

President Fershtman called the meeting to order at 9:15 a.m. on Friday, June 8, 2012 at the Grand Hotel on Mackinac Island.

Commissioners present:

Kathleen M. Allen	Donald E. McGinnis, Jr.
Dennis M. Barnes	Maureen M. McGinnis
David R. Brake	Lawrence P. Nolan
Robert J. Buchanan	Jules B. Olsman
Lori A. Buiteweg, Treasurer	David A. Perkins
Margaret A. Costello	Colleen A. Pero
Bruce A. Courtade, President-Elect	Michael J. Riordan
Richard L. Cunningham	Brandy Y. Robinson
Brian D. Einhorn, Vice President	Donald G. Rockwell
James N. Erhart	Thomas C. Rombach, Secretary
Julie I. Fershtman, President	Richard J. Siriani
Stephen J. Gobbo	Julie A. Sullivan
Jennifer M. Grieco	Laurin' C Roberts Thomas
Edward L. Haroutunian	Gregory L. Ulrich
Felicia O. Johnson	Dana M. Warnez

Commissioners absent and excused:

Commissioner Angelique Strong Marks was absent and excused.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
Candace Crowley, Director, External Development
Dawn Evans, Director, Professional Standards Division
Cliff Flood, General Counsel
James Horsch, Director, Finance and Administration Division
Elizabeth Lyon, Director, Governmental Relations
Rob Mathis, Pro Bono Attorney
Anne Vrooman, Director, Research and Development
Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program

Guests

Bruce Neckers, Former President of the State Bar of Michigan
Nell Kuhnmuensch, Governmental Consulting Services, Inc.

Consent Agenda

The Board received the minutes from the April 20, 2012 Board of Commissioners meeting and the Executive Committee meeting that was held on April 10, 2012.

The Board received a list of the SBM President's recent activities.

The Board received a list of the SBM Executive Director's recent activities.

The Board received the FY 2011 Financial Reports through April 2012 and the Financial Forecast.

The Board received a request from the Business Law Section for a dues increase.

Motion offered and supported to approve the consent agenda. Motion approved.

COMMISSIONER COMMITTEES

Finance, Lori A. Buiteweg, Chairperson

Ms. Buiteweg presented the Board with a FY 2012 Financial and Investment update.

Ms. Buiteweg provided the Board with the most current membership numbers.

Ms. Buiteweg reported that the Finance Committee will meet in July to review the entire budget and informed the Board that the budget would come before them in July for approval.

Professional Standards, Thomas C. Rombach, Chairperson

Mr. Rombach introduced a proposal on the unauthorized use of a power of attorney. A motion was offered and supported to adopt the proposal. Motion was adopted.

Mr. Rombach explained the recommendation of the Professional Standards committee to adopt the opinion on MRPC 1.15A, commonly known as the "TAON rule," as a formal opinion. A motion was offered and supported to adopt the proposal. Motion adopted. Ms. Robinson abstained.

Programs and Services, Brian D. Einhorn, Chairperson

There was no report.

Public Policy, Image and Identity, Bruce A Courtade, Chairperson

The Board received written reports from Justice Initiatives and Governmental Consulting Services, Inc.

Court Rules

ADM File No. 2009-19 - Proposed Amendments of Rules 6.425, 6.502, 7.204, and 7.205 of the Michigan Court Rules

The amendments would impose time limits for the filing of motions for relief from judgment in criminal cases and shorten time limits for late appeals in both civil and criminal actions. For MCR 7.204 and MCR 7.205, alternative provisions are offered under which, upon a showing of excusable neglect, the Court of Appeals or a trial court may grant an extension of time for filing a late appeal.

Motion was offered and supported to support the request to the Michigan Supreme Court to consider a change to MCR 7.205 to extend the late appeal period from 6 months to 12 months. Motion adopted.

Legislation

HB 5128

Courts; other; business court; create. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding ch.10B. Motion offered and supported as amended below:

Motion on HB 5218, H-1, Draft 3

As amended by the Public Policy, Image and Identity Committee on June 4, 2012

- Support the concept of creating business courts.
- Support the purposes described in HB 5128, Sec. 1086.
- Request the following amendments based on analysis of changes needed to meet the prescribed purpose:

1 – Recommend that the website contemplated in Sec 1089, subsection 3 be housed in the State Court Administrative Office to allow for easy and consistent statewide access to opinions.

