

President Rombach called the meeting to order at 9:50 a.m. on Friday, April 24, 2015 at the Michael Franck Building in Lansing.

Commissioners present:

Danielle Mason Anderson  
Dennis M. Barnes  
Danielle M. Brown  
Robert J. Buchanan  
Lori A. Buiteweg, President-Elect  
Timothy J. Burns  
Shauna L. Dunnings  
Robert C. Gardella  
Stephen J. Gobbo  
Jennifer M. Grieco, Treasurer  
Edward L. Haroutunian  
James W. Heath  
Fred K. Herrmann  
Andrea Irons

Mark W. Jane  
C. Thomas Ludden  
Thomas E. McCarthy Jr.  
Hon. Maureen M. McGinnis  
Lawrence P. Nolan, Vice President  
Jules B. Olsman  
Colleen A. Pero  
Daniel D. Quick  
Victoria A. Radke  
Thomas C. Rombach, President  
Richard J. Siriani  
Gregory L. Ulrich  
Vanessa Peterson Williams

Commissioners absent and excused: Commissioners E. Christopher Johnson Jr., Hon. Michael J. Riordan, Donald G. Rockwell and Hope V. Shovein were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director  
Nancy Brown, Director, Member Services and Communications Division  
Marge Bossenbery, Executive Coordinator  
Gregory Conyers, Director, Diversity  
Candace Crowley, Director, External Development  
Peter Cunningham, Director, Governmental Relations  
Cliff Flood, General Counsel  
Danon Goodrum-Garland, Director, Professional Services Division  
Brian Hildreth, Director, Information Services Division  
James Horsch, Director, Finance and Administration Division  
Nkrumah Johnson-Wynn, Assistant General Counsel  
Robert Mathis, Pro Bono Attorney  
Samantha Meinke, Communications Manager  
Kari Thrush, Manager, Member Services and Events  
Anne Vrooman, Director, Research and Development

Guests

Michael Antovski, Vice Chair, Taxation Section  
Tom Beam, President, Grand Rapids Bar Association  
Kim Coleman, Executive Director, Grand Rapids Bar Association  
Carolee Smith, Treasurer, Taxation Section

Consent Agenda

Mr. Rombach asked the Board if there were any items that needed to be removed from the consent agenda. Mr. Haroutunian and Mr. Herrmann both requested that agenda Item VI Professional Standards – Client Protection Fund Claims be removed from the consent agenda. Mr. Rombach directed that the item would be discussed during the report from the Professional Standards Committee.

The Board received the minutes from the January 16, 2015 Board of Commissioners meeting.

The Board received the minutes from the February 17 and March 3, 2015 Executive Committee meetings.

The Board received the recent activities of the President.

The Board received the recent activities of the Executive Director.

The Board received FY 2015 Financial Reports through March 2015.

The Board received the 2014 Report of the State Bar of Michigan Retirement Plans.

The Board received the State Bar of Michigan Retiree Health Care Trust Actuarial Study.

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

Local Bar Association and Section Presentations

The Board received a report from the Kent County Bar Association by its President, Tom Beam, and Executive Director, Kim Coleman.

The Board received a report from the Taxation Section by its Vice Chair, Michael Antovski, and Treasurer, Carolee Smith.

**COMMISSIONER COMMITTEES**

**Finance**, Jennifer M. Grieco, Chairperson

**FY 2014 Financial and Investment Update**

Ms. Grieco provided the Board with a FY 2015 Financial and Investment report.

Ms. Grieco reported to the Board that an SBM Investment policy will be brought before them at an upcoming meeting for action.

**FY 2015 Budget Amendment**

Ms. Greico presented the Board with a budget amendment to the FY 2015 budget to remove a salary line item from Professional Standards budget contract line to the appropriate salary and benefits line to reflect that a contractual position had been converted to an employee position.

A motion was offered and supported to reallocate funds. The motion was approved.

The Board received recommended changes to the following policies:

SBM Contracts Policy

Ms. Grieco presented the Board with proposed amendment to the SBM Contract Policy. A motion was offered and supported to adopt the amendments to the policy. During discussion, Ms. Buiteweg suggested a drafting clarification to the proposal that would take place before implementation and there was support for her clarification. The motion was approved.

