

President Buiteweg called the meeting to order at 9:45 a.m. on November 20, 2015 in the Michael Franck Building in Lansing, Michigan.

Commissioners present:

Dennis M. Barnes, Treasurer
Danielle M. Brown
Robert J. Buchanan
Lori A. Buiteweg, President
Timothy J. Burns
Hon. Clinton Canady III
Shauna L. Dunning
Robert C. Gardella
Jennifer M. Grieco, Secretary
Edward L. Haroutunian
Krista L. Haroutunian
James W. Heath
Mark W. Jane
Joseph P. McGill

Hon. Maureen M. McGinnis
Shenique A. Moss
Lawrence P. Nolan, President-Elect
Jules B. Olsman
Hon. David A. Perkins
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Vice President
Brian D. Shekell
Richard J. Siriani
Gregory L. Ulrich
Dana M. Warnez
Erane C. Washington

Commissioners absent and excused:

Danielle Mason Anderson
Fred K. Herrmann
Andrea Irons

Thomas E. McCarthy Jr.
Colleen A. Pero
Daniel D. Quick.

State Bar Staff present:

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

Ms. Buiteweg introduced new Commissioners Canady, Haroutunian, McGill, Moss, Perkins, Shekell, Warnez, and Washington.

Ms. Buiteweg informed the Board that she attended the Michigan Tribal State and Federal Forum earlier this month and reviewed with the Board the way in which the members of the forum run their meetings. Ms. Buiteweg reviewed their ground rules, called "collective commitments," that each member agrees to adhere to during their meetings.

Consent Agenda

Ms. Buiteweg asked the Board if there were any items that needed to be removed from the consent agenda. There were none.

The Board received the minutes from both the October 7, 2015 Board of Commissioners meetings. The Board received the minutes from the September 22, October 1, and October 14, 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 the draft FY 2015 Financial Reports through September 2015.

The Board received a Financial Safety Margin Calculation.

The Board received the District Character & Fitness Committee Appointments.

The Board received bylaw amendments from the Agricultural Law, Antitrust, Franchising & Trade Regulation, and Family Law Sections.

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

COMMISSIONER COMMITTEES

Finance, Dennis M Barnes, Chairperson

Mr. Barnes introduced the FY 2015 financial reports, and asked Mr. Horsch to provide the Board with a brief overview of the FY 2015 year-end financial results. Mr. Horsch provided a Powerpoint presentation on this issue.

Mr. Barnes introduced and welcomed Ms. Chelsea Rebeck, the new non-board member on the Finance and Audit committees.

Mr. Barnes informed the Board that the Finance committee will be proposing that the e-commerce system be used for credit card processing for non-dues transactions of the sections and the SBM; to charge sections the credit card transaction fees incurred by section members; and an amendment to the reimbursement policy requiring section payments to vendors for \$5,000 or greater be paid directly to the vendor and not as a reimbursement to a section member. The Finance committee will bring any policy revisions to the Board for its consideration next year.

Mr. Barnes informed the Board that the State Bar received correspondence from the IRS indicating that the SBM was classified as 501(c)6 entity rather than an exempt instrumentality of the State of Michigan under section 115 of the IRS code. Mr. Barnes informed the Board that staff is working to correct this and that Mr. Flood has engaged outside tax counsel to assist with having this corrected.

Mr. Horsch reported that he has heard from the State of Michigan Office of Retirement Services about the potential for a settlement on the SBM's pension liability and retiree health care obligation, and that they will be in touch with us after the first of the year after they consult with their attorneys and actuary.

Audit, Dennis M. Barnes, Chairperson

Mr. Barnes provided the Board with an overview of the ongoing audit process and reported that the representatives from the audit firm, Andrews Hooper Pavlik PLC, will provide a report to the Board at the January meeting.

Professional Standards, Jennifer Grieco, Chairperson

Ms. Grieco reported to the Board that Ms. Goodrum-Garland provided the committee with an orientation session at its meeting this morning. For the benefit of the new commissioners, Ms. Grieco described the topics listed under the Professional Standards section of the consent agenda.

