

President Courtade called the meeting to order at 9:40 a.m. on Friday, November 16, 2012 at the State Bar of Michigan Michael Franck Building

Commissioners present:

Kathleen M. Allen	C. Thomas Ludden
Dennis M. Barnes	Maureen M. McGinnis
David R. Brake	Lawrence P. Nolan, Treasurer
Robert J. Buchanan	Jules B. Olsman
Lori A. Buiteweg, Secretary	Colleen A. Pero
Margaret A. Costello	Hon. Michael J. Riordan
Bruce A. Courtade, President	Donald G. Rockwell
Richard L. Cunningham	Thomas C. Rombach, Vice President
Brian D. Einhorn, President-Elect	Hope V. Shovein
D. Randall Gilmer	Richard J. Siriani
Stephen J. Gobbo	Julie A. Sullivan
Jennifer M. Grieco	Gregory L. Ulrich
Charles S. Hegarty	Dana M. Warnez
Felicia O. Johnson	Vanessa Peterson Williams

Commissioners absent and excused:

Commissioners Hon. James N. Erhart, Edward L. Haroutunian, and Brandy Y. Robinson were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
Candace Crowley, Director, External Development
Peter Cunningham, Director, Governmental Relations
Dawn Evans, Director, Professional Standards
Cliff Flood, General Counsel
James Horsch, Director, Finance and Administration
William Kramer, Director, Information Technology Services
Rob Mathias, Pro Bono Attorney
Anne Smith, Administrative Assistant
Kari Thrush, Member Services and Events Manager
Anne Vrooman, Director, Research and Development

Guests

Chad Schmucker, State Court Administrator
Justice Brian Zahra, Michigan Supreme Court
Matthew Schneider, General Counsel, Michigan Supreme Court
Lynn Chard, Executive Director, ICLE
Ed Weslowski, Lawyers Weekly

Consent Agenda

The Board received the minutes from both of the September 19, 2012 Board of Commissioners meetings and the September 4, 2012 and the October 9, 2012 Executive Committee meetings.

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

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

The Board received the FY 2012 Draft Financial Reports through September 30, 2012 and the Financial Safety Margin Calculation.

The Board received the District Character and Fitness Committee Appointments.

The Board received the Practice Management Resources Advisory Committee Report and Recommendations.

The Board received bylaw amendments from the Administrative and Regulatory Law, the Alternative Dispute Resolution, the American Indian Law and the Information Technology Law sections.

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

Trial Court Performance Measures

Chad Schmucker, State Court Administrator, provided the Board with an update on the Trial Court Performance Measures initiative.

July Bar Exam Results

Mr. Courtade moved Agenda Item XVII – A. July Bar Exam results, from the Executive Director's report to this portion of the agenda, and Justice Brian Zahra discussed the July Bar Exam results with the Board.

Orientation

Mr. Courtade asked designated commissioners to introduce the new commissioners to the Board. The Board discussed how State Bar rules, bylaws, and policies applied to several scenarios derived from experiences of other bar associations.

COMMISSIONER COMMITTEES

Finance, Lawrence P. Nolan, Chairperson **FY2012 Financial and Investment Update**

Mr. Nolan presented the Board with a FY 2012 financial and investment update. Mr. Horsch presented the details of the financial update.

Audit, Lawrence P. Nolan, Chairperson **Status of Audit**

Mr. Nolan presented the Board with an update on the status of the audit.

Professional Standards, Lori A. Buiteweg, Chairperson There was no report given.

Programs and Services, Thomas C. Rombach, Chairperson

Mr. Rombach presented the Board with a summary of the evaluations received regarding the 2012 Annual Meeting.

Public Policy, Image and Identity, Brian D. Einhorn, Chairperson The Board received written reports from Justice Initiatives.

Court Rules

ADM File No. 2012-12 Proposed Amendment of Rule 3.925 of the Michigan Court Rules

The proposed amendments of MCR 3.925 would clarify rules and procedures for retention and destruction of various records in juvenile cases.

Motion offered and supported to support this court rule. Motion adopted.

ADM File No. 2012-13 Proposed Amendment of Rule 3.976 of the Michigan Court Rules

This proposed amendment would require a court to indicate on the record the reason that no petition for termination of parental rights need be filed, thus providing a record to future auditors who review the state's foster care program that the court explicitly chose the option.

Motion offered and supported to support this court rule. Motion adopted.

