



Board of Commissioners

Agenda and Materials

January 19, 2024

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
Friday, January 19, 2024
Michael Franck Building
Lansing, MI
Agenda
9:30 a.m.

State Bar of Michigan Statement of Purpose

“...The State Bar of Michigan shall aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.”

Rule 1 of the Supreme Court Rules Concerning the State Bar of Michigan

1. Call to Order.....Daniel D. Quick, President

CONSENT AGENDA

2. **Minutes**
 - A. November 17, 2023 Board meeting*
 - B. November 2, 2023 Executive Committee meeting*
3. **President’s Activities**.....Daniel D. Quick, President
 - A. Recent Activities*
4. **Executive Director’s Activities**.....Peter Cunningham, Executive Director
 - A. Recent Activities*
5. **Finance**..... Thomas H. Howlett, Chairperson
 - A. Financial Reports through November 2023**
6. **Professional Standards**Erika L. Bryant, Chairperson
 - A. Client Protection Fund Claims*

7. **FY2023 Audit Update and Report from Andrews Hooper Pavlik PLC**... Thomas H. Howlett

LEADERSHIP REPORTS

8. **President’s and Executive Director’s Report**Daniel D. Quick, President
Peter Cunningham, Executive Director
 - A. Licensing Fee Status
 - B. Interim Administrator Program Update
 - C. MSC Commission on Well-Being in the Law
 - D. MSC Diversity Equity and Inclusion Commission
 - E. MSC Justice for All Commission
 - F. Artificial Intelligence Work Group Update
 - G. Staff Updates

- 9. **Open Discussion: Challenges & Opportunities for the Profession and Justice System**
A. Response to Attacks on Judges
- 10. **Representative Assembly Report** Yolanda M. Bennett, Chairperson
- 11. **Young Lawyers Section Report** Tanya N. Cripps-Serra, Chairperson

COMMISSIONER COMMITTEES

- 12. **Public Policy**..... Joseph P. McGill, Chairperson
A. Court Rules**
B. Legislation**
C. Unfinished Business*
- 13. **Audit** Thomas H. Howlett, Chairperson
- 14. **Finance**..... Thomas H. Howlett, Chairperson
A. Financial Report
- 15. **Professional Standards** Erika L. Bryant, Chairperson
A. IAP Compensation and Reimbursement Policy*
- 16. **Communications and Member Services** Lisa J. Hamameh, Chairperson

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- 17. **Comments or questions from Commissioners**
- 18. **Comments or questions from the public**
- 19. **Adjournment**

*Materials included with agenda.

**Materials delivered or to be delivered under separate cover or handed out.

**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.

**State Bar of Michigan
Executive Committee Virtual Meeting
Thursday, November 2, 2023
4:00 p.m.**

President Quick called the meeting to order at 4:02 p.m.

Members Present: President Daniel D. Quick, President Elect Joseph P. McGill, Vice President Lisa Hamameh, Secretary Erika L. Bryant, Treasurer Thomas H. Howlett, Representative Assembly Vice Chair John Reiser III, and Commissioners David Anderson, Aaron V. Burrel, and Robert Easterly

Members Absent: Representative Assembly Chair Yolanda Bennett

State Bar Staff Present: Peter Cunningham, Executive Director; Drew Baker, General Counsel; Margaret Bossenbery, Executive Coordinator; and Assistant Executive Directors, Kathryn Gardner, and Kari Thrush.

Minutes:

A motion was offered to approve the October 5, 2023 minutes. The motion was seconded and approved. Commissioners Anderson and Easterly abstained.

President and Executive Director's Report

Mr. Cunningham provided the committee with a status report on both the Licensing Fee and Interim Administrator Program

Ms. Baker informed the committee that a lawsuit was filed against the State Bar of Michigan in the Eastern District of Michigan on October 24, 2023. The Plaintiff's name is Gabriel Hillel Kaimowitz. He is also suing the Florida State Bar and John Berry, the former Executive Director of the SBM and a Florida state attorney. Plaintiff alleges that he was retaliated against as a "Whistle Blower," the Michigan and Florida Bars conspired to deprive him of his license to practice law and that the SBM refused to publish the Plaintiff's letters to the Editor and articles, in violation of his First and Fifth Amendment rights. His current pleading requests injunctive relief.

Mr. Quick briefly reviewed the items beneath agenda item #7 of the November Board meeting agenda. Mr. Quick added this item to the agenda to generate discussion among board members relating to "Challenges & Opportunities for the Profession and Justice System."

Mr. Quick asked if there were other items to be included on the board meeting agenda and a few members had suggestions. A motion was offered and supported to approve the agenda as amended. The motion was approved.

Representative Assembly (RA)

Mr. Reiser informed the committee that the next RA meeting is taking place on April 20, 2024. He stated that the officers of the RA met with all the committee chairs of the RA to discuss what their focus should be for the upcoming year. He stated that at the September RA meeting 4 of the 5 proposals passed. He confirmed with Mr. Cunningham that the next step is for a letter to be drafted from the RA officers, Ms. Bennett, Mr. Reiser, and Ms. Evans, and Commissioners Mason and Ohanesian, and sent to the Supreme Court for their consideration. Mr. Cunningham stated that Mr. Triplett is working on that.

Other Items

There were none.

Adjournment

The meeting was adjourned at 5:05 p.m.