Programs and Services, Donald Rockwell, Chairperson

Mr. Rockwell reported that an overview of the 2015 SBM annual meeting could be found behind Tab 11 of the board book. He also commended Mr. Conyers on the Diversity and Inclusion reception that took place at the annual meeting.

Public Policy, Image and Identity, Larry Nolan, Chairperson

The Board members received a written Justice Initiatives Report.

Legislation

HB 4622 (Hovey-Wright) Civil procedure; personal protection orders; personal protection orders for victims of human trafficking; provide for. Amends sec. 2950a of 1961 PA 236 (MCL 600.2950a).

A motion was offered and supported that this legislation is Keller permissible as its subject matter falls within the availability of legal services to society in offering protection to a vulnerable population. The motion was approved. A motion was offered and supported to support this legislation. The motion was approved.

HB 4869 (Schor) Courts; juries; physicians to be exempt from jury duty in certain circumstances; provide for. Amends sec. 1307a of 1961 PA 236 (MCL 600.1307a).

A motion was offered and supported that this legislation is Keller permissible as its subject matter will affect the functioning of the courts. The motion was approved. A motion was offered and supported to oppose this legislation. The motion was approved.

SB 0453 (Jones) Courts; district court; residency requirement for magistrate in the third class district courts; expand. Amends sec. 8501 of 1961 PA 236 (MCL 600.8501).

A motion was offered and supported that this legislation is Keller permissible as its subject matter relates to improving the functioning of the courts. The motion was approved. A motion was offered and supported to support this legislation. A roll call vote was taken and the motion was approved.

Roll call vote:

Yes: Commissioners Barnes, Brown, Buchanan, Canady, Dunning, Gardella, Grieco, Haroutunian Edward, Haroutunian Krista, Heath, Jane, McGinnis, Moss, Nolan, Olsman, Perkins, Riordan, Rockwell, Shekell, Siriani, Warnez, Washington, Buiteweg

No: Commissioners Burns, McGill, Radke, and Ulrich.

**Model Jury Instructions
Proposed M Crim JI 12.3**

The Committee proposes amending MCrimJI 12.3, the instructions pertaining to possession with intent to deliver controlled substances contrary to MCL 333.7401. The amendments eliminate repetitive language and elements, and correct the language in subparagraph (6) of the instruction that exempts a person who is authorized to deliver controlled substances, rather than the current language that exempts for authorized possession.

A motion was offered and supported to support the proposed jury instructions with the amendment proposed by the Criminal Jurisprudence & Practice Committee. The motion was approved.

M Crim JI 20.40

The Committee proposes an instruction where a defendant has been charged with accosting a minor for immoral purposes under MCL 750.145a.

A motion was offered and supported to support the proposed jury instructions with the amendments proposed by the Criminal Jurisprudence & Practice Committee. The motion was approved.

M Crim JI 35.8 and 35.9

The Committee proposes amended instructions where a defendant has been charged with computer crimes under MCL 752.791 et seq. Language concerning the value of loss was eliminated because it was not an element for charges brought under MCL 752.795(a) and (b), and some technical changes were made to subparagraph (5). The Committee added language that comports with MRE 302 regarding presumptions in criminal cases to address the statutory presumptions found in MCL 752.797(6).

A motion was offered and supported to support this proposed jury instructions. The motion was approved.

Proposed M Crim JI 23.17

The Committee proposes an instruction where the defendant has been charged with defrauding a vulnerable adult under MCL 750.174a. This instruction is entirely new.

A motion was offered and supported oppose the proposed jury instructions as being too vague and seek further comment from other Bar entities. The motion was approved.

Proposed M Crim JI 20.38 through 20.38c

The Committee proposes the following instructions where a defendant has been charged under MCL 750.145c with engaging a minor in child sexually abusive acts or with producing child sexually abusive materials. These instructions are entirely new.

A motion was offered and supported to support these proposed jury instructions. The motion was approved.

President's Report, Lori A. Buiteweg, President
21st Century Practice Task Force Update

Ms. Buiteweg provided the Board with a brief update on the work of the 21st Century Practice Task Force. The final meeting of the Task Force is scheduled for March 1, 2016. She asked Ms. Welch to provide the Board with a more detailed report on the task force so that each member is aware of what the task force is discussing and reminded the Board that they will have the final review of the recommendations and it will be their decision on how the Bar moves forward with the recommendations.

