

President Nolan called the meeting to order at 1:40 p.m. on September 27, 2017 in Room 301 of the Cobo Center in Detroit, Michigan.

Commissioners present:

Danielle Mason Anderson

Dennis M. Barnes, Secretary

Robert J. Buchanan, Treasurer

Hon. Clinton Canady III

Richard L. Cunningham

Syeda F. Davidson

Shauna L. Dunning

Andrew F. Fink III

Robert C. Gardella

Jennifer M. Grieco, Vice President

Krista L. Haroutunian

James W. Heath

Fred K. Herrmann

Michael S. Hohaus

Mark W. Jane

Thomas E. McCarthy Jr

Joseph P. McGill

Hon. Maureen M. McGinnis

Shenique A. Moss

Lawrence P. Nolan, President

Hon. David A. Perkins

Victoria A. Radke

Hon. Michael J. Riordan

Donald G. Rockwell, President-Elect

Brian D. Shekell

Richard J. Siriani

Gregory L. Ulrich

Dana M. Warnez

Erane C. Washington

Commissioners absent and excused:

Colleen A. Pero

Jules B. Olsman

Edward L. Haroutunian

State Bar Staff present:

Janet Welch, Executive Director

Marge Bossenbery, Executive Coordinator

Gregory Conyers, Director, Diversity

Candace Crowley, Assistant Executive Director and Director, External Development

Peter Cunningham, Assistant Executive Director and Director, Governmental Relations

Darin Day, Director, Outreach and Constituent Development

Cliff Flood, General Counsel

Danon Goodrum-Garland, Director, Professional Services Division

Kathryn Hennessey, Public Policy Counsel

Nkrumah Johnson-Wynn, Assistant General Counsel

James Horsch, Director, Finance and Administration Division

Robert Mathis, Pro Bono Service Counsel

Samantha Meinke, Communications Manager

Laurin' Roberts Thomas, Assistant Counsel, LRS/UPL

Alecia Ruswinckel, Assistant Counsel, CPF/Ethics

Jeanette Socia, Human Resources Manager

Anne Vrooman, Director, Research and Development

Guests

David C. Anderson  
Aaron V. Burrell  
B.D. "Chris" Christenson  
Kara R. Hart-Negrich  
Jeff Kirkey, Institute for Continuing Legal Education  
Daniel D. Quick  
Hon. Cynthia Diane Stephens, Public Policy Committee member  
David Watson, Executive Director, Institute for Continuing Legal Education

Consent Agenda

Mr. Nolan 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 the July 21, 2017 Board of Commissioners meeting.  
The Board received the minutes from the July 11, 2017 Executive Committee meeting.  
The Board received the recent activities of the president.  
The Board received the recent activities of the executive director.  
The Board received the FY 2017 Financial Reports through July 2017.  
The Board received the Client Protection Fund Claims.  
The Board received the Unauthorized Practice of Law Claims.

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

## COMMISSIONER COMMITTEES REPORTS

**Audit,** Robert J. Buchanan, Chairperson

Mr. Buchanan informed the Board that the Audit Committee met on September 21 and reviewed and approved the 2017 incentive compensation package. He also noted that the auditors began their preliminary work in August and will return to the SBM office in October to complete the audit.

**Finance,** Robert J. Buchanan, Chairperson

FY 2017 Financial Update

Mr. Buchanan reviewed the FY 2017 financial reports through July 2017. He thanked the Finance and Audit committee members and the SBM staff for their work during the past year.

**Communications and Member Services,** Jennifer M. Grieco, Chairperson

Ms. Grieco thanked the committee members and the SBM staff for their work during the past year.

**Professional Standards,** Dennis M. Barnes, Chairperson

Mr. Barnes reported that there were no action items other than what was on the consent agenda. Mr. Barnes noted that the payee notification legislation would probably come before them in November. He thanked the committee members and the SBM staff for their work during the past year.

**Public Policy**, Donald G. Rockwell, Chairperson

The Board members received a written Public Policy report and a Justice Initiative report.

Mr. Rockwell asked Peter Cunningham if there was any additional information for the Public Policy report. Mr. Cunningham noted that the Limited Scope Representation rules that were proposed by the State Bar last year were adopted by the Supreme Court.