President Daniel D. Quick
President's Activities
November 17, 2023 through January 19, 2024

Date	Event	Location
December 5	Detroit Bar Association Jingle Mingle	Detroit
December 7	Oakland County Holiday Gala	Birmingham
December 13	Federal Bar Association Holiday Party	Detroit
December 14	Executive Committee meeting	Virtual
December 21	D. Augustus Straker Bar Association Wolverine Bar Association Black Women Lawyers Association Holiday Gathering	Detroit
January 4	Executive Committee meeting	Virtual
January 12	We The People Competition reception	East Lansing
January 20	Board of Commissioners meeting	Lansing

Executive Director Peter Cunningham
Executive Director Activities
November 17, 2023 through January 19, 2024

Date	Event
November 27	Meeting with David Watson, Executive Director of ICLE
November 30	Justice for All (JFA) Executive Committee meeting
December 1	Diversity, Equity, and Inclusion (DEI) Commission meeting
December 7	Michigan Supreme Court Historical Society Tribal Committee meeting
December 8	Finance and Audit Committee meetings
December 11	JFA Resource Committee meeting
December 11	JFA Commission meeting
December 11	RA Officers meeting
December 12	JFA Executive Committee meeting
December 12	Strategic Planning Committee meeting
December 14	Diversity, Equity, and Inclusion (DEI) Executive Team meeting
December 15	Artificial Intelligence (AI) Work Group meeting
December 15	Judicial Council Section meeting
December 15	Michigan Probate Judges Association meeting
December 15	DEI Commission Public Hearing
December 19	Mandatory Bar Chief Executives meeting
December 21	Well-Being in the Law Commission – Executive Committee meeting
December 22	Meeting with Treasurer, Thomas Howlett
December 22	Strategic Planning Subcommittee meeting
January 4	Executive Committee meeting
January 10	AI Work Group meeting
January 11	JFA Executive Committee meeting
January 16	Professional Standards Committee meeting
January 16	Finance and Audit Committee meetings
January 17	Public Policy Committee meeting
January 17	Well-Being in the Law Commission - Executive Committee meeting
January 18	Meeting with Chief Justice Clement

Date	Event
January 18	DEI Executive Committee meeting
January 19	Board of Commissioner meeting

TO: Board of Commissioners
 FROM: Professional Standards Committee
 Subject: Client Protection Fund Claims for Consent Agenda
 DATE: January 19, 2024, BOC Meeting

Rule 15 of the Client Protection Fund Rules provides that “claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant.” In order to protect CPF claim information as required in the Rule, and to avoid negative publicity about a lawyer who is subject to a claim, which has been denied and appealed, the CPF Report to the Board of Commissioners is designated “confidential.”

**CONSENT AGENDA
 CLIENT PROTECTION FUND**

Claims recommended for payment:

	<u>Claim No.</u>	<u>Amount Recommended</u>
1	CPF 3785	\$4,814.00
2	CPF 3793	\$5,000.00
3	CPF 3887	\$2,000.00
4	CPF 3902	\$18,000.00
5	CPF 3910	\$1,800.00
6	CPF 3931	\$1,500.00
7	CPF 3932	\$6,000.00
8	CPF 3938	\$2,755.00
9	CPF 3962	\$1,200.00
10	CPF 3964	\$500.00
11	CPF 3975	\$7,000.00
12	CPF 4046	\$650.00
13	CPF 4052	\$1,080.00
14	CPF 4055	\$1,020.00
	TOTAL	\$53,319.00

CPF 3785**\$4,814**

Respondent was retained to represent Claimant in a divorce proceeding. Respondent agreed to be compensated through a legal expense insurance plan included as an employee paid benefit. However, Respondent failed to provide adequate paperwork to seek payment for the legal services provided. Instead, Respondent obtained a tax refund they stated was due to Claimant, lied about receiving the refund, and then kept the refund without communicating or explaining the situation. Respondent was not entitled to the tax refund as it was their actions that resulted in the non-payment. This claim is recommended for reimbursement in the amount of \$4,814 payable to Claimant.

CPF 3793**\$5,000**

Claimant retained Respondent for a flat fee of \$5,000. Respondent did not complete the legal services resulting in the court dismissing Claimant's complaint. The ADB, in suspending Respondent's license to practice law found that Respondent failed to refund the advance payment of an unearned fee after termination of the representation. Respondent was ordered to pay \$5,000 in restitution to Claimant by October 13, 2023. Claimant has received no funds from Respondent. Rule 11(B) states that an order disciplining Respondent for the same dishonest conduct alleged in a claim is conclusive evidence that the lawyer committed the dishonest conduct.

Respondent did not complete any services before they were suspended from the practice of law. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6). This claim is recommended for reimbursement in the amount of \$5,000 payable to Claimant.

CPF 3887**\$2,000**

Respondent was retained to represent Claimant in an expungement matter for a fee of \$2,000. Respondent consulted with Claimant on the phone and purportedly mailed a fingerprint card to Claimant, which was never received. Thereafter, Respondent abandoned the matter. Respondent completed no legal services before their license was suspended and later revoked. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement of \$2,000 payable to Claimant.

CPF 3902**\$18,000**

Respondent was retained to represent Claimant in a federal civil lawsuit for an initial retainer of \$16,000, \$1,000 of which was non-refundable. Respondent was to bill Claimant \$400 per hour. Due to Respondent's request for additional funds, Claimant made two additional payments of \$1,000 each, paying a total of \$18,000 for the representation.

Despite communications to Claimant indicating work was done, Respondent admitted that they did not complete the services for which they were paid. Nonrefundable retainers are ethically permissible if the fee agreement is unambiguous. Respondent's law license was suspended, and later revoked, before the completion of any legal services on behalf of the Claimant. The nonrefundable advance fee may be deemed unreasonable or excessive contrary to MRPC 1.5(a). Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$18,000 to Claimant.

CPF 3910

\$1,800

Claimant retained Respondent regarding a post judgment enforcement matter and paid an advance fee of \$1,800, to be billed against at \$200 per hour. Claimant asserts that Respondent did not provide any services and they only engaged in a few phone conversations, but nothing further.

