

**State Bar of Michigan  
Representative Assembly  
April 25, 2015**

**SUMMARY OF PROCEEDINGS**

The following is a summary of proceedings of the State Bar Representative Assembly session held Saturday, April 25, 2015, at the Lansing Community College West Campus in Lansing, Michigan.

1. Call to order by Chairperson Vanessa Peterson Williams.
2. Clerk Fred K. Herrmann declared a quorum (50 members) was present.
3. Upon a motion made and seconded, the proposed calendar was adopted as amended.
4. As provided in Rule 4.8, the Summary of Proceedings of the September 18, 2014 meeting was deemed approved.
5. Shenique Moss, Chair, Nominating and Awards Committee, addressed the Assembly on filling vacancies for the current meeting. Upon a motion made and seconded, Daniel Ferris (3<sup>rd</sup> Circuit); Mwanaisha Sims (3<sup>rd</sup> Circuit); Aghogho Edevbie (3<sup>rd</sup> Circuit); Randall Tatem (3<sup>rd</sup> Circuit); Matthew Aneese (6<sup>th</sup> Circuit); Heather Atnip (6<sup>th</sup> Circuit); James Brennan (6<sup>th</sup> Circuit); Patrick Crandell (6<sup>th</sup> Circuit); Anthony Kochis (6<sup>th</sup> Circuit); Christian Ohanian (6<sup>th</sup> Circuit); Cesara Sclafani (6<sup>th</sup> Circuit); Jay Edwards (7<sup>th</sup> Circuit); Tracy McCarn-Dinehart (8<sup>th</sup> Circuit); John Lozano (10<sup>th</sup> Circuit); Thomas Fancher (10<sup>th</sup> Circuit); Mark Quinn (19<sup>th</sup> Circuit); Maureen Van Hoven (20<sup>th</sup> Circuit); Elizabeth Kitchen-Troop (22<sup>nd</sup> Circuit); Ashish Joshi (22<sup>nd</sup> Circuit); Melissa Ransom (28<sup>th</sup> Circuit); Carmen Fahie (30<sup>th</sup> Circuit); Gerry Mason (31<sup>st</sup> Circuit); David Marvin (45<sup>th</sup> Circuit); Nathan Hull (49<sup>th</sup> Circuit); and Christina DeMoore (57<sup>th</sup> Circuit) were appointed to fill immediate vacancies within their respective Circuits.
6. Shenique Moss, Chair, Nominating & Awards Committee, addressed the Assembly concerning the 2015 Award Nominations. Upon a motion made and seconded, the Assembly unanimously approved the 2015 Award Recipients. The Unsung Hero Award will be presented to Hon. Allie Greenleaf Maldonado of Harbor Springs. The Michael Franck Award will be presented to Vernon Kortering of Muskegon.
7. Vanessa Peterson Williams, Representative Assembly Chair, offered remarks on the proposals before the Assembly.
8. Kimberly A. Breitmeyer, Chair, Assembly Review Committee, addressed the Assembly on the Assembly Survey Report and answered questions.
9. Kimberly A. Breitmeyer, Chair, Assembly Review Committee, addressed the Assembly on a proposed amendment to the Representative Assembly Permanent Rules of Procedure—5.1 Voting, to clarify the ability of the Assembly to vote using

electronic devices. Upon a motion made and supported, after discussion and several friendly amendments, the proposal passed 94 to 14 as follows:

**5.1 Voting.** ~~Unless a written ballot is required, Voting-voting shall be by voice vote or electronic tally at the option of the chair. unless a written ballot is required or the members stand and are counted~~ If by voice vote, when the chair is in doubt provided however, that a roll call vote, either by voice or an electronic vote, shall be taken and a record kept. thereof to indicate the individual vote of each participating Representative Assembly member. ~~If a division is requested as to the voice vote any time a request for such vote is made and supported by at least twenty (20) members of the Representative Assembly, or when a position is to be taken on proposed legislation and the position of the Assembly is not unanimous, a roll call vote, either by voice or an electronic vote, shall be taken and a record kept. to indicate the individual vote of each participating Representative Assembly member.~~

10. Kimberly A. Breitmeyer, Chair, Assembly Review Committee, addressed the Assembly on a proposed amendment to the Representative Assembly Permanent Rules of Procedure—4.4 Minority Reports, to provide a minority report to accompany recommendations to the Michigan Supreme Court. Upon a motion made and supported, after discussion and several friendly amendments, the proposal passed 96 to 10 as follows:

**4.4 Section—Minority Reports.** ~~A section—minority report is a written report stating the views of less than half the members of a section, section council or a committee on a recommendation of the majority report of the section. The content of the minority report must reflect the minority~~ Minority—views must have been presented to the section, section council or committee orally or in writing at the time it acted on the matter, unless the section, section council or committee did not notify its members in advance that the matter would be considered. The report must be printed at the request of its proponents over their signatures and appended ~~added~~ to the report to which it relates.

