

**State Bar of Michigan  
Representative Assembly  
September 17, 2020**

**SUMMARY OF PROCEEDINGS**

The following is a summary of proceedings of the State Bar Representative Assembly session held Thursday, September 17, 2020, via Zoom Meetings.

1. Call to order by Chairman Aaron V. Burrell.
2. Clerk Nicholas Ohanesian declared a quorum (50+ members) was present.
3. Upon a motion made and seconded, the proposed calendar was adopted as amended.
4. As provided in Rule 4.8, the Summary of Proceedings of the April 25, 2020 meeting was deemed approved.
5. Mark W. Jane, Chair of the Nominating and Awards Committee, addressed the Assembly on filling vacancies for the current meeting. Upon a motion made and seconded, Jennifer Douglas (3<sup>rd</sup> Circuit), Joshua Arnkoff (6<sup>th</sup> Circuit), Troy Daniel (34<sup>th</sup> Circuit), and Jason Rozenzweig (50<sup>th</sup> Circuit) were appointed to fill immediate vacancies within their respective Circuits.
6. Mark Kaszubski presented the *Unsung Hero Award* to Cark Andrews. Mr. Andrews accepted the award and addressed the Assembly.
7. Adam Bancroft presented the *Michael Franck Award* to William Buhl. Mr. Buhl accepted the award and addressed the Assembly.
8. Chairman Aaron V. Burrell addressed the Assembly.
9. Daniel D. Quick, State Bar of Michigan Treasurer, and Janet K. Welch, Executive Director, addressed the Assembly regarding the Finances of the State Bar.
10. Nicole Evans, Chair of the Special Issues Committee, addressed the Assembly about the work of the Committee.
11. Chelsea M. Rebeck, Vice-Chair of the Assembly, and Lori Buiteweg, addressed the Assembly for consideration of a proposed amendment to the Model Rules of Professional Conduct 1.8. After discussion and a vote, the Assembly supported 85 to 19 with 2 abstentions the proposed amendment as listed below:
  - (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; ~~and~~

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses provided that the lawyer represents the indigent client pro bono, pro bono through a nonprofit legal services or public interest organization, or pro bono through a law school clinical or pro bono program. The legal services must be delivered at no fee to the indigent client and the lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such financial gifts to prospective clients.

Financial assistance provided under (3) may be provided even if the indigent client's representation is eligible for a fee under a fee-shifting statute.

Commentary of MRPC 1.8:

A lawyer representing an indigent client, pro bono through a nonprofit legal services or public interest organization, or pro bono through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) are limited to modest contributions for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client (including, but not limited to: eligibility for government benefits or social services or tax liability) the lawyer should consult with the client before providing the modest gift. The exception in paragraph (e)(3) is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a

willingness to provide gifts to prospective clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings. Financial assistance, including modest gifts pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee shifting statute. Paragraph (e)(3) does not permit lawyers to provide assistance in contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

12. Bernard A. Jocus, Member of the Representative Assembly, made the motion to table the consideration of the proposed amendment to MCR 8.120 to the April 2021 Assembly meeting. The motion passed 94 to 8 with 4 abstentions.
13. Aaron V. Burrell, Chair of the Representative Assembly, announced the election of Gerrow Mason as the 2020-2021 Clerk of the Assembly.
14. Chelsea M. Rebeck was sworn in as 2020-2021 Chair of the Assembly by Magistrate James P. Brennan.
15. Chelsea M. Rebeck, Chair of the Representative Assembly, thanked Aaron V. Burrell for all his work over the past year as Assembly Chair.
16. Adjournment.