

President Grieco called the meeting to order at 9:45 a.m. on April 12, 2019 in the Boardroom of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson

David C. Anderson

Dennis M. Barnes, President-Elect

Joseph J. Baumann

Robert J. Buchanan, Vice President

Aaron V. Burrell

B.D. "Chris" Christenson

Richard L. Cunningham

Syeda F. Davidson

Josephine A. DeLorenzo

Hon. Shauna L. Dunnings

Andrew F. Fink III

Jennifer M. Grieco, President

Lisa J. Hamameh

Kara R. Hart-Negrich

Edward L. Haroutunian

Thomas H. Howlett

Joseph P. McGill

Hon. David A. Perkins

Barry R. Powers

Daniel D. Quick

Victoria A. Radke

Chelsea M. Rebeck

Gregory L. Ulrich

Dana M. Warnez, Secretary

Erane C. Washington

Ryan Zemke

Commissioners absent and excused:

Hon. Clinton Canady III

James W. Heath, Treasurer

Michael S. Hohaus

E. Thomas McCarthy Jr.

State Bar staff present:

Janet Welch, Executive Director

Marge Bossenbery, Executive Coordinator

Nancy Brown, Director, Communications and Member Services Division

Candace Crowley, Senior Consultant

Peter Cunningham, Assistant Executive Director and Director, Governmental Relations

Cliff Flood, General Counsel

Thomas Grden, Clinical Case Manager, Lawyers and Judges Assistance Program

Danon Goodrum-Garland, Director, Professional Services Division

Kathryn Hennessey, Public Policy Counsel

James Horsch, Director, Finance and Administration Division

Nkrumah Johnson-Wynn, Assistant General Counsel

Robert Mathis, Pro Bono Service Counsel

Alecia Ruswinckel, Assistant Director, Professional Standards Division

Amanda Segar, Fee Licensing Specialist

Jeanette Socia, Director, Human Resources

Kari Thrush, Assistant Division Director, Member Services

Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program

Guests

Mark Engle, Consultant, Association Management Center

David Watson, Executive Director, ICLE

Consent Agenda

The Board received the minutes from the January 18 and March 8, 2019 Board meetings.

The Board received the minutes from the January 8 and February 12, 2019 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 FY 2019 Financial Reports through February 2019.

The Board received the 2018 Report of the State Bar of Michigan (SBM) retirement plans.

The Board received Client Protection Fund Claims.

The Board received the 50-Year Honoree Resolution.

The Board received a section dues amendment from the Alternative Dispute Resolution Section.

Ms. Grieco asked the Board if there were any items that 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's Report, Jennifer M. Grieco, President

State Bar Leadership Implicit Bias Training

Ms. Grieco introduced Judge Cynthia Stephens, chair of the Diversity and Inclusion Committee, who provided the Board with an overview for the need for the Board to participate in an implicit bias program. Judge Stephens reported that the State Bar has helped bring implicit bias programs to many other bars and external groups around the state, most recently the Prosecuting Attorneys Association of Michigan, and they have been well received. She said that the program could be designed for justice system decision makers, and that all SBM section chairs should be invited to attend.

Ms. Grieco asked the staff to work with Judge Stephens to schedule an implicit bias program for the Board of Commissioners and SBM committee leaders early in September 2019.

Board Officer Election Timeline, Procedure, and Matrix

Ms. Grieco informed the Board that the deadline to submit a letter of interest, resume, and completed matrix for an officer position, other than for president and president-elect, is June 11, 2019. The materials should be submitted to her.

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

Fleck v Wetch Update

Ms. Welch provided an overview of the status of the integrated bar challenge, and an update of the joint defense agreement. She reported that the State Bar of Michigan has filed the amici brief joined by five other integrated state bars, in the 8th Circuit.

FY 2020 Budget Process, Roles, and Calendar

Mr. Horsch described the FY 2020 budget process to the Board. He reported that current plans are for the FY 2020 Key Budget Assumptions to be reviewed with the Board at its June meeting and for the proposed FY 2020 budget to be brought before the Board at its July meeting.

Goals and Priorities for FY 2019

This item was deferred to a future meeting.

Introduction of New SBM Staff

Ms. Vincent introduced Thomas Grden, clinical case manager in the Lawyers and Judges Assistance Program.