Ms. Welch's PowerPoint slides provided the Board with information on the trends impacting the legal profession that form the basis for the discussions the task force and its committees have had to date.

Ms. Welch indicated that she will provide the Board with a copy of the PowerPoint presentation.

Upper Peninsula Tour

Ms. Buiteweg informed the Board that the UP Tour was successful and that she, Mr. Herrmann, Ms. Radke, Ms. Crowley and Mr. Conyers enjoyed meeting members in the Upper Peninsula. She said that a review of the schedule of the 2016 tour is being undertaken because of the decrease in the numbers of attendees at some of the locations.

Great Rivers Bar Leadership Conference

Ms. Buiteweg informed the Board that she, Mr. Nolan, and Ms. Welch attended the Great Rivers Bar Leaders Conference and learned many helpful ideas from the other bar associations in attendance.

Reapportionment Committee

Ms. Buiteweg, reported that in accordance with SBM rule, the State Bar must conduct a reapportionment of its members every six years and that the result could impact the districts in the Board of Commissioners, Representative Assembly, and Young Lawyers Section. She asked for volunteers to form a committee to work with staff to review the findings and make recommendations to the entire Board. Mr. Rockwell and Ms. Buiteweg will be on the committee from the BOC, as well as representatives from the RA officers and the YLS Executive Council.

Ms. Buiteweg presented Ms. Welch with a certificate of recognition for her fifteen years of service to the State Bar of Michigan.

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

Ms. Welch asked Mr. Flood to inform the Board about the business arrangement that the SBM has with ZeekBeek. Mr. Flood informed the Board that the Bar has a seven year contract with CloudLaw, the developer of the ZeekBeek software platform, and that if and when the contract ceases or is not renewed, the SBM is entitled to a copy of the software, which it could use to maintain its own site, although it would not be entitled to use the ZeekBeek name and would not be connected to the national ZeekBeek directory. Furthermore, in exchange for the SBM's assistance in developing the platform and its help in marketing to other bars, CloudLaw granted the Bar an interest in CloudLaw up to 20% of the company's stock (non-voting). A portion of that interest has now fully vested.

Ms. Welch provided the Board with a PowerPoint presentation regarding the enhanced profile directory that is shown to other state bar associations and has been used during a National Conference of Bar Presidents webinar on the topic.

SBM Diversity and Inclusion Advisory Committee “Blind Spots” Seminar

Ms. Welch reported that the “Blind Spots” seminar was well attended and that the attendees were provided with information that will help them in the future.

Frank J. Kelley Ethics Lecture/SBM Annual Justice Initiatives Summit

Ms. Welch asked Ms. Crowley to provide the Board with an overview of the Frank J. Kelley Ethics Lecture and SBM Annual Justice Initiatives Summit. Ms. Crowley reported that changing the format to combine both of these events, integrating the content, partnering with MSU Law School, and moving the location off site brought new excitement and enthusiasm to the event. Ms. Crowley said that the speakers, including Judge Jonathon Lippman from the New York Court of Appeals, and Professor Renee Newman Knake from MSU Law School, were well received and that the vast majority of the audience were law school students.

Supreme Court Update

Ms. Welch indicated that there was no new information to report.

Litigation Status Report

No report.

Executive Session

A motion was offered and supported for the Board to enter into an Executive Session.

Representative Assembly (RA) Report, Daniel D. Quick, Chairperson

In both Mr. Quick’s and Herrmann’s absence, Mr. McGill provided the Board with an update on the Representative Assembly including a review of the October meeting when after taking action on the proposals and court rule amendments, Chief Justice Young addressed the RA and swore in Mr. Quick as the new chair of the RA. Mr. McGill reported that the officers were currently working with the newly appointed committee chairs.

American Bar Association (ABA) Report

The Board received a written report.

Young Lawyers Section Report (YLS), Mark Jane, Chairperson

Mr. Jane provided the Board with an update on the activities of the YLS and reported that the YLS Council conducted a planning meeting to determine upcoming events.

Comments from Commissioners

There were none.

Adjournment

The meeting was adjourned at 12:18 p.m.