ADM File No. 2012-20 Proposed Amendment of Rule 3.616 of the Michigan Court Rules

The proposed amendments of MCR 3.616 would provide that the files of a young adult foster care youth are confidential, but may be accessed by the youth and by DHS. The proposal further would eliminate the requirement that the petition and order be served on the previous court in which the youth's child protection case was disposed because the case is no longer active. This order also corrects numbering of subsection (F)(2)(i)-(iv) so that the subsections are labeled with letters (a)-(c).

Motion offered and supported to support this court rule. Motion adopted.

Legislation – Old Business

HB 5600 (Haveman) Juveniles; criminal procedure; set-aside convictions for juvenile adjudications; clarify eligibility. Amends sec. 18e, ch. XIII A of 1939 PA 288 (MCL 712A.18e).

A motion was offered and supported to adopt the substitute bill in concept.

Position adopted by roll call vote. Commissioners voting in favor of the position: Allen, Brake, Buchanan, Buiteweg, Costello, Courtade, Einhorn, Gilmer, Grieco, Johnson, Ludden, McGinnis, Nolan, Olsman, Pero, Rockwell, Rombach, Shovein, Sirani, Sullivan, Ulrich, Warnez, Williams.

Commissioners voting in opposition of the position: Cunningham.

Commissioner Erhart, Haroutunian and Robinson were excused. Commissioners Hegarty and Riordan abstained. (23 yeas, 1 nay, 2 abstaining)

HB 5076 (Pettalia) Local government; budgets; challenging an approved budget; clarify. Amends secs. 16 & 18 of 1968 PA 2 (MCL 141.436 & 141.438).

Motion offered and supported to oppose this legislation. Motion adopted. Commissioner Johnson abstained.

SB 1296 (Schuitmaker) Civil procedure; statute of limitations; statute of repose for actions against an attorney-at-law or a law firm; enact. Amends sec. 5838 of 1961 PA 236 (MCL 600.5838) & adds sec. 5838b.

Motion offered and supported to take no position on this legislation, but to authorize committees to advocate their positions.

Position adopted by roll call vote. Commissioners voting in favor of the position: Allen, Brake, Buiteweg, Costello, Cunningham, Einhorn, Gilmer, Grieco, Hegarty, Johnson, Ludden, McGinnis, Nolan, Pero, Riordan, Rockwell, Rombach, Shovein, Sirani, Sullivan, Ulrich, Warnez Williams.

Commissioners voting in opposition of the position: Buchanan, Courtade, Olsman.

Commissioner Erhart, Haroutunian and Robinson were excused. (23 yeas, 3 nays) Motion adopted.

HB 5797 (Graves) Corrections; parole; standard of review for parole board release decisions; modify, and allow for attorney general intervention. Amends sec. 34 of 1953 PA 232 (MCL 791.234).

This legislation was not discussed by the committee or Board.

HB 5795 (Constan) Courts; records; digital court records and electronically filing court papers; allow. Amends secs. 832, 859, 1427, 2137 & 8344 of 1961 PA 236 (MCL 600.832 et seq.); adds secs. 1426 & 1428 & repeals 1949 PA 66 (MCL 780.221 - 780.225).

Motion offered and supported to support this legislation. Motion adopted.

HB 5813 (Damrow) Courts; other; audio recording of court proceedings by parties; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1488.

Motion offered and supported to oppose this legislation.

Position adopted by roll call vote. Commissioners voting in favor of the position: Allen, Brake, Buiteweg, Courtade, Cunningham, Einhorn, Gilmer, Grieco, Hegarty, Johnson, Ludden, McGinnis, Olsman, Pero, Rockwell, Riordan, Shovein, Sirani, Sullivan, Ulrich, Warnez, Williams.

Commissioners voting in opposition of the position: Buchanan, Costello, Nolan, Rombach.

Commissioner Erhart, Haroutunian and Robinson were excused. (22 yeas, 4 nays) Motion adopted.

HB 5870 (McMillin) Criminal procedure; evidence; consideration of videorecorded statements in certain proceedings; expand. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

The Board took no position on this legislation.

HB 5871 (McMillin) Law enforcement; investigations; electronic video recording of child interrogations; require. Amends 1975 PA 238 (MCL 722.621 - 722.638) by adding sec. 8f.

The Board took no position on this legislation.