Pursuant to CPF 9(C), the Committee determined that while Respondent did converse with Claimant, there is no evidence of any legal services were performed. In fact, Respondent engaged in a pattern of conduct of accepting advanced payments, providing no substantive legal services, and failing to return funds to clients while lying about the work being performed. Therefore, under CPF 9(C) and the discretionary rule, CPF 9(F), the PSC recommends this claim for payment as there was no value to the services provided. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$1,800 payable to Claimant.

CPF 3931

\$1,500

Claimant retained Respondent for representation in custody and child support matter for an advance payment of \$1,500, to be billed against at \$200 per hour. Respondent provided some services before abandoning the matter and later being suspended and disbarred.

Respondent did converse with Claimant, however, there is no evidence Respondent performed any legal services. In fact, Respondent engaged in a pattern of conduct where they accepted advanced payments, provided no substantive legal services, and failed to return funds to their client while lying about the work being performed. Therefore, under CPF 9(C) and the discretionary rule, CPF 9(F), the Committee may recommend this claim for payment as there was no value to the services provided. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$1,500 payable to Claimant.

CPF 3932**\$6,000**

Respondent was retained by Claimant to file a guardianship and conservatorship for Claimant's parent. Respondent charged Claimant \$300 for the initial consultation and \$6,000 each for the guardianship and conservatorship. Claimant paid Respondent \$12,300.

Respondent held the initial consultation; earning the \$300 charged; therefore, it is excluded from the recommendation of Claimant's reimbursable loss.

Respondent received \$6,000 for which they filed an appearance in both the conservatorship and the guardianship matters, reviewed an Agreement to Mediate and the Guardian's Annual Report, and appeared for Mediation. Respondent provided some services before being suspended from the practice of law. Claimant's request for reimbursement of the full \$6,000 is recommended for denial under CPF Rule 9(G) because a partial reimbursement would categorize this claim as a fee dispute. Under CPF policy, claims based on fee disputes are not reimbursable.

Later, Respondent received an additional \$6,000 from Claimant. Three months later, Respondent wrote to the AGC voluntarily surrendering their license to practice law; admitting they failed to perform their duties as an attorney, retained unearned fees clients gave them, continued to receive more fees after suspension, and lied to their clients about working on their case. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$6,000 payable to Claimant.

CPF 3938**\$2,755**

Respondent was retained to represent Claimant in a divorce matter. Per the Hourly Retainer Agreement, Respondent was to receive \$275 an hour, plus costs. Claimant agreed to provide a \$2,500 non-refundable retainer to commence work and issued a \$2,500 check.

Respondent drafted a complaint for divorce and emailed it to Claimant. Claimant e-signed the document as requested, advised Respondent the complaint listed the wrong county, and provided Respondent with \$255 to cover costs. Respondent admitted during the disciplinary process they failed to correct and file the complaint, abandoning the matter.

The ADB, in suspending Respondent's license to practice law, found that Respondent failed to refund the advance payment of an unearned fee after termination of the representation. Rule 11(B) states that an order disciplining Respondent for the same dishonest conduct alleged in a claim is conclusive evidence that the lawyer committed the dishonest conduct. However, there is a discrepancy between the restitution ordered (\$2,735) and the amount (\$2,755) Claimant states was misappropriated and supported by the documentation. When staff contacted the AGC, they responded that it was a typo or a miscalculation.

Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$2,755 payable to Claimant.

CPF 3962

\$1,200

Respondent was retained to represent Claimant in a criminal matter for a fee of \$500 and a divorce matter for a fee of \$1,250 with no retainer agreement. Respondent completed the criminal representation, earning the \$500. Respondent met with Claimant once and, per Respondent, was working on a draft complaint in the divorce matter. However, Respondent never completed the draft or filed the complaint.

No documentation indicates how much Respondent agreed to charge for either matter; however, after the completion of the criminal matter and before Respondent's death, Claimant attempted to obtain a refund via cash app for \$1,200, representing the unearned fee for the divorce. Respondent provided no substantive legal services before death on the divorce matter. The failure of a respondent's law firm or estate to reimburse claimant after Respondent's death is a failure to return an unearned fee in violation of MRPC 1.15 and is a reimbursable loss under CPF Rule 9(C)(1) and Rule 9(D)(6). This claim is recommended for reimbursement of \$1,200 payable to Claimant.

CPF 3964

\$500

Claimant retained Respondent to represent them in enforcement of entry of a QDRO pursuant to a divorce decree for an advance payment of \$500, which Claimant paid. After receipt of payment, Respondent abandoned the matter.

Respondent did not complete the legal services before Respondent's license to practice law was suspended and later revoked. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$500 payable to Claimant.

CPF 3975

\$7,000

Respondent was retained to represent Claimant with arbitration related to a payment dispute and issues with Claimant's builder. Claimant paid a \$7,000 advance payment to be billed against hourly. Respondent did not complete any work on the arbitration filing. Respondent wrote to the Attorney Grievance Commission and admitted that since suspension, Respondent kept client funds, lied about working on their case, while trying to figure out a way to actually do work on their matters. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$7,000 to Claimant.

CPF 4046**\$650**

Respondent was retained to represent Claimant in a criminal matter for a flat fee of \$2,500. Claimant paid \$650 towards the agreed upon fee. Respondent completed \$1,850 in legal services prior to his death, leaving a balance due to Claimant of \$650. A respondent's failure to safeguard the funds in an attorney trust account until the conclusion of the representation, which is when the fees are earned, violates MRPC 1.15. The failure of a respondent's law firm or estate to reimburse claimant after Respondent's death is a failure to return an unearned fee in violation of MRPC 1.15 and is a reimbursable loss under CPF Rule 9(C)(1) and Rule 9(D)(6). This claim is recommended for reimbursement in the amount of \$650 payable to Claimant.