Court Rules

**ADM File No. 2015-20 – Proposed Amendment of Rules 8.110 and 8.111 of the Michigan Court Rules**

The proposed amendments would explicitly provide that corrective action may be taken by the State Court Administrator, under the Supreme Court's direction, against a judge whose actions raise the question of the propriety of the judge's continued service. Such corrective action may include relieving a judge of the judge's caseload, and reassigning such cases to another judge or judges. The proposed amendments also would provide explicit authority for a chief judge (with approval from the state court administrator) to order a judge to submit to an independent medical examination if there is a good faith doubt as to the judge's fitness that prompted the chief judge's report.

A motion was offered and supported to oppose this proposed court rule amendment. The motion was approved.

**ADM File No. 2017-04 – Proposed Amendment of Code of Judicial Conduct Canon 4(E)(4)(a) and (c)**

The proposed amendment would increase the acceptable value for a gift given incident to a public testimonial, and likewise would increase the threshold amount for disclosure of a gift. This proposed increase would be the first revision since the \$100 value threshold was adopted in 1974. The threshold amount for reporting gifts is widely variable among the states and federal government. The disclosure threshold for reporting gifts in other states, established by statute or court rule, ranges from \$50 to \$500. Many states do not have a threshold amount at all; instead, such states may prohibit the acceptance of gifts from certain classes of donors, or alternatively allow judges to accept a certain class of gifts without regard to value for specific events, such as a wedding, or 25th or 50th wedding anniversary. In considering whether to publish for comment a proposed change, the Court also considered the increase in the value of money since the \$100 threshold was adopted. According to the American Institute for Economic Research, the value of \$100 in today's economy is \$495.92. In settling on a structure for purposes of publication, the Court used the federal disclosure rule and threshold as its model. For federal judges, the gift disclosure amount is \$375, as established by the Judicial Conference. The instructions for submitting the annual disclosure report require a federal judge to:

Report information on gifts aggregating more than \$375 in value received by the filer, spouse and dependent child from any source other than a relative during the reporting period. Any gift with a fair market value of \$150 or less need not be aggregated to determine if the \$375 reporting threshold has been met. Thus, similar to the federal rule, the proposed amendment would increase the disclosure threshold to \$375, but would require gifts to the judge and his family members from a single source to be aggregated for purposes of reporting. Gifts with value less than \$150 would not need to be included in this aggregate amount. Further, the proposed amendment would not change the restriction that a gift may be accepted under this subsection only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

A motion was offered and supported to support this proposed court rule amendment. The motion was approved.

#### Legislation

**HB 4666 (Runestad) Civil procedure; service of process; provisions relating to service of process; amend. Amends sec. 1910 of 1961 PA 236 (MCL 600.1910).**

A motion was offered and supported that this legislation is Keller permissible because it relates to the improvement in the functioning of the court. The motion was approved.

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

**SB 0385 (Stamas) Occupations; collection practices; engagement of staff attorneys by licensed debt collection agencies; allow. Amends sec. 915a of 1980 PA 299 (339.915a).**

A motion was offered and supported that this legislation is Keller permissible because it relates to the regulation and discipline of attorneys. The motion was approved

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

#### Michigan Indigent Defense Commission Standards

##### **Independence from the Judiciary**

1. The indigent criminal defense system (“the system”) should be designed to guarantee the integrity of the relationship between lawyer and client. The system and the lawyers serving under it should be free from political and undue budgetary influence. Both should be subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution. The selection of lawyers and the payment for their services shall not be made by the judiciary or employees reporting to the judiciary. Similarly, the selection and approval of, and payment for, other expenses necessary for providing effective assistance of defense counsel shall not be made by the judiciary or employees reporting to the judiciary.

2. The court’s role shall be limited to: informing defendants of right to counsel; making a determination of indigency and entitlement to appointment; if deemed eligible for counsel, referring the defendant to the appropriate agency (absent a valid waiver); and contributing information and advice concerning the system.

Mr. Rockwell asked Judge Stephens to make a presentation to the Board on behalf of the committee, regarding this Standard. Judge Stephens reported that this Standard severs the tie between the judge who is the neutral in the case and the judge as the selector and regulator of the defense portion of the case. It provides that the judge would not appoint, select, or determine compensation of defense counsel or employees reporting to the judiciary. Judge Stephens noted that the language in the second portion of the Standard, the limitations to the court’s role, might cause unintended consequences and suggested an amendment about the use of investigator/experts in accordance with the law.