Mr. Horsch introduced Amanda Seger, fee licensing specialist in the Finance and Administration Division.

Representative Assembly (RA) Report, Richard L. Cunningham, Chairperson

Mr. Cunningham reported that at its April 13 meeting the RA will address two proposals. The first is the proposed Interim Administrator Program and the second, a proposed amendment to court rules on scheduling attorney vacations. Ms. Welch will talk to the RA about the amicus brief in the *Fleck* case and Mark Engle, of American Management Center, will present on the State Bar Operations, Structure, and Governance Task Force.

Young Lawyers Section (YLS) Report, Kara R. Hart-Negrich, Chairperson

Ms. Hart-Negrich provided the Board with an update on recent activities of the YLS and reminded the Board that the “Board Game Challenge” event between the Board of Commissioners and the Young Lawyers Section Executive Council is taking place today beginning at 3:30 p.m. in Rooms 1 & 2 of the State Bar building.

SPECIAL REPORT

State Bar Operations, Structure, and Governance Task Force

Ms. Grieco reported on the past activities of the State Bar Operations, Structure, and Governance Task Force and introduced the Task Force consultant, Mark Engle. Mr. Engle described the task force activity to date and next steps, and asked the Board for input. The Task Force is scheduled to present its recommendations to the RA and the Board in April 2020.

COMMISSIONER COMMITTEES REPORTS

Finance Committee Report, James W. Heath, Chairperson

In Mr. Heath’s absence, Ms. Rebeck reviewed the highlights of the FY 2019 financial reports through February 2019. Ms. Rebeck also reported that the Finance committee has formed a subcommittee on a potential fee increase and will report to the Board at a future meeting.

Professional Standards, Dana M. Warnez, Chairperson

American Bar Association appointment

A motion was offered and supported to appoint Julie I. Fershtman as the SBM delegate to the ABA House of Delegates for a two-year term. The motion was approved.

Appellate Defender Commission Recommendations

A motion was offered and supported to recommend to Governor Whitmer that she reappoint Judith S. Gracey and Douglas E. Mains as SBM representatives on the Appellate Defenders Commission. The motion was approved.

Communications and Member Services, Robert J. Buchanan, Chairperson

2019 John W. Cummiskey Award

A motion was offered and supported to award the Access to Justice Initiative John W. Cummiskey Award to Kimberly Scott. The motion was approved.

2019 SBM Awards Committee Recommendations

A motion was offered and supported to award the Roberts P. Hudson Award to Lawrence P. Nolan; the Frank J. Kelley Distinguished Public Service Award to the Hon. Michael J. Talbot; the Champion of Justice Award to Julie A. Gafkay, Robert P. Gillett, and Marla R. McCowan; the Kim Cahill Bar Leadership Award to Michael Sullivan; and the John W. Reed Michigan Lawyer Legacy Award to Professor Lawrence C. Mann and Professor Suellyn Scarnecchia. The motion was approved.

Ms. Warnez reported that the recommendation for the Liberty Bell Award winner will be brought to the Board at its June meeting.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File No. 2002-37: Proposed Amendment of Rule 1.109 of the Michigan Court Rules

The proposed amendment of Rule 1.109 of the Michigan Court Rules is an expected progression necessary for design and implementation of the statewide electronic-filing system. This particular amendment will assist in implementing the goals of the project.

A motion was offered and supported to support the proposed amendment with the amendments proposed by the Access to Justice Policy Committee and Civil Procedure & Courts Committee to (G)(6)(a)(ii) regarding setting forth a non-exhaustive list of “good cause” factors, and to support ATJ Policy’s recommendation that the filing deadlines should be stayed pending the court’s review of the e-filing exemption request. The motion was approved.

ADM File No. 2002-37: Proposed Administrative Order 2019-XX

To ensure that those individuals required to electronically file court documents have meaningful access to Michigan courts, the Michigan Supreme Court adopts this order requiring courts that seek permission to mandate that all litigants e-File to first submit an e-Filing Access Plan for approval by the State Court Administrative Office.

Each plan must conform to the model promulgated by the state court administrator and ensure access to at least one computer workstation per county. The plan shall be submitted to and approved by the State Court Administrative Office as a local administrative order under MCR 8.112. The State Court Administrative Office may revoke approval of an e-Filing Access Plan due to litigant grievances.