CPF 4052**\$1,080**

Claimant retained Respondent representation in divorce matter at \$200 per hour. While suspended from the practice of law, Respondent requested, and received \$1,080 for legal services, which Respondent could not perform. Therefore, Respondent could not earn the fee. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6). This claim is recommended for reimbursement in the amount of \$1,080 payable to Claimant.

CPF 4055**\$1,020**

Claimant retained Respondent for representation in a parenting time matter at \$200 per hour with an advanced fee to be held in trust of \$1,500. Respondent earned \$480 before Claimant terminated the representation, leaving a balance due to Claimant of \$1,020.

Respondent's representation was terminated after Respondent earned \$480 of the \$1,500 advance payment. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6). This claim is recommended for reimbursement in the amount of \$1,020 payable to Claimant.

TOTAL**\$53,319**

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: January 11, 2024

Re: Unfinished Business - HB 4738 & HB 4739 – Overturning *People v Jack* and
People v Antaramian

Prior Board of Commissioners Action

At its July 2023 meeting, the Board of Commissioners considered HB 4738 and 4739. The Public Policy Committee’s recommended motion was to oppose both bills. The Board voted that the bills were *Keller*-permissible. However, the Board deferred voting on the substantive motions for all legislation at the July meeting to an electronic vote because attendance at the meeting had dipped too low to achieve the 2/3 vote required to adopt any legislative position under Administrative Order 2004-1. Ultimately, with not all Commissioners participating in the electronic vote, the Public Policy Committee’s motion to oppose HB 4738 and HB 4739 narrowly failed to reach the required threshold and therefore the State Bar of Michigan has no position on the bills.

Because use of an electronic vote did not allow for any further discussion or motions, Commissioners Newman and Nyamfukudza requested that this legislation be brought before the Board at its January 2024 meeting to conclude deliberations and adopt a public policy position on HB 4738 and HB 4739.

Background

House Bills 4738 and 4739 are a legislative response to the Michigan Court of Appeals opinion construing MCR 6.201 in *People v Jack*, 336 Mich App 316 (2021), which held that “absent an applicable exception provided for in MCR 6.201, a prosecutor is required to produce unredacted police reports under MCR 6.201(B)(2).” *Jack* specifically addressed witness contact information. The Court of Appeals, in *People v Antaramian*, ___ Mich App ___, 992 NW2d 667 (2023) (Docket No. 362604), subsequently applied the *Jack* rationale to crime victims’ contact information as well. In both *Jack* and *Antaramian*, applications for leave to appeal and motions to stay the precedential effect of the Court of Appeals published opinions were filed. All were denied by the Michigan Supreme Court.

HB 4738 would amend the Code of Criminal Procedure, 1927 PA 115, and HB 4739 would amend the William Van Regenmorter Crime Victim’s Rights Act, 1985 PA 87, to require prosecuting attorneys to redact the personal information, including contact information, of witnesses (HB 4738) and victims (HB 4739) of crime from certain court documents. Unauthorized disclosure would be a misdemeanor offense. In short, HB 4738 aims to overturn the court’s construction of MCR 6.201 in *Jack* and HB 4739 likewise aims to overturn *Antaramian*.

Both bills were reported from the House Committee on Judiciary in June 2023 with recommendation and without amendment. In October 2023, (H-1) floor substitutes were adopted for each bill. HB 4738 (witnesses) then passed by a vote of 106-3. HB 4739 (victims) passed by a vote of 105-4. The bills were referred to the Senate Committee on Civil Rights, Judiciary & Public Safety, but no further

action was taken prior to the Legislature's *sine die* adjournment in November. Similar legislation (2021 HB 4798 and 2021 HB 4974) passed the House in the last Legislature but died in the Senate.

The (H-1) substitutes add limited exceptions to the bills' general requirement that witness/victim personal information be redacted by the prosecuting attorney. Notably, the (H-1) leaves the principal substance of the legislation undisturbed, effectively overturning *Jack/Antaramian* and flipping the burden from the prosecuting attorney being required to demonstrate a need to withhold information to the defense attorney being required to secure a court order to obtain witness and/or victim contact information in each case to prepare their defense.

For documents provided to defense counsel or the defendant, redaction is not required:

- (1) if the document or personal information was obtained from the defendant or defendant's counsel; or
- (2) if, on motion by the prosecutor, the court enters a protective order restricting the defendant and defendant's counsel from disclosing or using the document for any purpose other than the litigation of the case in which the document was provided; or
- (3) if, on motion by the defendant, the court orders the prosecuting attorney to provide personal information to the defendant or defendant's counsel.

For documents that the prosecuting attorney submits as ordinary court documents or that will be entered into the court file, redaction is not required if, on motion by the prosecutor, the court enters a protective order placing the document under seal and not accessible to the public.

The (H-1) substitutes also add new language requiring the defendant or defendant's counsel to redact personal information from any document they submit as ordinary court document. Here again, an exception is created if the defendant or defendant's counsel moves for the court to enter a protective order placing the document under seal and not accessible to the public.

House Bills 4738 and 4739 are not the only context in which the Board has deliberated on the issue of access to witness/victim personal (contact) information. In June 2022, following *Jack*, the Michigan Supreme Court issued a proposed amendment of MCR 6.201 (ADM File No. 2021-29). Similar to House Bills 4738 and 4739, the proposed amendment would permit redaction of "address, telephone or cell phone number, or any personal identifying information protected by MCR 1.109(9)(a)[.]"¹ The Board voted to support the proposed amendment with an additional amendment striking "the address, telephone or cell phone number, or" from the proposed language. The Board's proposed amendment would leave the Court of Appeals construction of MCR 6.201 in *Jack/Antaramian* undisturbed, while allowing redaction of other personal information less essential to the preparation of a defense in nearly every criminal matter. The comment period on ADM File No. 2021-29 expired on October 1, 2022. As of now, ADM File No. 2021-29 has not been scheduled for a public administrative hearing and no further action has been taken on the matter by the Court.