The committee voted to support the Standard with amendments to make it clear that the court has the obligation and responsibility to rule on the defense’s request on the use of investigators and/or experts in accordance with Michigan law.

A motion was offered and supported to support the Standard as recommended by the committee. The motion was approved.

### **Indigent Defense Workloads**

The caseload of indigent defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

These workloads will be determined over time through special Michigan specific weighted caseload studies. Until the completion of such studies, defender organizations, county offices, public defenders, assigned counsel, and contract attorneys should not exceed the caseload levels adopted by the American Council of Chief Defenders – 150 felonies or 400 non-traffic misdemeanors per attorney per year. If an attorney is carrying a mixed caseload which includes cases from felonies and misdemeanors, or non-criminal cases, these standards should be applied proportionally.

These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.

Mr. Rockwell asked Judge Stephens to report to the Board on this Standard and she stated that this Standard addresses the workload of lawyers. She noted that it covers the caseload levels and recommends that a workload study be done to determine what is appropriate based on certain cases. In the interim, the committee suggests that the Chief Defenders standards be used. An additional concern is that caseload levels might be impacted based on geographic areas and that the language be changed in the interim to “presumptive” rather than “absolute” to avoid penalties being assessed to attorneys before the workload study is completed.

The committee voted in favor of support of the Standard with the proviso that the interim standard is presumptive, not absolute.

A motion was offered and supported to support the workload standards as recommended by the committee. The motion passed.

Judge McGinnis asked about when the compensation portion of the Standards will be released, and Peter Cunningham indicated that it was expected to be released later this year.

### **Qualification and Review**

**A. Basic Requirements.** In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications (hereafter “basic requirements”): Satisfy the minimum requirements for practicing law in Michigan as determined by the Michigan Supreme Court and the State Bar of Michigan; and Comply with the requirements of MIDC Standard 1, relating to the Training and Education of Defense Counsel.

**B. Qualifications.** Eligibility for particular case assignments shall be based on counsel’s ability, training, and experience.

**C. Review.** The quality of the representation provided by indigent defense providers must be monitored and regularly assessed. Productivity is a component of the review process. Review is a process to evaluate the quality of the representation after an attorney has established the minimum requirements for eligibility. For attorneys seeking qualification under sections B(1)(c) or B(2)(a)(iii), the review process can be used for that purpose. In some cases, the review will give notice to an attorney whose performance can be improved. In all cases, the evaluation of attorneys must be made by peers in the criminal defense community, allowing for input from other stakeholders in the criminal justice system including judges, prosecutors and clients.

The committee voted to support the Standard with the additional comment that equivalent experience and ability to use those skills be considered and be extended to Sections 3 and 4.

A motion was offered and supported to support the recommendation of the Public Policy Committee. The motion was approved.

#### Model Criminal Jury Instructions

##### **M Crim JI 5.14**

**The Committee proposes a new jury instruction, M Crim JI 5.14, to explain the presence of support persons or animals in the courtroom. See MCL 600.2163a(4) and *People v Johnson*, 315 Mich App 163 (2016). The instruction is entirely new.**

A motion was offered and supported to support this new jury instruction. A friendly amendment was offered to include translators. The friendly amendment was declined.

A motion was offered and supported to support the new jury instruction with an option for Ms. Welch to add a comment in the letter that is sent to the Court on this issue about including translators without directing that the provision be included. The motion was approved.

Mr. Rockwell thanked the committee members and SBM staff for their work during the past year.

#### **President's Report**, Lawrence P. Nolan, President

##### Trial Court Funding Commission Nominations

Mr. Nolan informed the Board that Ms. Dunnings and Mr. Thomas C. Rombach's names would be submitted to the Governor's Office as the nominees for State Bar Representatives on the Trial Court Funding Commission.

Mr. Nolan reminded and encouraged the Board to attend the SBM Awards Banquet this evening.

Mr. Nolan informed Ms. Welch that a donation to the Access to Justice Fund is being made from SBM commissioners and committee chairs in honor of Ben Hare, Ms. Welch's late husband. Ms. Welch thanked the Board and noted that Ben was a great supporter of ATJ.

