

The meeting was called to order by President Neckers at 9:30 a.m. on Friday, June 14, 2002, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

John M. Barr  
Marjory G. Basile  
Scott S. Brinkmeyer, Vice President  
Kimberly M. Cahill  
Thomas W. Cranmer, Treasurer  
Kathryn M. Day  
Nancy J. Diehl, Secretary  
Evanne L. Dietz  
Kim Warren Eddie  
James N. Erhart  
Hon. Joseph J. Farah  
Jon Feikens  
Julie I. Fershtman, Assembly Chair

Dennis P. Grenkowicz  
Michael S. Hohausen  
Ronald D. Keefe  
Daniel M. Levy  
Craig H. Lubben  
Hon. William B. Murphy  
Bruce W. Neckers, President  
Edward H. Pappas  
Thomas G. Plunkett  
Thomas C. Rombach  
Charles R. Toy  
Reginald M. Turner, President-Elect  
Gregory L. Ulrich

Commissioners Kim Warren Eddie, Joshua A. Lerner, Richard D. McLellan, Randolph P. Piper and Kurt E. Schnelz were absent and excused. Commissioners W. Anthony Jenkins and Hon. Cynthia D. Stephens were absent and unexcused.

State Bar Staff Present:

Thomas K. Byerley - Director, Regulation Counsel;  
Kathleen J. Fox - Director, Employee Services;  
Marian Frane - Manager of Financial Services;  
James C. Horsch - Director, Administration and Finance;  
Victoria Kremiski - Assistant Regulation Counsel;  
William E. Livingston - Program Administrator, Lawyers & Judges Assistance;  
Roberta M. Lott - Administrative Assistant;  
Glenna D. Peters - Executive Coordinator;  
Lorraine Weber - Consultant  
Janet Welch - General Counsel  
Karen L. Williams - Committees and Sections;

Present for such portions of the meeting as pertained to a specific agenda item were Lynn Chard, Executive Director, ICLE; Jack Gilbreath, member Lawyers and Judges Assistance Committee; David Haynes and Becky Bechler, Public Affairs Associates; Linda Rexer, Executive Director, State Bar Foundation.

Mr. Neckers reported that Mr. Berry and Commissioner McLellan would not be in attendance due to recent surgeries.

## CONSENT AGENDA

A motion was made and seconded to approve the following items on the Consent Agenda:

### Minutes

The Board approved the minutes of the April 26, 2002 Board meeting.

The Board accepted the minutes of the following Executive Committee meetings:

April 8, 2002  
April 15, 2002  
April 22, 2002  
April 25, 2002  
May 6, 2002  
May 13, 2002  
May 20, 2002  
June 3, 2002

The Board received the following: Grievance Committee Meeting Minutes from May 20, 2002;  
Annual Report 2001-02 and Michigan Standards for Imposing Lawyer Sanctions Draft

### President's Report – Bruce W. Neckers, President

The Board received the President's written report.

### Executive Director's Report – John T. Berry, Executive Director

The Board received the Executive Director's written report and the UPL litigation report.

### Professional Standards Committee – Nancy J. Diehl, Chairperson

The Board approved the following Client Protection Claims for payment:

<u>Claim Number</u>	<u>Amount</u>
CPF 1650	\$ 17,375.00
CPF 1703	\$ 6,950.00
CPF 1705	\$ 16,838.90
CPF 1709	\$ 1,560.28
CPF 1710	\$ 17,375.00
CPF 1717	\$ 16,999.70
CPF 1718	\$ 5,560.00
CPF 1734	\$ 17,375.00

Commissioner Liaison Reports - Written reports by the following Commissioner Liaisons were included in the Board agenda packet:

- A. Marjory G. Basile: Libraries, Legal Research and Publications Committee, Intellectual Property Law Section
- B. Kim Warren Eddie: Quality of Professional Life Committee, International Law Committee
- C. Dennis P. Grenkowicz: Aviation Law Section, Prisons and Corrections Section (distributed at meeting)
- D. Craig H. Lubben: Computer Law Section
- E. Randolph P. Piper: Client Protection Fund Committee
- F. Charles R. Toy: Character & Fitness Committee, Environmental Law Section

**Budget for FY 2002-03** – Thomas W. Cranmer

Following a review of the budget process, an explanation of the budget materials and subsequent discussion, a motion was made and seconded to tentatively approve the budget, subject to its return to the agenda in July for possible revision. Motion carried.

**LEADERSHIP REPORTS**

**President-Elect's Report** – Reginald M. Turner

Mr. Turner reported that in accordance with the Strategic Plan, a Vision Committee has been formed to review the meeting strategies of the Bar in a way that provides better services to members in a cost-efficient manner. Information was provided that summarized the actions taken by the committee. Their two-year meeting strategy recommendations are:

- 1) Convene one-day business meeting in Lansing that would include Board of Commissioners and Representative Assembly meetings
- 2) Convene 1 ½ day meeting in conjunction with the Bar Leadership Forum
- 3) Enhance/Coordinate SBM and Section Partnerships

Additionally, it was noted that it may be necessary for attendees to bear some of the costs.