It is expected that House Bills 4738 and 4739 will be considered by the Senate in 2024.

¹ MCR 1.109(D)(9)(a) defines the following as personal identifying information: date of birth, social security number or national identification number, driver's license number or state-issued personal identification card number, passport number, and financial account numbers.

**SUBSTITUTE FOR
HOUSE BILL NO. 4738**

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding section 40b to chapter VII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER VII

Sec. 40b. (1) Except as otherwise provided under this section,
the prosecuting attorney shall keep personal information of a
witness confidential unless the personal information is a part of
the res gestae of the charged crime.

(2) Except as otherwise provided under this section, the
prosecuting attorney shall redact personal information of a witness
required to be kept confidential under subsection (1) from both of
the following documents:

1 (a) Subject to subsections (3), (4), and (9), a document
2 provided to the defendant's counsel or the defendant.

3 (b) Subject to subsection (5), a document that the prosecuting
4 attorney submits as an ordinary court document or that will be
5 entered into the court file.

6 (3) The prosecuting attorney is not required to redact the
7 personal information of a witness under subsection (2)(a) if either
8 of the following applies:

9 (a) The document was obtained from the defendant or
10 defendant's counsel, or was obtained from the defendant's or
11 defendant's counsel's possession.

12 (b) The personal information was obtained from the defendant
13 or defendant's counsel, or was obtained from the defendant's or
14 defendant's counsel's possession.

15 (4) The prosecuting attorney is not required to redact
16 personal information of a witness as provided under subsection
17 (2)(a) if, on a motion by the prosecutor, the court enters a
18 protective order restricting the defendant and defendant's counsel
19 from disclosing or using the document for any purpose other than
20 the litigation of the case in which the document was provided to
21 the defendant or defendant's counsel.

22 (5) The prosecuting attorney is not required to redact
23 personal information of a witness as provided under subsection
24 (2)(b) if, on a motion by the prosecutor, the court enters a
25 protective order placing the document to be entered into the court
26 record under seal and not accessible to the public.

27 (6) Subject to subsection (7), the defendant or defendant's
28 counsel shall redact personal information of a witness from any
29 document that the defendant or defendant's counsel submits as an

1 ordinary court document or that will be entered into the court
2 file.

3 (7) The defendant or defendant's counsel is not required to
4 redact personal information of a witness as provided under
5 subsection (6) if, on a motion by the defendant or defendant's
6 counsel, the court enters a protective order placing the document
7 to be entered into the court record under seal and not accessible
8 to the public.

9 (8) This section does not alleviate the obligation otherwise
10 required under law to make a witness available for interview by the
11 other party.

12 (9) On motion by the defendant, and subject to subsection
13 (12), the court may order the prosecuting attorney to provide
14 personal information of a witness to the defendant's counsel or the
15 defendant.

16 (10) A motion under subsection (9) must demonstrate that the
17 requested personal information of a witness is reasonably necessary
18 to provide an adequate defense.

19 (11) If the court grants a motion under subsection (9), the
20 order must do all of the following:

21 (a) Limit the disclosure of the personal information of a
22 witness to the extent the disclosure is reasonably necessary to
23 provide an adequate defense.

24 (b) Except as provided in subdivision (c), require the
25 personal information of a witness to remain in the exclusive
26 custody of the defendant's counsel or the defendant if the
27 defendant is not represented by counsel.

28 (c) Include conditions and terms for the defendant's counsel
29 or, if the defendant is not represented by counsel, the defendant,

1 to provide the personal information of a witness to the counsel's
2 or the defendant's agent, employee, or expert witness if it is
3 necessary for a limited purpose that is approved by the court.

4 (d) Prohibit the reproduction, copying, or dissemination of
5 the personal information of a witness unless authorized in the
6 order.

7 (12) This section does not authorize the disclosure of the
8 confidential address of a program participant.

9 (13) This section does not preclude the release of information
10 to a victim advocacy organization or agency for the purpose of
11 providing victim services.

12 (14) A person who is required to keep confidential or redact
13 personal information of a witness under this section and who
14 intentionally and willfully discloses that personal information in
15 violation of this section is guilty of a misdemeanor punishable by
16 imprisonment for not more than 93 days or a fine of not more than
17 \$500.00, or both.

18 (15) As used in this section:

19 (a) "Confidential address" means that term as defined in
20 section 3 of the address confidentiality program act, 2020 PA 301,
21 MCL 780.853.

22 (b) "Internet identifier" means a designation used for self-
23 identification or routing used in posting on the internet or in
24 other internet communications.

25 (c) "Personal information" means the following information of
26 an individual but does not include the location of a charged crime:

27 (i) Home address.

28 (ii) Telephone number and cellular telephone number.

29 (iii) Driver license number or official state personal

- 1 identification card number.
- 2 (iv) Social Security number.
- 3 (v) Date of birth.
- 4 (vi) Place and address of employment.
- 5 (vii) Employee identification number.
- 6 (viii) Mother's maiden name.
- 7 (ix) Demand deposit account, savings account, or checking
8 account number, or other financial identification information.
- 9 (x) Credit card number.
- 10 (xi) Email address.
- 11 (xii) Internet identifier.
- 12 (xiii) Home address, telephone number, and cellular telephone
13 number of a family member.
- 14 (d) "Program participant" means that term as defined in
15 section 3 of the address confidentiality program act, 2020 PA 301,
16 MCL 780.853.

