

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES**

President Buchanan called the meeting to order at 9:30 a.m. on Friday, November 20, 2020, via videoconference.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Kristina A. Bilowus
Robert J. Buchanan, President
Erika L. Butler
Hon. Clinton Canady III
Thomas P. Clement
Josephine A. DeLorenzo
Robert A. Easterly
Lisa J. Hamameh
James W. Heath, Vice President
Thomas H. Howlett
Sarah E. Kuchon
Suzanne C. Larsen
James W. Low

Gerrow D. “Gerry” Mason
E. Thomas McCarthy Jr.
Joseph P. McGill, Treasurer
Valerie R. Newman
Takura N. Nyamfukudza
Nicholas M. Ohanesian
Samantha J. Orvis
Hon. David A. Perkins
Barry R. Powers
Daniel D. Quick, Secretary
Chelsea M. Rebeck
Thomas G. Sinas
Dana M. Warnez, President-Elect
Mark A. Wisniewski
Ryan Zemke

Commissioner Absent

B. D. “Chris” Christenson

Erane C. Washington

State Bar staff present

Janet Welch, Executive Director
Felicia Alvarez, Lawyer Referral Representative
Margaret Bossenbery, Executive Coordinator
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Michelle Erskine, Research Assistant & Event Specialist
Liz Goebel, Public Policy Counsel
Tatiana Goodkin, Chief Financial Officer
Kathryn Hennessey, General Counsel
Molly Ranns, LJAP Program Director
Dana Richards, LJAP Clinical Case Manager
Carrie Sharlow, Administrative Assistant
Janna Sheppard, Administrative Assistant
Laurin’ Roberts Thomas, Public Services Counsel

Consent Agenda

The Board received the minutes from both of the September 16, 2020 Board meetings.

The Board received the minutes from the September 8 and October 6, 2020 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 2020 financial reports through September 30, 2020.

The Board received the financial safety margin calculation.

The Board received the District Character and Fitness Committee appointments.

The Board received the Client Protection Fund claims.

The Board received the Unauthorized Practice of Law claims.

The Board received Model Criminal Jury Instructions.

The Board received section bylaw amendments from the Children's Law, Marijuana Law, and Young Lawyers sections.

Mr. Buchanan asked the Board if any item needed to be removed from the consent agenda. There were none.

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

LEADERSHIP REPORTS

President and Executive Director's Report: Robert J. Buchanan, President and Janet K. Welch, Executive Director

- Mr. Buchanan administered the oath of office to Commissioners Bilowus, Clement, Mason, and Nyamfukudza, and asked the new commissioners to introduce themselves.
- Ms. Welch asked Ms. Roberts Thomas to introduce Ms. Felicia Alvarez, lawyer referral representative, and asked Ms. Ranns to introduce Mr. Dana Richards, LJAP clinical case manager, who are both new SBM employees.
- Ms. Welch and Ms. Hennessey provided the Board with an update on the Justice for All Task Force, which was created by the Supreme Court 18 months ago, stressing its significance as the locus for discussions about the future of the provision of legal services regulation. The primary recommendation of the task force to the Supreme Court is the creation of an ongoing Access to Justice Commission. Ms. Hennessey shared the draft Justice for All Task Force Report with the Board.
- Ms. Welch provided the Board with updates on:
 - License fee collection;
 - Strategic Planning Report of all State Bar activities that is being used in the compilation of SBM FY 2019-2020 Financial Report;
 - Finance staff has been working on closing last FY year's books while working with the auditors;
 - 2nd Virtual Mass Swearing-In Ceremony;
 - 1st Virtual Section Orientation; and
 - the Unconscious Decision-Making Zoom programs.

Representative Assembly (RA) Report: Chelsea Rebeck, Chairperson

- Ms. Rebeck reported that the officers met and appointed the members and chairs of the RA committees; the RA Diversity Committee, formed during the 2019-2020 bar year, will continue during 2020-2021; steps are being taken to make the Diversity Committee a permanent committee; and plans are underway to develop messaging for the proposed fee increase proposal that will come before the RA at its April meeting.

Young Lawyers Section (YLS) Report: Samantha Orvis, Chairperson

- Ms. Orvis provided the Board with an update on the activities of the YLS, reporting that the YLS Executive Council met in September and elected its officers, and at its October meeting two vacancies in District 3 were filled with three vacancies still existing in District 2, Oakland County. Ms. Orvis asked the Board members to encourage anyone they might know in Oakland County who is a young lawyer to submit their names for a position on the Council.

COMMISSIONER COMMITTEES

Finance: Joseph P. McGill, Chairperson

Mr. McGill reviewed the draft FY 2020 financial results through September 2020.

Mr. McGill introduced Mr. Cunningham and Ms. Goodkin, who provided the Board with a review of the FY 2019/20 financial results and presented a PowerPoint presentation to show the financial results and trends.

Licensing Fee Resolution

Mr. McGill presented an Executive Committee recommendation for the Board to ask the Representative Assembly to address an adjustment in the SBM portion of the license fee, which has not been changed since 2004, at its April 2020 meeting.

Mr. McGill made a motion that “The Board of Commissioners requests that the Representative Assembly of the State Bar of Michigan exercise its exclusive responsibility under Rule 6 Section 1 of the Supreme Court Rules Concerning the State Bar of Michigan and petition the Supreme Court for an increase in State Bar dues at its April 24, 2021 Assembly meeting.”

