

The meeting was called to order by President Diehl at 10:05 a.m. on Friday, January 21, 2005, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

Lori A. Buiteweg	Allyn D. Kantor
Kimberly M. Cahill, Vice President	Ronald D. Keefe, Secretary
Bruce A. Courtade	Lambro Niforos
Thomas W. Cranmer, President-Elect	Edward H. Pappas, Treasurer
Nancy J. Diehl, President	D. Andrew Portinga
Brian D. Einhorn	Kurt E. Schnelz
Elias J. Escobedo, Jr.	Hon. Cynthia D. Stephens
Julie I. Fershtman	Scott C. Strattard
Edward L. Haroutunian	Charles R. Toy
Michael S. Hohaus	Gregory L. Ulrich
Elizabeth A. Jamieson, Assembly Chairperson	Debra A. Walling
W. Anthony Jenkins	

Commissioners Kim Warren Eddie, Craig H. Lubben, Richard D. McLellan, Stephen J. Murphy, III, Hon. William B. Murphy, Randolph P. Piper, Angelique Strong Marks and Rodger D. Young were absent and excused. Commissioner Jeffrey E. Kirkey was absent and unexcused.

State Bar Staff Present:

John T. Berry – Executive Director  
Nancy Brown – Director, Communications  
Gregory Conyers – Program Administrator  
Candace Crowley – Justice Initiatives Manager  
Kathleen Fox – Director, Human Resources  
James Horsch – Director, Finance and Administration  
Victoria Kremski – Deputy Regulation Counsel  
Elizabeth Lyon – Legal Secretary  
Susan McMann – Sections and Committees Coordinator  
Caryl Markzon – Events Planner  
Glenna Peters – Executive Coordinator  
Anne Smith – Administrative Assistant  
Naseem Stecker – Media Specialist  
Janet K. Welch – General Counsel

Present for such portions of the meeting as pertained to specific agenda items were Lynn Chard, Executive Director, ICLE; Linda Rexer, Executive Director, Michigan State Bar Foundation, and Anne Vrooman.

**CONSENT AGENDA**

A motion was made and seconded to approve the Consent Agenda. Motion carried.

**Minutes**

The Board approved the minutes of the November 19, 2004 Board meeting.

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

November 18, 2004  
November 22, 2004

December 6, 2004  
December 20, 2004  
January 7, 2005  
January 10, 2005

**President's Report** – Nancy J. Diehl, President  
The Board received the written President's recent activities report.

**Executive Director's Report** – John T. Berry, Executive Director  
The Board received the written Executive Director's recent activities report and the UPL Litigation Status Report.

**Finance and Human Resources** – Edward H. Pappas, Chairperson  
The Board received the written year to date financial results through November 30, 2004, and the FY 2004-05 year financial forecast.

**Justice Initiatives** – Richard D. McLellan, Chairperson  
The Board received a written report on the activities of the Standing Committee on Justice Initiatives (SCJI) and related entities.

**Professional Standards Committee** – Ronald D. Keefe, Chairperson  
The Board approved the appointment of Amy Timmer for the District E Character and Fitness Committee.

The Board approved the following Client Protection Fund Claim:

<b>Claim No.</b>		<b>Amt. Recommended</b>
CPF 2026		\$ 400.00
	<b>Total</b>	<b>400.00</b>

**Section Bylaw Proposed Amendments**

The Board approved the proposed bylaw amendments included in the Board agenda packet for the Probate and Estate Section, Law Student Section, and Public Corporation Law Section.

**SBM Standing and Special Committees Resolution**

The Board approved the following:

**RESOLVED: That, the fiscal year 2004-2005 membership of the committees and appointed subentities of the State Bar of Michigan, and the jurisdictional description of the Ethics Committee, be revised as follows:**

Standing Committees

Character and Fitness, increase to 17 from 13  
Civil Procedure, increase to 20 from 15  
Client Protection Fund, increase to 16 from 15  
Criminal Jurisprudence, increase to 22 from 20  
Ethics, Professional and Judicial, increase to 17 from 15  
Law and Media, increase to 16 from 15