**SUBSTITUTE FOR
HOUSE BILL NO. 4739**

A bill to amend 1985 PA 87, entitled
"William Van Regenmorter crime victim's rights act,"
(MCL 780.751 to 780.834) by adding section 8a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 8a. (1) Except as otherwise provided under this section,**
2 **the prosecuting attorney shall keep the personal information of a**
3 **victim confidential unless the personal information is a part of**
4 **the res gestae of the charged crime.**

5 **(2) Except as otherwise provided under this section, the**
6 **prosecuting attorney shall redact personal information of a victim**
7 **required to be kept confidential under subsection (1) from both of**
8 **the following documents:**

9 **(a) Subject to subsections (3), (4), and (9), a document**

1 provided to the defendant's counsel or the defendant.

2 (b) Subject to subsection (5), a document that the prosecuting
3 attorney submits as an ordinary court document or that will be
4 entered into the court file.

5 (3) The prosecuting attorney is not required to redact the
6 personal information of a victim under subsection (2)(a) if either
7 of the following applies:

8 (a) The document was obtained from the defendant or
9 defendant's counsel, or was obtained from the defendant's or
10 defendant's counsel's possession.

11 (b) The personal information was obtained from the defendant
12 or defendant's counsel, or was obtained from the defendant's or
13 defendant's counsel's possession.

14 (4) The prosecuting attorney is not required to redact
15 personal information of a victim as provided under subsection
16 (2)(a) if, on a motion by the prosecutor, the court enters a
17 protective order restricting the defendant and defendant's counsel
18 from disclosing or using the document for any purpose other than
19 the litigation of the case in which the document was provided to
20 the defendant or defendant's counsel.

21 (5) The prosecuting attorney is not required to redact
22 personal information of a victim as provided under subsection
23 (2)(b) if, on a motion by the prosecutor, the court enters a
24 protective order placing the document to be entered into the court
25 record under seal and not accessible to the public.

26 (6) Subject to subsection (7), the defendant or defendant's
27 counsel shall redact personal information of a victim from any
28 document that the defendant or defendant's counsel submits as an
29 ordinary court document or that will be entered into the court

1 file.

2 (7) The defendant or defendant's counsel is not required to
3 redact personal information of a victim as provided under
4 subsection (6) if, on a motion by the defendant or defendant's
5 counsel, the court enters a protective order placing the document
6 to be entered into the court record under seal and not accessible
7 to the public.

8 (8) This section does not alleviate the obligation otherwise
9 required under law to make a victim available for interview by the
10 other party.

11 (9) On motion by the defendant, and subject to subsection
12 (12), the court may order the prosecuting attorney to provide
13 personal information of a victim to the defendant's counsel or the
14 defendant.

15 (10) A motion under subsection (9) must demonstrate that the
16 requested personal information of a victim is reasonably necessary
17 to provide an adequate defense.

18 (11) If the court grants a motion under subsection (9), the
19 order must do all of the following:

20 (a) Limit the disclosure of the personal information of a
21 victim to the extent the disclosure is reasonably necessary to
22 provide an adequate defense.

23 (b) Except as provided in subdivision (c), require the
24 personal information of a victim to remain in the exclusive custody
25 of the defendant's counsel or the defendant if the defendant is not
26 represented by counsel.

27 (c) Include conditions and terms for the defendant's counsel
28 or, if the defendant is not represented by counsel, the defendant,
29 to provide the personal information of a victim to the counsel's or

1 the defendant's agent, employee, or expert witness if it is
2 necessary for a limited purpose that is approved by the court.

3 (d) Prohibit the reproduction, copying, or dissemination of
4 the personal information of a victim unless authorized in the
5 order.

6 (12) This section does not authorize the disclosure of the
7 confidential address of a program participant.

8 (13) This section does not preclude the release of information
9 to a victim advocacy organization or agency for the purpose of
10 providing victim services.

11 (14) A person who is required to keep confidential or redact
12 personal information of a victim under this section and who
13 intentionally and willfully discloses that personal information in
14 violation of this section is guilty of a misdemeanor punishable by
15 imprisonment for not more than 93 days or a fine of not more than
16 \$500.00, or both.

17 (15) As used in this section:

18 (a) "Confidential address" means that term as defined in
19 section 3 of the address confidentiality program act, 2020 PA 301,
20 MCL 780.853.

21 (b) "Internet identifier" means a designation used for self-
22 identification or routing used in posting on the internet or in
23 other internet communications.

24 (c) "Personal information" means the following information of
25 an individual but does not include the location of a charged crime:

26 (i) Home address.

27 (ii) Telephone number and cellular telephone number.

28 (iii) Driver license number or official state personal
29 identification card number.

- 1 (iv) Social Security number.
- 2 (v) Date of birth.
- 3 (vi) Place and address of employment.
- 4 (vii) Employee identification number.
- 5 (viii) Mother's maiden name.
- 6 (ix) Demand deposit account, savings account, or checking
- 7 account number, or other financial identification information.
- 8 (x) Credit card number.
- 9 (xi) Email address.
- 10 (xii) Internet identifier.
- 11 (xiii) Home address, telephone number, and cellular telephone
- 12 number of a family member.
- 13 (d) "Program participant" means that term as defined in
- 14 section 3 of the address confidentiality program act, 2020 PA 301,
- 15 MCL 780.853.

Public Policy Position
HB 4738 – HB 4739

Oppose

Explanation:

The Committee voted to oppose House Bills 4738 and 4739. The Committee believes that the legislation will impose unnecessary limitations on defense counsel’s ability to access information that is essential to the preparation of a defense (e.g., witness contact information) and thereby undermine the Sixth Amendment rights of individuals that have been accused of a crime. The Committee also took note of the fact that its position on this legislation is consistent with the Board of Commissioners position on the proposed amendment of MCR 6.201 (ADM File No. 2021-29), which would have imposed similar, unnecessary limitations.