SBM Business Credit Card Policy

Ms. Grieco presented the Board with proposed amendments to the SBM Business Credit Card Policy. A motion was offered and supported to adopt the changes. The motion was approved.

SBM Expense Reimbursement Policies

Ms. Grieco presented the Board with proposed amendments to the SBM Expense Reimbursement Policies. A motion was offered and supported to adopt the changes. The motion was approved.

**Audit,** Jennifer M. Grieco, Chairperson

There was no report.

**Professional Standards,** Donald G. Rockwell, Chairperson

In Mr. Rockwell's absence, Mr. Barnes provided the Board with the Professional Standards Committee report.

ABA House of Delegates Appointment

Mr. Barnes reported that the committee recommends the re-appointment of Mr. Ulrich to the American Bar Association House of Delegates for a term ending at the end of the annual meeting in August 2017.

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

State Appellate Defender Commission Recommendations

Mr. Barnes reported that the committee recommends that the Board approve its recommendation to Governor Rick Snyder that he reappoint John Nussbaumer to the State Appellate Defenders Commission.

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

Mr. Barnes reported that the committee recommends that the Board approve its recommendation to Governor Rick Snyder that he reappoint Judith S. Gracey to the State Appellate Defenders Commission.

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

Michigan Indian Legal Services Board of Trustees

Mr. Barnes reported that due to a resignation of a current member, there is a vacancy on the Board of Michigan Indian Legal Services Board of Trustees. The vacancy is one of the appointments of the State Bar. The committee recommends the appointment of the Honorable Angela Sherigan for the remainder of the term, which ends on September 30, 2017.

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

Client Protection Fund Claims

The Client Protection Fund Claims were removed from the consent agenda at Mr. Haroutunian's and Mr. Herrmann's request. Mr. Barnes confirmed with Mr. Haroutunian that his concern about this item dealt with a discrepancy in the amount of a claim in the materials provided.

Mr. Barnes indicated that there was a discrepancy in the amount listed on the cover sheet and what is described in the documentation of CPF Claim #3068. The cover sheet lists \$850 and the documentation lists \$2,200. It was determined that the correct amount was \$850. A motion was offered to approve the claim as amended. The motion was approved.

Mr. Herrmann indicated that his concern dealt with a discrepancy in the amount listed on the cover sheet and what is described in the documentation of CPF Claim #2974. The cover sheet lists \$32,419 and the documentation lists \$32,416.16. It was determined that the correct amount was \$32,416.16. A motion was offered and supported to approve the balance of the items on the client protection fund claims as amended. The motion was approved.

Mr. Hermann expressed his concern with the reason given for payment of funds in Items 3, 11 and 13 of the CPF Claims, specifically the term "dishonest conduct" in cases where the attorney has died. Ms. Goodrum Garland indicated that the term is defined in Rule 9c of the Client Protection Fund Rules -- failure to return an unearned fee -- and it does not matter why the fee was not returned. In order for a payment to be approved a finding must be made and the failure to return a fee was the finding in each of these cases.

After a lengthy discussion, Mr. Rombach stated the rules of the Client Protection Fund Claims are State Bar rules and that the Board has the authority to amend the rules in such a way as to alleviate the concern expressed during the discussion. Mr. Rombach charged the Professional Standards Committee with the task of reviewing the CPF rules and bringing back to the Board any proposed amendments to address the concern.

**Programs and Services**, Lawrence P. Nolan, Chairperson

50 Year Honoree Resolution

Mr. Nolan reported that the Board received the 2015 Resolution honoring members for 50-Year of membership for action. A motion was offered and supported to approve the resolution. The motion was approved.

Mr. Gobbo suggested that the date the resolution was adopted by the Board be added to the resolution.

Mr. Nolan asked that the Board members complete the registration form for the Bar Leadership Forum and return to Ms. Bossenbery.

**Public Policy, Image and Identity**, Lori A. Buiteweg, Chairperson  
The Board members received a written Justice Initiatives Report.