The motion was seconded and unanimously approved.

Mr. McGill stated that the Retiree Health Care Trustee Committee met and will have more to report at a future board meeting.

Audit: Joseph P. McGill, Chairperson

Mr. McGill reported that the committee is anticipating preliminary audit results in early December and will meet with the auditors at that point. The final audit results will be submitted by December 31.

Professional Standards: Daniel D. Quick, Chairperson

Mr. Quick reported that committee held its initial meeting today, reviewed the areas that the committee had oversight of, and there were no action items to report.

Communications and Member Services (CAMS): James W. Heath, Chairperson

Mr. Heath reported that the CAMS Committee met earlier this week and received updates from various staff members.

The committee is reviewing the SBM mailing list policies and Mr. Heath expects that a proposed policy will be brought to the Board at its January meeting for action. He stated that the committee will also bring a recommendation to the Board about State Bar events and Awards scheduled in 2021.

Public Policy: Dana M. Warnez, Chairperson
Court Rules

ADM File No. 2019-48: Proposed Amendment of MCR 1.109

The proposed amendment of MCR 1.109 would require a signature from an attorney of record on documents filed by represented parties. This language was inadvertently eliminated when MCR 2.114(C) was relocated to MCR 1.109 as part of the e-Filing rule changes.

A motion was offered to support the proposed amendment with these recommendations:

Requirement. ~~Every document filed shall be signed by the person filing it or by at least one attorney of record.~~ **Every document of a party represented by an attorney shall be signed by at least one attorney of record.** A party not represented by an attorney must sign the document. In probate proceedings the following also applies . . .

The motion was seconded and approved.

ADM File No. 2019-35: Proposed Amendment of MCR 6.502

The proposed amendment of MCR 6.502 would eliminate the requirement to return successive motions to the filer and would eliminate the prohibition on appeal of a decision made on a motion for relief from judgment. Further, it would require all such motions to be submitted to the assigned judge, and require a trial court to issue an order when it rejects or denies relief.

A motion was offered to support the proposed amendments with these recommendations:

- (1) Remove redundancies in MCR 6.502(G)(1) as follows: [deletions shown in strikethrough].
Except as provided in subrule (G)(2), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, ~~one and~~ only one motion for relief from judgment may be filed with regard to a conviction. . . .
- (2) Amend MCR 6.502(G)(2) to clarify that a retroactive change in law or discovery of new evidence provides grounds to file a second or subsequent motion for relief from judgment so long as the retroactive change in law or discovery of new evidence occurred after the first motion for relief from judgment was filed, as opposed to when the motion was actually decided. The amended language would read as follows: [additions shown in underline].
A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment was filed or a claim of new evidence that was not discovered before the first such motion.

The motion was seconded and approved.

ADM File No. 2020-16: Proposed Amendment of MCR 9.261

The proposed amendment of MCR 9.261 would allow the JTC to share information with two separate divisions of the State Bar of Michigan: the Judicial Qualifications Committee and the Lawyers & Judges Assistance Program.

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

ADM File No. 2019-06: Amendment of MCR 6.302

The amendment of MCR 6.302 makes the rule consistent with the Supreme Court's ruling in *People v Warren*, 505 Mich 196 (2020), and requires a judge to advise a defendant of the maximum possible prison sentence including the possibility of consecutive sentencing.

A motion was offered to support the proposed amendments with these amendments to Rule 6.302(B)(2):

...the maximum possible prison sentence for the offense, including, if applicable and based upon the matters pending before that judicial officer, whether the law permits or requires consecutive sentences, making clear to the defendant that the representation only relates to cases pending before that judicial officer, and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c.

The motion was seconded and approved.

Model Criminal Jury Instructions

The committee proposes adding a new instruction to M Crim JI 5.15, to address the use of a foreign language interpreter during court proceedings before a jury.

A motion was offered to support the new proposed criminal jury instruction with these amendments:

(1) Amendment to paragraph one (1):

This court seeks a fair trial for everyone, regardless of the language they speak or how well it is spoken including those who communicate through sign language.

(2) Amendment to paragraph four (4):

Bias against or for persons who have little or no proficiency in English is not allowed. Do not allow the fact that the court is using an interpreter to help [the defendant/a witness] to influence how you decide the facts or the case in any way. Likewise, do not allow the fact that the testimony is given in a language other than English influence you in any way.

(3) Amendment to last sentence of paragraph five (5):

If, however, after such efforts a discrepancy remains in your mind, ~~I emphasize that you must~~ should rely only upon the official English translation as provided by the official court interpreter ~~and disregard any other contrary interpretation.~~ However, it is up to you as the triers of fact to resolve the discrepancy as you would any other question of fact.

The motion was seconded and approved.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Mr. Wisniewski stated that he had received comments from some of the District H members about the status of jury trials and questioned whether there was a new statement from the Supreme Court lately.

SBM is in regular contact with the Office of the Chief Justice, Administrative Counsel, and the State Court Administrator, and publishes and publicizes all new orders.

At the staff level the SBM has had discussions about communications to the membership about why there is ambiguity and uncertainty in resumption of jury trials given the uncertain and uneven trajectory of COVID-19.

Mr. McGill mentioned that a member's difficulty updating his directory profile.

Judge Perkins urged Board members to stay safe.

Ms. Welch mentioned that two commissioners, Mr. Christenson and Ms. Washington are absent because they are attending new judges' school.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 11:25 p.m.