C would amend the rules governing IOLTA accounts to: modernize the rules, address gaps in the existing rules, and clarify attorneys' ethical duties related to safekeeping client or third-party property and managing trust accounts.

A motion was offered and seconded to support ADM File No. 2022-019 as drafted. The motion was approved.

3. ADM File No. 2023-24: Proposed Amendment of MCR 3.701 and Proposed Additions of MCR 3.715, 3.716, 3.717, 3.718, 3.719, 3.720, 3.721, and 3.722

The proposed amendments would offer procedural guidance to trial courts for implementing the Extreme Risk Protection Order (ERPO) Act, MCL 691.1801 et seq.

A motion was offered and seconded to support ADM File No. 2023-24 with amendments jointly proposed by the Family Law Section and the Michigan Judges Association. The motion was approved.

4. ADM File No. 2022-33: Proposed Amendment of MCR 4.303

The proposed amendment of MCR 4.303 would allow courts to dismiss small claims cases for lack of progress.

A motion was offered and seconded to support ADM File No. 2022-33 with two additional amendments as follows:

- (1) Clarifying when “within 91 days” begins
- (2) Including additional language as follows: “Prior to a court dismissing a case for no progress on its own initiative, the court shall serve notice on all parties that the case will be dismissed if no progress has been made within 14 days.”

The motion was approved.

5. ADM File No. 2022-24: Proposed Amendments of MCR 6.907, 6.909, and 6.933

As a condition for the State’s receipt of federal funds under the Prison Rape Elimination Act, 34 USC 30301 et seq., the conditions of confinement for juveniles must comply with federal regulations promulgated under that act, including the requirement that best efforts be made to avoid placing incarcerated youthful inmates in isolation. See 28 CFR 115.14. The proposed amendments clarify that youthful inmates should not be placed in isolation in order to keep them separate from adults.

A motion was offered and seconded to support ADM File No. 2022-24 with the amendments proposed by the Access to Justice Policy Committee, Children’s Law Section, and Criminal Law Section. The motion was approved.

Legislation

1. Fees for Transcripts

HB 5046 (Shannon) Civil procedure: costs and fees; fees for transcripts; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

SB 0514 (Irwin) Civil procedure: costs and fees; fees for transcripts; increase. Amends sec. 2543 of 1961PA 236 (MCL 600.2543).

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to remain neutral on bills HB 5046 and SB 0514 due to the absence of a mandatory fee waiver for indigent parties and parties represented by pro bono counsel in civil matters. The motion passed.

2. HB 5131 (Skaggs) Legislature: apportionment; redistricting of court of appeals; provide for. Amends secs. 301, 302 & 303d of 1961 PA 236 (MCL 600.301 et seq.); adds sec. 303e & repeals secs. 303a, 303b & 303c of 1961 PA 236 (MCL 600 et seq).

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to oppose HB 5131, because additional Court of Appeals judges are not warranted based on the court's existing or anticipated caseload, and to take no position on the proposed redistricting of Court of Appeals judicial districts. The motion passed.

3. HB 5271 (Hope) Criminal procedure: DNA; post-conviction DNA testing; modify. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to support HB 5271. The motion passed.

Commissioners voting in support: Anderson, Bennett, Bryant, Burrell, Christenson, Clay, Cripps-Serra, Easterly, Evans, Gant, Hamameh, Howlett, Larsen, Lerner, Low, Mansoor, Mantese, Mason, McGill, Murray, Nyamfukudza, Ohanesian, Reiser, Simmons, Simpson.

Commissioner voting in opposition of the position: Walton.

Commissioner abstaining: Quick.

There was an additional motion to support a further amendment of HB 5271 that,

“The investigating law enforcement agency shall preserve any biological material identified during the investigation of a crime or crimes for which any person may file a petition for DNA testing under this section. The identified biological material must be preserved until either (1) 25 years have passed from the date that the convicted person ceases to be in the custody of this state, under the jurisdiction of this state, including while serving a term of probation or parole, or required to register under the sex offender registration act, 1994 PA 295, MCL 28.721 to 28.730, or (2) the investigating law enforcement agency receives notice that the convicted person is deceased, whichever is sooner.”

This motion failed after non-unanimous vote.

4. HB 5300 (Pohutsky) Probate: other; name change proceedings; modify.

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to support HB 5300. The motion passed.

Audit: Thomas H. Howlett, Chairperson

Mr. Howlett reported that there is an Audit Committee meeting scheduled with the auditors on Friday, December 8, 2023. There is a deadline of December 31, 2023, to submit a report to the Supreme Court. Further updates will be available in January.

Finance: Thomas H. Howlett, Chairperson

Financial Report

Mr. Cunningham provided a financial report for FY 2023 through September 30, 2023. A more detailed report will be provided in January following the conclusion of the audit. SBM's net position for FY 2023 is favorable to budget by \$1,249,519.

The amount budgeted for FY 2023 for operating revenue was \$12.6 million for operating revenue. The actual year to date operating revenue varied to only \$17,679 less than budgeted. The amount budgeted for operating expenses was favorable to budget by \$900,000 due to lower salary expenses and payroll taxes and benefits. Non-operating revenue is \$960,643, which is significantly higher than what was budgeted primarily due to higher interest rates. This variance includes money that is not in the budget for the Retiree Healthcare Trust Fund, which changed the net position from \$1.1 million to \$2.9 million, of which \$700,000 is restricted for the Retiree Healthcare Fund. The amount of non-labor operating expenses was also favorable to budget by \$611,245, due to delays in IT/software launches, General Counsel expenses were lower due to minimal outside counsel expenses.

Approximately \$2.2 million was added to the administrative fund at the end of FY 2023, making the administrative fund balance \$9.6 million to begin the fiscal year 2024.

The Client Protection Fund balance continues to be healthy with a balance of \$2,521,993, an increase of \$400,202 from the beginning of the year. Much of this increase is due to increased subrogation efforts of SBM staff.

Overall, the section balances are healthy with a combined, overall balance of approximately \$2.9 million.

As of September 30, 2023, the active, inactive, and emeritus membership in good standing totaled 46,824 attorneys, an increase of 51 attorneys since the beginning of the year with the number of paying attorneys decreased by 536. 736 new attorneys have joined SBM since the beginning of the year.

Professional Standards: Erika L. Bryant, Chairperson

Interim Administrator Compensation Rate

Ms. Bryant shared there are currently 1,763 members registered to serve as Interim Administrators. SBM wants to be prepared when an interim administrator requests a fee. Ms. Chandler shared facts about how SBM has gone about identifying a reasonable hourly rate of \$100/ hour for

compensation. A comprehensive compensation policy is being written and will be presented to the Board for consideration at the January meeting.

A motion was made and seconded for SBM to establish an hourly rate of \$100/hour for interim administrators. The motion passed.

Communications and Member Services (CAMS): Lisa J. Hamameh, Chairperson
2023 Presidential Inauguration Event Summary

Ms. Hamameh reported this year's inauguration event received a net promoter score of 53, which indicates very positive feedback. This is the first time SBM has utilized net promoter to determine the satisfaction of attendees.

Ms. Hamameh informed the Board that we are locked into the same location for the 2024 inaugural event but not for 2025. If anyone has other locations to consider, please let her know.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Ms. Bryant extended her condolences to Mr. Cunningham on the loss of his mother and to Judge Washington on the loss of her father-in-law.

Tomorrow, Saturday, November 18, 2023, Detroit Delta is hosting a virtual college prep symposium.

Comments or questions from the public

None.

Adjournment

The meeting was adjourned at 12:57 p.m.