Upon motion made and seconded, the Board adopted the recommendations of the Vision Committee, subject to additional details provided by the Implementation Committee.

**SPECIAL PRESENTATIONS**

**Resolution Honoring Elaine Charney** - A resolution was prepared and presented for adoption by Mr. Neckers. Upon a motion made and seconded, it was adopted. A copy is attached hereto as an addendum.

An informational update on the Lawyers and Judges Assistance Program was provided by Bill Livingston and Jack Gilbreath.

**LEADERSHIP REPORTS (Continued)**

**President's Report** – Bruce W. Neckers

Mr. Neckers reported that he attended the Probate Seminar and that the Section Summit was a great success.

Mr. Neckers announced that he would be writing about trial lawyers in his article for the July Bar Journal, in response to a message sent to Michigan Chamber of Commerce members.

**Representative Assembly Chairperson's Report** - Julie I. Fershtman

Ms. Fershtman reported that the Assembly is conducting a self-assessment and that the Assembly Review Committee will be presenting a report at the September meeting. They will be providing a mechanism to involve a voice from Sections in their report.

**Executive Director's Report**

In light of Mr. Berry's absence, no report was presented.

## **COMMITTEES, COMMISSIONS & TASK FORCES**

### **Finance and Human Resources** - Thomas W. Cranmer, Chairperson

Mr. Cranmer referenced the financial materials provided and noted that we are currently ahead of budget, largely due to holding down expenses.

Mr. Cranmer reported that the sub-committee had completed its review of the proposals that were received by six different accounting firms and it was their unanimous recommendation that Plante & Moran be retained as auditors for the fiscal year ending 2001-2002, with the anticipation that they remain as auditors for the State Bar of Michigan for the next 3 years. Upon a motion made and seconded, the Board approved the recommendation. Following discussion, Mr. Neckers noted that he supported the committee process, because he believes that good controls are now in place and it is appropriate for Plante and Moran to continue to be our auditors. Motion carried.

Upon a motion made and seconded, the Board approved the proposed Resolution to move the Bar's mortgage loan and line of credit from Citizens Bank to Bank One with the following caveats: 1) A final review of the loan documents, 2) A final review of ancillary costs, and 3) A written indication from the bank that there is no further environmental study or work required. Motion carried.

### **Professional Standards** – Nancy Diehl, Chairperson

Upon a motion made and seconded, the Board approved the recommendation to participate with the League of Women Voters in a bookmark project entitled "Judging Your Judges", subject to no significant expense to the Bar and in coordination with the Bar's legal counsel. Motion carried.

### **Nominating Committee** – Charles Toy, Chairperson

Upon a motion made and seconded, Miles C. Gerberding of Frankfort, Michigan was approved by the Board as the alternate to the ABA House of Delegates.

### **Programs and Services** –Scott Brinkmeyer, Chairperson

Mr. Brinkmeyer provided an update on the e-filing project. Judge Shelton, Chair of the E-Filing Task Force, indicated to him that a county program will probably be implemented and there would be funding available. He is planning to retire as chair, but recommends: 1) that the task force continue 2) that the Bar continues a partnership in some form with Washtenaw County during the implementation of their project, and 3) that the Bar continues involvement from the standpoint of Certificate of Authority. Staff will review the original business plan for Certificate of Authority to determine if it is justifiable as a business project. The committee hopes to make a recommendation at the next Board meeting.

Commissioner Plunkett provided a report on the Bar Leadership Forum. Twenty-two Sections were represented and actively participated in the program led by Dadie Perlov and associate, Manny Elkin. A summary of evaluations was distributed. Next year's Forum will be expanded to include the Board of Commissioners.

### **Public Policy, Image and Identity**– Reginald M. Turner, Chairperson

Mr. Haynes reported that the legislature is still in session and is working on the budget. The judicial budget is being monitored closely, as well as the upcoming lame duck session. He noted that Mr. Turner and Mr. Brinkmeyer recently met with legislative leaders.

Mr. Haynes further reported that he is coordinating the Gubernatorial Debate Committee appointed by Mr. Neckers, and that the 21<sup>st</sup> Century Courts Committee, which includes Section representation, recently had a good meeting. They are working on recommendations that will be presented to the Board at a future meeting.

Mr. Turner reported that in response to a presentation from the Legal Aid Committee, they voted to defer to sections and committees with respect to Proposed Amendment Rule 2.102, relating to procedures for which prisoners are notified regarding certain domestic relations proceedings.

Mr. Turner asked for comments from the public about the Bar's legislative program, but none were forthcoming.