2 – Delete provisions in Section 1087 subsections 5 and 6 regarding judicial discretion to remove or add a case.

Revised Sec 1087, subsection 5:

AN ACTION ASSIGNED TO A BUSINESS COURT JUDGE MAY, ~~WITHIN THE DISCRETION OF THE BUSINESS COURT JUDGE,~~ BE REASSIGNED BY BLIND DRAW TO ANOTHER JUDGE ACCORDING TO THE PLAN SUBMITTED FOR THE OPERATION OF THE BUSINESS COURT IN SECTION 1086 (1) AND (2) IF THE ACTION CEASES TO INCLUDE A BUSINESS OR COMMERCIAL DISPUTE.

Sec 1087, subsection 6:

AN ACTION THAT DOES NOT INITIALLY INCLUDE A BUSINESS OR COMMERCIAL DISPUTE BUT THAT SUBSEQUENTLY INCLUDES A BUSINESS OR COMMERCIAL DISPUTE AS A RESULT OF A CROSS-CLAIM, COUNTERCLAIM, THIRD-PARTY COMPLAINT, AMENDMENT, OR ANY MODIFICATION OF THE ACTION, ~~MAY, WITHIN THE DISCRETION OF THE ASSIGNED JUDGE,~~ SHALL BE REASSIGNED BY BLIND DRAW TO A BUSINESS COURT AFTER THE ACTION IS MODIFIED TO INCLUDE A BUSINESS OR COMMERCIAL DISPUTE ACCORDING TO THE PLAN SUBMITTED FOR THE OPERATION OF THE BUSINESS COURT IN SECTION 1086 (1) AND (2).

Rationale:

Reassignment of cases should be clear given the number of actions that would need to be reviewed or the reassignment of which could be appealed. The proposed amendments would further protect against sole judicial discretion to reassign cases but also assure that cases properly in the jurisdiction of the business court be reassigned if a subsequent action warrants the reassignment.

3 – Revise Sec 1087, subsection 7 to delete references to subsection 5 & 6 because it is no longer necessary given the above recommendation:

UPON MOTION OF A PARTY, THE CHIEF JUDGE OF THE JUDICIAL CIRCUIT MAY REVIEW DETERMINATION UNDER SUBSECTION (3), ~~(5), AND (6) FOR AN ABUSE OF DISCRETION.~~

4 – Request a delayed implementation date to allow the current pilot sites in Kent, Macomb and Oakland to provide data and to allow for the website to index written opinions to be developed.

Motion adopted

HB 5551 & HB 5552

HB 5551 (Jenkins) Courts; funding; mileage reimbursement rate for juror; increase. Amends sec. 1344 of 1961 PA 236 (MCL 600.1344).

HB 5552 (Kowall) Courts; funding; juror compensation; allow reimbursement if funding unit pays increased mileage. Amends sec. 151e of 1961 PA 236 (MCL 600.151e)

Mr. Courtade offered a motion to support HB 5551. Motion supported and adopted. Ms. Johnson abstained.

Mr. Courtade reported that the committee recommends that no position be taken on HB 5552 because it is not Keller permissible.

SB 0630, 0631, 0632 and 0633

Retention and Release of Non-Public Records

SB 0630 (Jones) Criminal procedure; probation; retention and release of nonpublic records of an arrest, diversion, discharge, or dismissal of certain controlled substance cases; clarify. Amends sec. 1070 of 1961 PA 236 (MCL 600.1070).

SB 0631 (Schuitmaker) Criminal procedure; probation; retention of nonpublic records during period of diversion for a controlled substance violation; clarify. Amends sec. 350a of 1931 PA 328 (MCL 750.350a).

SB 0632 (Bieda) Criminal procedure; probation; retention of nonpublic records during period of diversion for a controlled substance violation; require. Amends sec. 7411 of 1978 PA 368 (MCL 333.7411).

SB 0633 (Smith) Criminal procedure; probation; retention of nonpublic records during period of diversion for certain crimes; clarify. Amends sec. 4a, ch. IX of 1927 PA 175 (MCL 769.4a).

The committee recommended that action on these bills be tabled until July and that they be referred to Sections/Committees.