Position Vote:

Voted For position: 12
Voted against position: 3
Abstained from vote: 0
Did not vote (absent): 12

Keller-Permissibility Explanation:

The Committee concluded that House Bills 4738 and 4739 were each *Keller*-permissible, because they are reasonably related the functioning of the courts.

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

**Public Policy Position
HB 4738 & HB 4739**

Support

Explanation:

The Committee voted to support House Bills 4738 and 4739.

Position Vote:

Voted For position: 9

Voted against position: 7

Abstained from vote: 0

Did not vote: 10

Keller Permissibility Explanation:

The Committee concluded that both House Bill 4738 and 4739 are *Keller*-permissible because they are each reasonably related to the functioning of the courts. Both bills will have a significant impact of on discovery and case development in criminal cases.

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@sado.org

September 30, 2022

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2021-29 – Proposed Amendment of Rule 6.201 of the Michigan Court Rules

Dear Clerk Royster:

At its September 16, 2022 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-29. In its review, the Board considered recommendations from the Access to Justice Policy Committee and the Criminal Jurisprudence & Practice Committee. The Board voted to support ADM File No. 2021-29 with an additional amendment striking “the address, telephone or cell phone number, or” from the proposed language. The Board believes that this additional amendment will address the need to protect sensitive personal identifying information from disclosure, while also ensuring access to information necessary to contact witnesses and prepare a defendant’s defense. Additionally, the Board recommends that the citation in the proposed amendment be corrected to read “MCR 1.109(D)(9)(a).”

We thank the Court for the opportunity to convey the Board’s position.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
James W. Heath, President

MEMORANDUM

TO: Professional Standards Committee
FROM: Staff
DATE: January 16, 2023
RE: Interim Administrator Compensation and Reimbursement

Overview

The Interim Administrator Program (IAP) rules provide for compensation for attorneys who fill the role of Interim Administrator. To ensure standardized practices and fair compensation, staff requests a Compensation and Reimbursement Policy be adopted by the Board regarding the IAP.

An Interim Administrator who is matched by the State Bar of Michigan (SBM) to an affected attorney may seek compensation and reimbursement.¹ Michigan Court Rule 9.313 anticipates that payment for services of an Interim Administrator will be made by the law firm or an estate, and, if the Interim Administrator was matched by SBM, the Interim Administrator may seek reimbursement and compensation from the State Bar of Michigan (SBM).² On November 17, 2023, the Board adopted an hourly compensation rate of \$100 for an Interim Administrator matched by SBM, which is incorporated into the proposed policy.

This proposed policy requires that the matched Interim Administrator submit a verified claim attesting that all other sources of recovery have been exhausted when requesting compensation and/or reimbursement from SBM for services provided under the IAP. This will ensure that the State Bar of Michigan is aware of potential sources of payment while still providing compensation and/or reimbursement if those other sources are exhausted or not sufficient to fully compensate and/or reimburse the matched Interim Administrator.

Additionally, the proposed policy sets forth the requirements for filing a claim with supporting documentation and an option to request a review of a determination.³

Staff recommends the following proposed policy for the Board's consideration:

Interim Administrator Compensation and Reimbursement

1. Purpose

This Compensation and Reimbursement Policy ("Policy") is established to provide requirements for a claim of compensation and/or reimbursement ("Claim") of an Interim Administrator who

¹ MCR 9.313

² MCR 9.313(B)(2)

³ The request for review process is modeled after the Client Protection Fund Rules

was matched by the State Bar of Michigan to an Affected Attorney (“Interim Administrator”). The objective is to ensure fair and transparent compensation and reimbursement practices while complying with the Rules. The State Bar of Michigan will only accept compensation and/or reimbursement Claims that are verified by the Interim Administrator attesting that all other sources of recovery have been exhausted. Requests for compensation and/or reimbursement sought prior to exhaustion of other available resources may be denied.

2. Compensation of Interim Administrator

The State Bar of Michigan (“SBM”) reserves the right, in its sole and absolute discretion, to approve or deny and Claim based on the reasonableness of the request and whether the costs incurred were necessary to complete the duties as Interim Administrator under the Rules.

2.1. Maximum Compensation Hourly Rate. The hourly rate of compensation shall be paid at the established rate approved by the Board of Commissioners.

2.2. Reimbursable Expenses. An Interim Administrator may incur reasonable and necessary expenses to fulfill their duties under the Rules. Prior approval of any expenses does not guarantee payment of a claim. Allowable expenses include:

- (a) Mileage reimbursed at the rate established annually by the Internal Revenue Service;
- (b) Necessary court costs and filing fees;
- (c) Postage;
- (d) Reasonable costs related to obtaining financial records;
- (e) With prior approval from SBM, reasonable costs to continue services required to fulfill the duties of the Interim Administrator, such as temporary continuation of the Affected Attorney’s practice management software, professional liability insurance, or staff;
- (f) With prior approval from SBM, the reasonable cost of professional services, i.e., Accountant, Financial Advisor, or other experts; and
- (g) With prior approval from SBM, other reasonable costs as deemed necessary to fulfill the duties of an Interim Administrator.

2.3. Claim Requirements. An Interim Administrator shall submit claims for compensation and/or reimbursement to the State Bar of Michigan’s Interim Administrator Program. The claim must be verified in accordance with MCR 1.109(D)(3)(b). The claim must also include the following:

2.3.1. Expense Documentation. An Interim Administrator must maintain accurate records of all expenses and costs incurred, including receipts and supporting documentation, and submit those records to SBM with the related Claim.