**Court Proposals**

**Model Criminal Jury Instructions, 20.39, 20.39a, 20.39b, 20.39c, 20.39d, 20.39e, 20.39f, 20.39g, 20.39h, 20.39i, 20.39j, 20.39k**

The MCJI Committee proposes the following instructions for use where a violation of the Sex Offenders Registration Act has been charged under MCL 28.721, et seq. There are thirteen different instructions. They include registration, notification and verification offenses, as well as school safety zone and registering agent offenses, and a special venue instruction in compliance with the Act. They are all new and, consequently, they are underlined throughout.

The committee proposed that this item be tabled.

**Model Criminal Jury Instructions, 11.38, 11.38a**

The MCJI Committee proposes amendments to M Crim JI 11.38 and 11.38a to comport with statutory amendments to MCL 750.224f, which added “ammunition” as material that could not be possessed by convicted felons under certain circumstances, and added the acts of carrying, shipping, transporting and purchasing to the list of forbidden acts.

A motion was offered and supported to support with recommended amendment from CJAP. The motion was approved

**Model Criminal Jury Instructions, 11.13, 11.14, 11.15**

The MCJI Committee proposes amendments to M Crim JI 11.13 and 11.14, and elimination of M Crim JI 11.15 to conform with statutory amendments to MCL 750.231a(c) and (d). The instructions are used where there is evidence of an exemption to the prohibition against carrying concealed weapons in a vehicle under MCL 750.227(2). Deletions are shown in strike-out and additions to the instructional language are underlined. M Crim JI 11.15 was deleted because its exemption is now entirely encompassed within M Crim JI 11.14.

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

**Model Criminal Jury Instructions, 12.1a, 12.1b, 12.1c**

The MCJI Committee proposes the following instructions for use where a violation of the drug manufacturing/laboratory statute, MCL 333.7401c, is charged. There are three instructions. Since they are new, they are underlined throughout.

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

**ADM File No. 2014-02 – Proposed Amendment of Rule 6.106 of the Michigan Court Rules**

The proposed amendment of MCR 6.106(A) would clarify that a court would determine issues concerning defendant’s pretrial release, if any, at the time of defendant’s arraignment on the complaint and warrant.

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

**ADM File No. 2014-09 – Proposed Amendment of Rule 7.215 of the Michigan Court Rules**

The proposed amendments of MCR 7.215(A)-(C) were submitted by the Court of Appeals. Proposed MCR 7.215(A) would clarify the term “unpublished” as used in the rule. The proposed amendment of MCR 7.215(B) would provide more specific guidance for Court of Appeals judges regarding when an opinion should be published. Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215(C) would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal. The committee proposed the following action be taken:

No position on MCR7.125 (A) and MCR 7.215 (B); oppose the proposed amendments to MCR 7.215 (C), and authorize Sections and Committees to transmit their positions to the Michigan Supreme Court as long as the positions are not in opposition to the official position of the State Bar.

A motion was offered and supported to support the action as described above. The motion was approved

**ADM File No. 2014-45 – Proposed Adoption of Rule 5.731a of the Michigan Court Rules**

The proposed rule would require clinical certificates to be marked and filed as confidential and would allow only persons who have been found by the court to have a legitimate interest in the confidential documents to be granted access.

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

**ADM File No. 2015-03 – Amendment of Rule 1.15 of the Michigan Rules of Professional Conduct**

The amendment of MRPC 1.15 adds “credit union” to the definition of “eligible institution” for deposit of IOLTA funds. This change reflects a recent federal statutory amendment that extends federal insurance protection to IOLTA deposits held in credit unions. PL 113-252.

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

**Legislation**

**HB 4132** (Geiss) Family law; parenting time; right to first refusal of child care for children during other parent's normal parenting time; provide for. Amends 1970 PA 91 (MCL 722.21 - 722.31) by adding sec. 7c.

This item was removed from the agenda as Keller-impermissible.

**SB 0056** (Jones) Courts; judges; salary formula for judges; modify. Amends secs. 304, 555, 821 & 8202 of 1961 PA 236 (MCL 600.304 et seq.).

A motion was offered and supported that taking action on this legislation is Keller-permissible. The motion was approved.

A motion was offered and supported to support this legislation. The motion was approved.