Special Committees and Subentities

Domestic Violence, increase to 18 from 15

ETHICS, PROFESSIONAL & JUDICIAL

Jurisdiction (Judicial & Professional) - Shall concern itself with expressing its written opinion concerning the propriety of professional and judicial conduct when requested to do so by the State Bar President, Board of Commissioners, Representative Assembly, Attorney Discipline Board, Attorney Grievance Commission, Judicial Tenure Commission, State Court Administrator, Executive Director, any State Bar Committee, an adjudicative officer concerning an ethical matter arising before the adjudicator, a member of the judiciary or any member of the State Bar who inquires concerning his/her own contemplated conduct. The Committee may recommend amendments to the Michigan Rules of Professional Conduct, the Code of Judicial Conduct and other standards of professional conduct as it deems proper for appropriate approval and adoption, and shall review all such amendments proposed by other State Bar entities before they are acted upon. ~~The Committee shall be divided into subcommittees on professional and judicial ethics. The Chairperson shall chair each subcommittee. The Michigan Judges Association, Michigan Probate Judges Association, and Michigan District Judges Association, shall each appoint one member to the 21 member subcommittee on professional ethics and two members to the eleven member subcommittee on judicial ethics. The and the Referees Association of Michigan shall each appoint nominate one member for appointment to the committee to the subcommittee on judicial ethics.~~

## LEADERSHIP REPORTS

### President's Report – Nancy J. Diehl

Ms. Diehl reported that an excellent orientation was scheduled for today and thanked commissioners who submitted questions.

Ms. Diehl also reported that the possible conflict with the July 29, 2005 Board meeting was not a conflict and therefore the Board meeting would remain as scheduled.

Ms. Diehl further reported that there had been an issue related to the emeritus status and deferred to Janet Welch, general counsel, for an explanation. Ms. Welch reported that the emeritus rule says that once someone has chosen emeritus status, they cannot practice law without going through the same process as they would initially for becoming a lawyer, including taking the bar exam again. While this information was included in the instructions and distributed, a handful did not take notice of this. A few members realized their mistake early in the process and we reversed the processing of their emeritus status. Others didn't realize it until December, however, which then called into question our authority to administratively reverse the decision they had made. Following discussions with the Michigan Supreme Court, the Court ultimately gave us the authority to administratively reverse the process for anyone this year through February 14, 2005, the date upon which all members who have not paid their dues are suspended. As a result, we have notified all attorneys who elected emeritus status to let them know that up to that date they can reconsider their decision.

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

Mr. Berry reported that he was proud of the Cultural Vision Statement developed by the staff that reads as follows: "We are committed to promoting a creative, positive, and proactive environment where individuals are trusted, respected, and empowered to provide exceptional service to each other, our members, and the public.

Mr. Berry reported that a draft of the Strategic Planning Retreat outline was included in the Board agenda materials and that we are working to have a facilitator who would update us on nationwide trends as it compares to the assumptions we made at the beginning of our Strategic Plan development. We will be working to prioritize how we should now spend our time and money, to include reviewing our meeting processes, governance issues, and anything else that others would like to add. Ms. Diehl invited suggestions from board members as soon as possible so they can be incorporated into the agenda.

Mr. Berry also reported that we continue to be conservative with expenditures and staffing. The Court has indicated that when the time comes that we need a dues increase, we will need to involve them in the process early in that fiscal year. Due to the upcoming strategic planning retreat and our current financial stability, our goal will be to revisit where we currently are and where we want to be for planning a potential dues increase in the following year.

Mr. Berry deferred to Candace Crowley to provide an update on planning for Justice Initiatives. Ms. Crowley reminded the Board that at its April, 2004 BOC meeting, they adopted a structure report that included the establishment of a planning work-group to develop a 3-5 year master plan to direct Justice Initiatives work at the Bar. She noted that commissioners Richard McLellan and Judge Cynthia Stephens were instrumental as co-chairs of the committee. Ms. Crowley reported that the Planning Work Group has been assembled and is chaired by Linda Rexer. Members are listed in the report that is included in the board packet. Finally, Ms. Crowley introduced Anne Vrooman., who will be providing consulting services to the Planning workgroup.

**Representative Assembly Chairperson's Report** – Elizabeth A. Jamieson

Ms. Jamieson provided a report on the Assembly meeting to be held the next day, January 22, 2005. She reported that there was a full agenda, with 15 proposals dealing with Michigan Court Rules, the Rules of Professional Conduct, and the Standards for Imposing Lawyer Sanctions. The Assembly leadership has been working with ADB, AGC, Supreme Court Commissioners and the State Bar Grievance Committee to more effectively deal with the issues to present to the Court. Ms. Jamieson noted that the meeting would be held in a new location, the MTech Center, a new meeting site of Lansing Community College. The next meeting will also be held there on April 16, 2005.

Ms. Jamieson further reported that the Assembly is at 90% capacity.

**Young Lawyers Section Report** – Angelique Strong Marks, Chairperson

No official report was provided. Ms. Cahill reported that on January 27<sup>th</sup> the Young Lawyers Section is hosting a networking event in Royal Oak to raise funds for tsunami relief efforts.

## **COMMISSIONER COMMITTEES**

**Finance and Human Resources** – Edward H. Pappas, Chairperson

Mr. Pappas reported that the committee has reviewed several options in regard to the Reserve Policy and they plan to present a final recommendation at the April Board meeting.