2.3.2. Supporting Documentation. A Claim for compensation and/or reimbursement submitted to SBM must include:

- (a) A statement of services rendered and expenses incurred for which compensation and/or reimbursement is sought, including compensation received from any source prior to submitting this claim;
- (b) Information regarding each source from which compensation and/or reimbursement was sought, the amount requested, and compensation received. This information must include actions taken to recover from the Affected Attorney's Law Firm ("Law Firm") and, where applicable, the Affected Attorney's Estate ("Estate") and/or Affected Attorney's Trust ("Trust");
- (c) Inventory of Interim Administrator (CC 533 if using);
- (d) All accountings filed with the Circuit Court administering the Interim Administrator Appointment ("Court");
- (e) All motions or petitions for compensation filed with the Court and corresponding orders;
- (f) Inventory of the Affected Attorney's Estate and/or Trust and all related accountings; and
- (g) All claims, motions, or petitions for compensation and/or reimbursement for actions filed with the Affected Attorney's Estate, Trust, or any other source for which claims were made as an Interim Administrator and corresponding orders.

2.4. **Partial Claims.** If the requirements of 2.3 are met when submitting the Claim, an Interim Administrator may submit a Claim for partial compensation and/or reimbursement while the administration is ongoing. Partial Claims shall be labeled as "Partial Claim". If a Claim is not labeled as a "Partial Claim," the State Bar of Michigan reserves the right to treat the Claim as a final satisfaction of all Claims made to the State Bar of Michigan for compensation and/or reimbursement.

2.5. **Request for Additional Information.** If a Claim submitted to the State Bar of Michigan is incomplete, the State Bar of Michigan may request additional information from the Interim Administrator. The State Bar of Michigan reserves the right to deny an incomplete Claim.

2.6. **Denial of Claim.** The State Bar of Michigan reserves the right to deny a Claim if the Claim does not comport with the requirements in this policy. If a Claim is denied by the State Bar of Michigan, the Interim Administrator may submit an amended Claim to the State Bar of Michigan for the same matter.

2.7. **Timely Reimbursement.** The State Bar of Michigan is committed to processing compensation and/or reimbursement requests in a timely manner, if all requirements are met, in accordance with applicable laws and the State Bar of Michigan's internal procedures. Once a claim is received, notice will be provided to the Interim Administrator confirming receipt.

2.7.1. **Notice of Determination.** Once a determination has been made, a determination notice will be provided to the Interim Administrator. The Interim Administrator has the right to request a review of a determination ("Request for Review") in accordance

with the procedure found in Section 2.7.1.1 if a Claim is denied or partially denied. If no Request for Review has been filed within 30 days from the date of determination notice, the determination shall be final, and no further reviews will be allowed.

- 2.7.1.1. **Request for Review.** The Interim Administrator must submit a Request for Review in writing within 30 days from the date of the determination notice. Requests for review are subject to the following policies and procedures:
- (a) A timely request for review shall be submitted to the Board of Commissioners, or its delegate, for review;
 - (b) A de novo standard of review applies to a Request for Review. The requestor must show by a preponderance of the evidence that the determination was incorrect; and
 - (c) The record established for review by the Board is the sole record relied on. However, the Board may consider newly discovered evidence that, by due diligence, could not reasonably have been discovered before the final determination.

2.7.2. **Approval of Compensation and/or Reimbursement of Expenses.** Once the determination has been given and no Request for Review is pending, payment shall be remitted to the Interim Administrator, if applicable, and the file closed. No other additional Claim(s) will be considered unless the payment remitted was for a Partial Claim (See 2.4 of this Policy).

Applicable Rules

[Michigan Court Rule 9.313](#). Compensation and Reimbursable Expenses of Interim Administrator.

- (A) Compensation and Reimbursement Available. The Interim Administrator, except as otherwise provided by an agreement with the Affected Attorney, is entitled to reasonable compensation for the performance of the Interim Administrator's duties and reimbursement for actual and reasonable costs incurred in connection with the performance of the Interim Administrator's duties. Reimbursable expenses include, but are not limited to, the costs incurred in connection with maintaining the staff, offices, and operation of the Law Firm and the employment of attorneys, accountants, and others retained by the Interim Administrator in connection with carrying out the Interim Administrator's duties.
- (B) Request for Compensation or Reimbursement.
 - (1) The Interim Administrator may file a motion with the court that ordered the appointment seeking compensation or reimbursement under this rule. Unless the Interim Administrator and the Affected Attorney or the Affected Attorney's estate have reached an agreement otherwise, the Interim Administrator will be paid from the Law Firm if funds are available; if funds are not available from the practice, the

attorney may file a claim against the estate in a probate court. The claim must include an accounting of all receipts, disbursements, and distributions of money and property of the Law Firm.

- (2) An Interim Administrator who was matched to an Affected Attorney through the list maintained by the State Bar of Michigan and who was subsequently appointed by the circuit court may seek payment or reimbursement from the State Bar of Michigan for expenses identified in subrule (A). The State Bar of Michigan will promulgate a process for reimbursement under this subrule.

Michigan Court Rule 9.307. Duties and Powers of the Interim Administrator.

- (A) The Interim Administrator is not required to expend his or her own resources when exercising the duties and powers identified in this rule. If the Interim Administrator does expend his or her own resources, the Interim Administrator may request reimbursement under MCR 9.313.
- (B) The general duties of the Interim Administrator are to:
 - (1) take custody of the files and records.
 - (2) take control of accounts, including lawyer trust accounts and operating accounts.
 - (3) review the files and other papers to identify any pending matters.
 - (4) promptly notify all clients represented by the Affected Attorney in pending matters of the appointment of the Interim Administrator. Notification shall be made in writing, where practicable.
 - (5) promptly notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of an Interim Administrator for the Affected Attorney. Notification shall be made in writing, where practicable.
 - (6) deliver the files, funds, and other property belonging to the Affected Attorney's Clients pursuant to the clients' directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property to the extent permitted by law.
 - (7) take steps to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the Affected Attorney's Clients, to protect the interests of the Affected Attorney.
 - (8) comply with the terms of the agreement between the Affected Attorney and the Interim Administrator.

SBM

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