Mr. Nolan thanked the Board for the opportunity to serve as the SBM President.

**Executive Director's Report, Janet K. Welch, Executive Director**  
Electronic Dues Payment Processing

Ms. Welch provided the Board with an update on an accidental interruption in the electronic dues payment process of several hours affecting the receipt of dues payments. No security was breached. She described the cause of the interruption and the process that will be used to remedy the problem. A further review of the methods used was taking place and a check list system will be developed to avoid any recurrence of this problem.

Employee Contract

Ms. Welch informed the Board about an employment contract that requires their approval with an IT technician. The contract converts the technician, who has been independent contractor in the SBM IT Department for two years, to a full-time SBM employee for a two year time period.

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

Michigan Association of Bar Executives (MABE) Boot Camp

Ms. Welch reported that she and Mr. Rockwell attended the MABE Boot camp last week. She noted that this event brought leaders of local and affinity bars together and was important in that it helped further one of the objectives of the SBM Strategic Plan, which is increased collaboration and cooperation with our stakeholders.

Strategic Plan/Futures Update

Ms. Welch asked Ms. Crowley to provide the Board with an update on the implementation of the new committee structure and the progress being made in terms of populating the new committees and work groups. Ms. Crowley described the implementation process and reported that the steering committees are scheduled to meet in the next couple of weeks, and will identify work groups that need to be formed and volunteers appointed.

Economics of Law Practice Survey

Ms. Welch reported that the Economics of Law Practice Survey is available for members to complete online in conjunction with the electronic dues payment process. This was done in an effort to get greater member involvement. She asked Ms. Vrooman to inform the Board of the additional ways the survey will be available. Ms. Vrooman indicated that the survey is online on the SBM website and will be advertised in e-blasts to the members and in other member areas to maximize participation.

State Bar of Michigan Member Demographics

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the status of the SBM Member Demographics project. Mr. Vrooman informed the board that the demographics study will be available online next week. She also offered to provide Board members with customized statistics for any presentations they might be making in conjunction with the Board responsibilities.

Incentive Compensation

Ms. Welch informed the Board that the full amount of money available for incentive compensation was not expended this year. Although staff efforts continue to be extraordinary, she anticipates that the implementation of the strategic goals in the new Strategic Plan will warrant more incentive compensation distributions in the future, and thus chose to defer expending the full amount budgeted until the next budget cycle.

**Representative Assembly (RA) Report**, Fred Herrmann, Chairperson

Mr. Herrmann reported that the agenda for the RA meeting includes consideration of a proposed about rule amendment to **MCR 3.993**, a member dues proposal update, and a presentation on the work product of the Civil Discovery Court Rule Review Special Committee. He indicated that Mr. McGill will be sworn in as the 2017-18 Chair of the Assembly, an election will take place for the new Clerk of the Assembly, and the Unsung Hero and Michael Franck Awards will be presented.

Mr. Herrmann thanked the Board and RA members for their support during his term.

**American Bar Association (ABA) Report**

There was no report.

**Young Lawyers Section (YLS) Report**, Shenique A. Moss, Chairperson

Ms. Moss provided the Board with an update on the activities of the YLS.

Ms. Moss indicated that Ms. Davidson would be installed as the 2017-18 Chair of the YLS at tomorrow's meeting and introduced Ms. Hart-Negrich, who will become Chair-Elect.

**Recognition of Retiring Board Members**

Fred K. Herrmann, written and presented by Joseph P. McGill

Mark W. Jane, written and presented by Shenique A. Moss

Colleen A. Pero, written by Hon. Michael J. Riordan – to be presented at a later date.

Richard J. Siriani, written and presented by Hon. Maureen M. McGinnis

**Recognition of President Lawrence P. Nolan**

Mr. Rockwell presented Mr. Nolan with a plaque and scrapbook in recognition and appreciation of his year as President.

**Comments from Commissioners**

Mr. Rockwell invited everyone to attend a reception at the "Top of the Pontch" located in the Crowne Plaza Detroit on both Wednesday and Thursday nights beginning at 9:00 p.m.

**Adjournment**

The meeting was adjourned at 3:44 p.m.