**SB 0094** (Schuitmaker) Law enforcement; other; certain records of probation to be provided to the Michigan commission on law enforcement standards; require. Amends sec. 7411 of 1978 PA 368 (MCL 333.7411).

This item was removed from the agenda as Keller-impermissible.

**SB 0151** (Bieda) Criminal procedure; DNA; filing deadline for petition seeking review of DNA evidence; remove sunset. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

A motion was offered and supported that this legislation is Keller-permissible. Mr. Haroutunian voted that the legislation was not Keller-permissible. The motion was approved.

A motion was offered and supported to support this legislation. The motion was approved.

**HB 4038** (Forlini) Housing; landlord and tenants; notification of evictions; allow by electronic mail. Amends sec. 5718 of 1961 PA 236 (MCL 600.5718).

A motion was offered and supported that this legislation is Keller-permissible. The motion was approved.

A motion was offered and supported to oppose this legislation. The motion was approved.

Roll Call Vote

Yes: Commissioners Anderson, Barnes, Brown, Buchanan, Burns, Dunnings, Gardella, Gobbo, Grieco, Haroutunian, Heath, Herrmann, Irons, Jane, McCarthy, McGinnis, Nolan, Olsman, Pero, Quick, Radke, Siriani, Ulrich, Williams, and Rombach

No: Commissioner Ludden

Absent: Commissioners Johnson, Riordan, Rockwell and Shovein

### **Record Expunction**

**HB 4176** (Lucido) Criminal procedure; expunction; expunction of all information in arrest record when individual is wrongly accused under certain circumstances; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 26a to ch. IV

A motion was offered and supported that this legislation is Keller permissible. The motion was approved.

A motion was offered and supported to oppose HB 4176 as written, but support the idea of expungement of criminal files of people found not guilty or have their charges dropped in appropriate cases. The motion was approved.

**HB 4177** (Lucido) Law enforcement; law enforcement information network (LEIN); promulgation of rules to effectuate expunction and destruction of all arrest record information from LEIN and other databases by C.J.I.S. under certain circumstances; require. Amends sec. 4 of 1974 PA 163 (MCL 28.214).

This item was removed from the agenda as Keller-impermissible.

**HB 4178** (Lucido) Criminal procedure; pretrial procedure; expunction and destruction of biometric data; eliminate certain exceptions. Amends sec. 3 of 1925 PA 289 (MCL 28.243).

This item was removed from the agenda as Keller-impermissible.

**SB 0100** (Brandenburg) Taxation; administration; prepayment of tax, penalty, and interest requirement as a prerequisite to filing a case regarding the assessment of tax in the Michigan court of claims; eliminate. Amends sec. 22 of 1941 PA 122 (MCL 205.22).

A motion was offered and supported that this legislation is Keller-permissible. The motion was approved.

The committee recommends that the Board take no position and to allow the sections to engage in future discussions.

**President's Report**, Thomas C. Rombach, President  
**21<sup>st</sup> Century Practice Task Force Update**

Mr. Rombach provided the Board with an update on the progress of the 21<sup>st</sup> Century Practice Task Force. The task force will meet for the first time on Monday, April 27, 2015. Three committees have been assigned tasks, co-chairs have been identified and volunteer appointments to these committees are being considered.

**State Bar of Michigan Strategic Planning Committee**

Mr. Rombach reported that although he had appointed a committee to review the current SBM Strategic Plan and appointed Ms. Buiteweg as chair, full Board review of the strategic plan will be placed on hold until the 21<sup>st</sup> Century Practice Task Force completes its work. Ms. Buiteweg will convene one meeting to review the current strategic plan to insure that there are no areas that the board needs to review this year. Ms. Buiteweg will report to the Board at a future meeting if there are any such findings.

**ABA Day**

Mr. Rombach reported to the Board that he, along with former State Bar President, Reggie Turner, SBM President Elect, Lori Buiteweg, Judge Ward Clarkston from Corunna, Robert Mossel from Ford Motor Credit, ABA Law School Division Chair, Aaron Sohaski and SBM Director of Governmental Relations and Assistant Director, Peter Cunningham, met with representatives from Congress during ABA Days in Washington. They advocated for Legal Services Corporation funding and for the reauthorization of the Juvenile Justice & Delinquency Prevention Act.