### **Michigan Court Rules**

Proposed Amendment of **Rule 8.121(C)**: Contingent Fees and Claims or Actions for Personal Injury and Wrongful Death; Computation

Previously adopted. Based on further examination by the Civil Procedure Committee, a minor adjustment was made. Upon motion and second, the Board approved the recommendation from the Civil Procedure Committee. Motion carried.

Proposed Amendments of **Rules 703 and 1101** of the Michigan Rules of Evidence: Bases of Opinion Testimony by Experts; Applicability

Recommended referral back to Civil Procedure Committee regarding Rule 1101 for further clarification

Proposed Amendments of **Rules 7.302, 7.304, 7.306 and 7.309**: Application for Leave to Appeal; Briefs in Calendar Cases; Preparation, Filing and Serving Briefs and Appendixes

Deferred

Proposed Amendment of **Rule 6.005 and Proposed New Rule 8.123**: Sub-rule Letter Re-designation: Proposed New Rule re Records of Counsel Appointments

Deferred

Proposed Amendment of **Rules 7.205, 7.210, 7.215, 7.302 and 7.316**: Application for Leave to Appeal; Record on Appeal; Opinions, Orders, Judgments and Final Process from Court of Appeals; Application for Leave to Appeal; Opposing Brief, Cross Appeal; Misc Relief Obtainable in Supreme Court

Deferred

**SB 733 - Domestic Violence**; Allows prior acts of domestic violence to be admissible as evidence.

Based on prior position of the Bar that these matters should be dealt with by Court Rule as opposed to legislation and on basis of comments received, support substance generally but believe that it is better addressed by rule than legislation. Motion made and seconded. Motion carried.

Motion of Amendment to oppose legislation in principle but support substance in principle. Seconded. Motion carried.

**SB 734 - Domestic Violence;** Exempts reports by victim of threats accompanying domestic violence from hearsay rule.

Based on prior position of the Bar that these matters should be dealt with by Court Rule as opposed to legislation and on basis of comments received, support substance generally but believe that it is better addressed by rule than legislation. Motion made and seconded. Motion carried.

Motion of Amendment to oppose legislation in principle but support substance in principle. Seconded. Motion carried.

**SB 1243 - Malpractice Civil Procedure;** Amends qualification requirements of expert witness for medical malpractice action in civil procedure.

Deferred

**HB 4765 - Domestic Violence Evidence;** Allows for evidence of certain statements or acts of domestic violence.

Deferred

**HB 5283 - Domestic Violence;** Allows prior acts of domestic violence to be admissible as evidence.

Based on prior position of the Bar that these matters should be dealt with by Court Rule as opposed to legislation and on basis of comments received, support substance generally but believe that it is better addressed by rule than legislation. Motion made and seconded. Motion carried.

Motion of Amendment to oppose legislation in principle but support substance in principle. Seconded. Motion carried.

**HB 5648 - Judicial Budget;** Provides fiscal year 2002-03 judicial appropriations. See provision concerning law student loan forgiveness.

Section 319 of the bill as passed the Senate provides funding for a law school debt management relief program. Consistent with its longstanding support of efforts to provide additional funding for civil legal services, including law school debt management relief programs for lawyers employed in public interest law positions, a motion was made and seconded to support in principle funding such as that included in HB 5648, but oppose in principle restrictions that would have the effect of denying debt relief to any public sector position, including a prosecutorial position, whose compensation falls within the parameters of the program. Motion carried.

**HB 5787 – Malpractice Defense;** Requires sworn statement to be signed by a licensed physician practicing in the same field as the defendant in a malpractice suit.

Deferred

**Young Lawyers Section** – Evanne Dietz, Chairperson

Ms. Dietz provided an update on the section's recent and upcoming activities, including the Race for Justice that will be held on Friday, September 27<sup>th</sup>. Additionally, Ms. Dietz will be sworn in as Assembly Clerk for the ABA Young Lawyers Division.

**FOR THE GOOD OF THE PUBLIC AND THE PROFESSION**

**Comments or questions from Commissioners**

Mr. Neckers asked for comments or questions from the Commissioners, but there were none.

**Comments or questions from the public**

Presentations were made by attorneys regarding the matter of Ameribank v. Dressel. Speaking on behalf of the mortgage industry (Ameribank) were: William K. Holmes, John E. Jacobs and George Kemsley. Speaking on behalf of the plaintiffs/appellees (Dressel) was Christopher Hastings.

In accordance with the request from the Michigan Supreme Court and upon a motion made and seconded, the Board approved deferral of the matter to the Public Policy Committee and its subcommittee, consisting of Tom Plunkett and Kathryn Day, to work with the Bar's legal counsel in drafting an amicus brief in this matter.

**Old Business**

There was none.

**New Business**

There was none.

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