A motion was made and seconded to approve the designation of \$225,037.00 for continued pre-funding of the retirement health care liability for FY 2004-05. Motion carried.

Mr. Pappas reported that at the January 7, 2005 Executive Committee meeting, the Finance/HR Committee was asked to review the provisions of the Board expense policy and make recommendations to clarify the policy, to include guest/spouse expenses. They are in the process of reviewing and hope to have a recommendation by the April Board meeting.

Mr. Pappas further reported that they are beginning the RFP process for auditor selection as the three-year period has ended. Commissioner Tony Jenkins will chair the sub-committee involved in this process.

**Justice Initiatives** – Richard D. McLellan, Chairperson

There was nothing additional to report other than the written report that was included in the consent agenda.

**Professional Standards** – Ronald D. Keefe, Chairperson

Mr. Keefe reported that the committee met jointly with the Programs and Services Committee. Following that session, they appointed a Nominations sub-committee chaired by Lambro Niforos.

**Programs and Services** – Kimberly M. Cahill, Chairperson

Ms. Cahill reported that they met jointly with the Professional Standards Committee to hear a presentation by Lynn Chard regarding co-sponsoring ICLE's Solo and Small Firm Institute seminar scheduled for October 20 and 21, 2005. Ms. Cahill stated that this program was offered last year in Dearborn with approximately 200 participants. The State Bar was a sponsor last year, along with the Law Practice Management Section and

General Practice Section, as well as additional professional organizations. ICLE has requested a \$20,000 contribution that would help reduce the price of registration (from \$245.00 to \$170.00) and to apply toward 50 scholarships.

At the joint recommendation of both committees, Commissioner Cahill made a motion to co-sponsor the event and provide the \$20,000 to ICLE, with payments being made in two equal installments of \$10,000 in March and \$10,000 in September. Following discussion, it was determined that future contributions should be included in the budget process, along with a close review of the how the institute performs. The motion was seconded and carried.

Ms. Cahill provided an annual meeting update in Max Hoffman's absence. She reported that the 2005 Annual Meeting has been scheduled for September 21-23, 2005 at the Kellogg Center in East Lansing. The Annual Meeting Committee meets by phone on a regular basis and an in-person meeting is scheduled for February 28, 2005 at the State Bar to discuss the continued vision for the Annual Meeting and provide input prior to the Strategic Planning Retreat. A sub-committee has been formed to discuss possible program alternatives. Members are Max Hoffman, Tom Cranmer, John Mills (Family Law Section) and Kris Kemp, ED Ingham County Bar Association. Planning continues.

**Public Policy, Image and Identity** – Thomas W. Cranmer, Chairperson

Mr. Cranmer reported that the March Bar Journal would highlight lawyer-legislators. He also reported that the Bar will host a Section and Committee Summit on March 3, 2005 and all commissioners are invited to attend. Members of the legislature and the Michigan Supreme Court will be involved in the program, and Mort Crim Communications will provide media training.

**Michigan Court Rules**

A motion was made and carried to approve the following Board actions:

**ADM File No. 2004-37 – Amendment of Rule 7.217 of the Michigan Court Rules**

The amendment of MCR 7.217(D) prohibits the Court of Appeals clerk from accepting untimely motions for reinstatement of an appeal that is involuntarily dismissed for want of prosecution. The amendment makes the rule consistent with MCR 7.215(I)(4), which prohibits the acceptance of a later motion for reconsideration.

Deferred

**ADM File No. 2004-53 – Amendment of Rules 9.124 and 9.126 of the Michigan Court Rules**

The amendments of MCR 9.124(B)(1) require a petitioner for reinstatement to file a personal history affidavit only with the grievance administrator and prevent its disclosure to the public except as provided by MCR 9.126. The amendment of MCR 9.124(B)(2) clarifies that a petition for reinstatement must be accompanied by both a publication fee and administrative costs imposed by MCR 9.128(B)(1). The amendment of MCR 9.126(C) clarifies that a personal history affidavit pursuant to MCR 9.124(B)(1) is a confidential document and is not open to the public.

Support

**Legislation**

There was no new legislation to report.

Mr. Cranmer reported that subcommittees have been appointed to further study tax review, jury review, and family law legislation.

A motion was made, seconded and carried to go into Executive Session. Staff who remained for the session was John Berry, Kathleen Fox, Glenna Peters and Janet Welch.

A motion was made, seconded and carried to return from Executive Session.

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

**Comments or questions from Commissioners**

Ms. Diehl asked for comments or questions, but there were none.

**Comments or questions from the Public**

Ms. Diehl asked for comments or questions from the public, but there were none.

**Old Business**

There was none.

**New Business**

There was none.

The meeting was adjourned at 11:40 p.m.