**Taxation Section Compliance with AO 2004-01**

Mr. Rombach discussed with the Board a recent violation of AO 2004-1 and State Bar bylaws by the Taxation Section. At this point, steps have been taken by the Taxation Section, with the assistance of the Governmental Relations staff to remedy the error. The section has done everything that the SBM has asked them to do to remedy this situation.

A motion was offered and supported to send a letter to the SBM Taxation Section regarding compliance with AO 2004-01. The motion was approved.

It was suggested that a reminder be sent to all sections indicating that knowledge of AO 2004-1's provisions concerning section is expected, and compliance with AO 2004-01 is required.

**Executive Director's Report**, Janet K. Welch, Executive Director  
**FY 2016 Budget Process, Roles and Calendar**

Ms. Welch reported to the Board that the budget process for the next FY budget is the same as in past and is described in their materials.

**Michigan Supreme Court Update**

Ms. Welch reported to the Board that there have been no formal communications from the Court regarding the comments that were submitted by the Board to the Supreme Court on the Report to the Court from the Supreme Court Task Force on the Role of the State Bar of Michigan.

Ms. Grieco asked Ms. Welch if she or Mr. Rombach received a copy of the letter that was sent by some of the Past Presidents to the Supreme Court regarding this issue and should it be disseminated to the Board. Ms. Welch said that she had, and that at Ms. Grieco's request she would seek authorization from the authors to convey the letter to the Board.



#### ZeekBeek Contract Amendments

At Ms. Welch's direction, Mr. Flood discussed the ZeekBeek contract amendments with the Board. A motion was offered and supported that the Board adopt the changes to the two contracts the SBM has with ZeekBeek. The motion was approved.

#### Conflict of Interest Policy

At Ms. Welch's direction, Mr. Flood discussed both the staff and the Board's Conflict of Interest policies. A motion was offered and supported to approve both the staff and board conflict of interest policies. The motion was approved.

Ms. Pero suggested that the conflict of interest policy be reviewed again to address the concerns surrounding the disclosure and waiver issues. Mr. Rombach referred the review of the Conflict of Interest policy to the Executive Committee for further review.

#### Personnel Update

Ms. Welch asked Mr. Hildreth to introduce new employees from the Information Technology Division. Mr. Hildreth introduced Jason Buton, Developer and Tom Faes, Date Base Professional.

#### Litigation Status Report

There is no written report for this meeting as there have not been any developments since the last report.

#### **Representative Assembly (RA) Report**, Vanessa Peterson Williams, Chairperson Meeting on April 25, 2015

Ms. Williams reported that the Representative Assembly is meeting tomorrow, April 25. She indicated that the RA Executive team has been hard at work all year accomplishing the goals that we set in September and keeping the members connected. Ms. Williams reported that at the RA meeting tomorrow discussions will take place on instituting a Keller process, adding a minority report opportunity for the RA as well as formalizing the electronic vote process so that it will be in the rules. The drafting committee will also present a power point presentation on the process for submitting proposals.

#### **American Bar Association (ABA) Report**

Mr. Ulrich reported that the ABA Annual Meeting is taking place in August and that he is traveling to Newport RI in July for a Navy JAG school which is tied into the Michigan section on military veterans.

#### **Young Lawyers Section Report (YLS)**, Andrea Irons, Chairperson

Ms. Irons provided the Board with an update on the activities of the Young Lawyers Section. She reminded the commissioners of the Laser Tag Challenge taking place today and that at the 8<sup>th</sup> Annual RA summit, Justice Richard Bernstein is the featured speaker.

#### **Comments from Commissioners**

Mr. Haroutunian recognized the 100<sup>th</sup> anniversary date of the Armenian genocide of 1915 by the Ottoman Turkish Empire. He reported that his father, Lewis Haroutunian, was a survivor of that genocide.

Mr. Nolan reported to the Board that former SBM President Wally Riley stepped down from his position as President of the Michigan Supreme Court Historical Society.

**Adjournment**

The meeting was adjourned at 3:00 p.m.