A motion was offered and supported to support the administrative order with the following changes:

- Courts mandating e-filing should be required to have at least one court computer workstation at the courthouse and all workstations have assistance available.
- Court should be required to provide in-person e-filing assistance.
- The court should follow the SCAO guidelines for what does and does not constitute legal advice.

The motion was approved.

ADM File No. 2016-46: Special Administrative Inquiry Regarding Questions Relating to Mental Health on the Michigan Bar Examination Application

The Court is considering whether questions regarding mental health should be included on the personal affidavit that is part of the application for the Michigan Bar Examination, and if so, what form those questions should take.

The motion was offered and supported to support the Character & Fitness Committee recommendation that the current questions be replaced with the NCBE language but extend inquiry to 10 years. The Board also recommends that the BLE should consider the potential benefits of using an independent health professional in appropriate circumstances involving mental health, and the Court maintain data and monitor the new NCBE questions for five years to assess what impact the NCBE questions have on the character & fitness process. The motion was approved.

ADM File No. 2018-25: Proposed Amendment of Rule 7.312 of the Michigan Court Rules

The proposed amendment of MCR 7.312 would incorporate into the Supreme Court rules the procedure to be followed for cases being argued on the application. These rules have been previously included in orders granting argument on the application. A proposed new subrule (K) would alert parties to the fact that they should argue the merits of the case even for motions being heard on the application.

A motion was offered and supported to support the proposed amendment, with the amendment to make the briefing deadlines for MOAAs the same as grants. The motion was approved.

Legislation

HB 4296 (Filler) Civil procedure; costs and fees; e-filing fee; extend sunset. Amends sec. 1993 of 1961 PA 236 (MCL 600.1993).

A motion was offered and supported that the bill is *Keller* permissible in that it impacts the improvement of the functioning of the courts. The motion carried.

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

SB 0076 (LaSata) Courts; other; certain crime victims; exempt from jury duty and provide that certain individuals are not practicing law in violation of the revised judicature act. Amends secs. 916 & 1307a of 1961 PA 236 (MCL 600.916 & 600.1307a).

A motion was offered and supported that the bill is *Keller* permissible because it addresses the ability of legal services to society.

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

Judge Dunnings provided the Board with a summary of the Trial Court Funding Commission report, which was released this week.

OTHER REPORTS

American Bar Association (ABA) Report

Ms. Grieco reported that she participated in ABA Days in Washington, DC and advocated for Legal Services Corporation funding and public service loan forgiveness issues. She stated that it was a phenomenal experience participating with the Michigan delegation.

Mr. Ulrich provided the Board with an update on the ABA Standing Committee for Legal Assistance to Military Personnel which met at Fort Sam Houston in San Antonio. He moderated the ABA CLE Webinar for JAG officers and private attorneys with 180 participants.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Ms. Warnez recognized that Syeda Davidson received the Macomb County Bar Association Pro Bono Award.

Mr. Haroutunian mentioned that earlier this month the state of Alabama became the 49th state to recognize the Armenian genocide which began in 1915. He stated that the state of Mississippi is the last state left to consider this issue.

Mr. Haroutunian expressed his concern about a member who was solicited to join a group and after refusing the solicitation was reviewed in a negative way by that group. As a solo practitioner it is very difficult for him. Ms. Grieco said that the member contacted her as well and that she is proposing that this issue be referred to the newly appointed SBM Task Force on Legal Services Marketing.

Mr. Powers asked Ms. Welch about the status of the Master Lawyers Section. Ms. Welch stated that the Board voted at the January Board meeting to dissolve the Master Lawyers Section at the end of the current bar year. The staff will continue providing support to the section if it continues as a voluntary section, but the SBM will not provide any financial support. The deadline for filing the paperwork to make the section voluntary for the upcoming bar year is July 1. Ms. Welch stated that the SBM continues to maintain the section's listserv, but there have been concerns about what is posted.

A motion was offered and supported to give notice to the Master Lawyers Section that the State Bar is terminating the underwriting of the listserv effective at the end of the bar year.

The motion was approved. Mr. Powers abstained.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at 1:23 p.m.