HB 5872 (McMillin) Children; protection; videorecorded statements; allow to be used in child protective services hearings, increase fines, and require to retain for certain period of time. Amends sec. 17b, ch. XIII of 1939 PA 288 (MCL 712A.17b).

The Board took no position on this legislation.

SB 1014 (Nofs) Courts; jurisdiction; jurisdiction for prosecution of felony offenses; expand to county where consequence intended to have effect. Amends sec. 8, ch. II of 1927 PA 175 (MCL 762.8).

The Board took no position on this legislation.

SB 1313 no discussion

SB 1313 (Hansen) Criminal procedure; discovery; child pornography discovery; clarify access and disclosure procedures. Amends sec. 145c of 1931 PA 328 (MCL 750.145c).

The committee did not discuss this legislation.

Discussion

Letter from Ms. Renee Smallwood Re: Need for Minor Reform to Appellate Procedural Law

The Civil Procedure and Courts Committee believes that trial court (and Court of Appeals) discretion over how to handle its docket and various motions is best left to the particular court. The proposal creates the potential for mischief by the filing of frivolous or marginal motions to strike, thus delaying adjudication on the merits. While the Committee understands the purpose behind the proposal, whatever marginal good this rule change might do is far outweighed by the negatives.

The Board suggests that Ms. Welch respond to this letter at her discretion.

LEADERSHIP REPORTS

President's Report, Bruce A. Courtade, President

Mr. Courtade congratulated Ms. Buiteweg on being selected as the Michigan Council for the Social Studies Citizen of the year, recognized Ms. McGinnis for her term as the Mayor of Troy, and informed the Board that Commissioner James Erhart had been appointed as judge of the 90th District Court in Petoskey.

Mr. Courtade informed the Board about continuing discussions with the Supreme Court about diversity on the State Bar Board of Commissioners.

Mr. Courtade noted that business court legislation was passed with a January 1, 2013 effective date.

Mr. Courtade discussed the activities of the UP tour, the Great Rivers Bar Leaders conference and the dinner planned for December 2 with the President-Elect of the ABA, James Silkenat.

Mr. Courtade noted that the indigent criminal defense bill passed the House with a large majority, but that its prospects in the Senate are uncertain.

Mr. Courtade recognized and thanked the staff for their efforts in making the Annual Meeting in Grand Rapids so memorable, and especially noted the success of the Celebrating Diversity event, which included artwork of West Michigan Center for Arts and Technology (WMCAT) students.

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

As a follow up to the bar exam results agenda item, Ms. Welch informed the Board that she had talked with Tim Raubinger, Assistant Secretary of the Board of Law Examiners, to see if any analysis had been done about the use of laptops during the Bar exam. While data has not been analyzed in Michigan, he indicated that there is a long history of laptops being used on the national level that shows that there is not a significant difference in results.

Solutions on Self Help Task Force Update

Ms. Welch provided the Board with an update on the Solutions on Self Help Task Force.

Focus Group Report

Ms. Welch provided the Board with information on the focus groups that were convened to discuss how the State Bar is doing in general, as well as thoughts on the Economics of Law study, the State Bar website and the publications.

Demographics

Ms. Welch said that Ms. Vrooman would defer her full presentation on the demographics of the State Bar membership until a future meeting. Ms. Vrooman distributed a document titled "The Big Picture 2012" and briefly discussed the information that was included in the document. More information will be available at the next meeting.

Representative Assembly (R.A.) Report, Dana M. Warnez, Chairperson

Ms. Warnez updated the Board on the chairs of the RA committees and indicated that the top priority of the year is to complete the assembly review process. She also indicated that the work was taking place to develop the agenda for the April 27 meeting, which may include the Inventory Rule, Rules on Professional conduct, and some court rules.

ABA Report

There was no report.

Young Lawyers Section Report (YLS), Felicia O. Johnson, Chairperson

Ms. Johnson provided the Board with an update on the activities of the Young Lawyers Section.

Comments from Commissioners

Mr. Nolan commented favorably on the dinner honoring immediate SBM Past President Julie Fershtman.

Mr. Olsman commented on a judicial election situation in Oakland County and asked that Mr. Courtade appoint a committee to evaluate what role, if any, the State Bar of Michigan might play in response and report back to the Board in January. Mr. Courtade indicated to the Board that if anyone had an interest in participating in such an effort to let him know.

Adjournment

The meeting was adjourned at 2:30 p.m.