Indigent Defense Advisory Commission

Ms. Lyon provided the Board with an update about the findings and recommendations of the Indigent Defense Advisory Commission. She expects legislation to be introduced in the near future.

LEADERSHIP REPORTS

President's Report, Julie I. Fershtman, President

Ms. Fershtman recognized former State Bar of Michigan President Bruce Neckers.

Upcoming Executive Director's Contract Update

Ms. Fershtman informed the Board that the Executive Committee will discuss the contract of the Executive Director and present a recommendation to them at the July Board meeting. Commissioners and State Bar staff will receive an evaluation document via email to complete and return to her. She will compile the information and present it to the Board.

Judicial Selection Task Force Report

Ms. Fershtman reported to the Board that the Judicial Selection Task Force has been released and suggested that each commissioner read the report. She and Mr. Gobbo had a conference call with Task Force co-chairs Justice Kelly and former Justice James Ryan about the report. The process for determining State Bar consideration of the report's recommendations is under review.

Board Officer Election Procedure, Matrix and 2012 Timeline

Ms. Fershtman reported to the Board that those interested in submitting a letter of interest and matrix for the office of Treasurer should submit the information by the end of the day on Monday, June 11.

Executive Director's Report, Janet K. Welch, Executive Director FY 2013 Preliminary Budget

Ms. Welch and Mr. Horsch provided the Board with an overview of the FY 2013 Preliminary Budget.

2012 Awards Committee Recommendations

Mr. Courtade reported to the Board the Awards committee's nominees for the 2012 State Bar Awards. Motion offered and supported to approve the nominees. Motion Adopted.

2012 John W. Cumiskey Nominee

Mr. Courtade reported to the Board the Pro Bono Initiative nominee for the 2012 John W Cumiskey Award. Motion offered and supported to approve the nominee. Motion adopted.

Personal Public Statements Committee Update

Mr. Courtade provided the Board with a report from the meeting of the Personal Public Statements workgroup. A motion was offered and supported to approve the policy as written. Motion adopted.

Mr. Ulrich questioned whether a recent internal section policy and guidelines that applies to the uses of social media by State Bar sections is inconsistent with the policy on personal public statements. Ms. Welch explained to the Board that the guidelines recently sent to the section chairs were developed to assist them deal with the fact that they were exposing themselves to potential liability when using social media outlets. Ms. Welch suggested that she and Mr. Ulrich meet prior to the July 2012 board meeting to discuss this issue and report back to the Board in July.

2012 Election Update

Ms. Welch provided the Board with an update of the 2012 State Bar election.

Supreme Court Update

Ms. Welch provided the Board with an update on the Supreme Court orders recently adopted.. The Court has closed its file on the State Bar's anti-trolling recommendation, but invites the Bar to provide more empirical evidence of the problem to address First Amendment concerns. Ms. Welch indicated that she, along with Ms. Buiteweg, met with the chair of the Family Law Section, to discuss how to respond.

Litigation Status Report

There was no report provided.

Personnel Update

Ms. Evans introduced Tish Vincent, the new program administrator of the Lawyers and Judges Assistance Program.

Ms. Welch recognized Ms. Lyon's departure from State Bar and informed the Board that Ms. Lyon's last day at the bar is Friday, June 15. Ms. Welch also announced that Peter Cunningham, currently the Director of the Campaign for Justice, has been hired to succeed Ms. Lyon as director of Government Relations. The Board acknowledged Ms. Lyon with a card and a round of applause. Ms. Lyon extended her appreciation.

Representative Assembly Report (R.A.), Stephen J. Gobbo, Chairperson

Mr. Gobbo reported to the Board that the honorees for the Michael Franck and Unsung Hero awards have been selected and the awards will be presented at the September 20th R.A. meeting.

Mr. Gobbo indicated that proposals for the September R.A. meeting agenda need to be submitted by August 9.

Mr. Gobbo informed the Board that nominations for the 2012 – 2013 R.A. clerk must be submitted by July 23.

Young Lawyers Section Report (YLS), Brandy Y. Robinson, Chairperson

Ms. Robinson provided the Board with a report of the activities of the YLS.

Comments

Mr. Courtade asked for a moment of silence in recognition of the passing of Martin Krohner. He was active in the leadership of several sections and committees of the State Bar and Representative Assembly.

Adjournment

The meeting was adjourned at 11:07 p.m.