Representative Assembly Minority Reports. Members of the Representative Assembly voting in the minority on a proposal to be submitted to the Michigan Supreme Court may collectively submit a minority report to accompany State Bar recommendations to the Michigan Supreme Court, if the majority proposal has been adopted by less than 75% of the members present and voting. The content of the minority report must be limited to the views presented on the floor of the Assembly meeting during the debate on the merits of the proposal. A member of the Assembly must invoke this rule by making a motion request for the submission of a minority report immediately following the vote on the following the proposal from which the minority report dissents have been adopted, and must identify the author(s) of the minority report. The length of the report may not exceed that of the

majority and must be submitted to the Clerk within 14 days of the conclusion receipt of the transcript of the meeting at which the motion passed. The Clerk must review the report with the drafting committee to ensure compliance with the word limitations and reasonable consistency with the minority opinions expressed during the debate on the recommendations and largely reflected in the transcript of the proceedings. The Clerk and drafting committee, in consultation with the author of the minority report, shall have the final decision on the draft of the minority report submitted.

11. Michael W. Thomsen, Chair, Drafting Committee, presented “Your Voice in the State Bar of Michigan.”
12. Janet K. Welch, Executive Director, addressed the Assembly on *Keller*.
13. Kimberly A. Breitmeyer, Chair, Assembly Review Committee, addressed the Assembly on a proposed amendment to the Representative Assembly Permanent Rules of Procedure—5.1 Voting-*Keller*, to require that the Assembly implement a voting process to ensure that actions conform to *Keller v. State Bar of California* and subsequent governing and/or authoritative law on the constitutional standard for mandatory bar advocacy. Upon a motion made and supported, after discussion and a friendly amendment, the proposal passed 77 to 25, with 2 abstentions, as follows:

**5.1 Voting.** Voting shall be by voice vote, unless a written ballot is required or the members stand and are counted when the chair is in doubt or a division is requested provided however, that a roll call vote shall be taken and a record kept thereof any time a request for such vote is made and supported by at least twenty (20) members of the Representative Assembly, or when a position is to be taken on proposed legislation and the position of the Assembly is not unanimous.

5.1.1 Keller Vote. Any proposal to be submitted for a vote, which has potential Keller implications, where applicable, shall first be submitted to counsel and/or bar staff, as applicable, who is not a member of the Representative Assembly, for an independent opinion as to the permissibility of the vote by the Representative Assembly on the merits of such proposal under Keller v. State Bar of California and subsequent governing and/or authoritative law on the constitutional standard for mandatory bar advocacy (collectively, “Keller”). The opinion of counsel and/or bar staff, as applicable, should articulate the reasoning behind the determination and accompany the applicable proposal at the time of publication pursuant to Section 2.5 of these Rules. A “Keller Vote” shall be taken prior to the Representative Assembly taking a position on proposals, where applicable, to determine the permissibility of the vote under Keller. A two-thirds vote of the members of the Representative Assembly present is required to support a determination that a vote on the proposal is permissible.

14. Thomas C. Rombach, President, addressed the Assembly.

15. Vanessa Peterson Williams, Chair, Representative Assembly offered the opportunity to have open discussion on Administrative File Number 2013-38, the proposed on Michigan Rules of Professional Conduct Rule 1.5.
16. Adjournment

President Rombach called the meeting to order at 9:50 a.m. on Friday, April 24, 2015 at the Michael Franck Building in Lansing.

Commissioners present:

Danielle Mason Anderson

Dennis M. Barnes

Danielle M. Brown

Robert J. Buchanan

Lori A. Buiteweg, President-Elect

Timothy J. Burns

Shauna L. Dunning

Robert C. Gardella

Stephen J. Gobbo

Jennifer M. Grieco, Treasurer

Edward L. Haroutunian

James W. Heath

Fred K. Herrmann

Andrea Irons

Mark W. Jane

C. Thomas Ludden

Thomas E. McCarthy Jr.

Hon. Maureen M. McGinnis

Lawrence P. Nolan, Vice President

Jules B. Olsman

Colleen A. Pero

Daniel D. Quick

Victoria A. Radke

Thomas C. Rombach, President

Richard J. Siriani

Gregory L. Ulrich

Vanessa Peterson Williams

Commissioners absent and excused: Commissioners E. Christopher Johnson Jr., Hon. Michael J. Riordan, Donald F. Rockwell and Hope V. Shovein were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director

Nancy Brown, Director, Member Services and Communications Division

Marge Bossenbery, Executive Coordinator

Gregory Conyers, Director, Diversity

Candace Crowley, Director, External Development

Peter Cunningham, Director, Governmental Relations

Cliff Flood, General Counsel

Danon Goodrum-Garland, Director, Professional Services Division

Brian Hildreth, Director, Information Services Division

James Horsch, Director, Finance and Administration Division

Nkrumah Johnson-Wynn, Assistant General Counsel

Robert Mathis, Pro Bono Attorney

Samantha Meinke, Communications Manager

Kari Thrush, Manager, Member Services and Events

Anne Vrooman, Director, Research and Development

Guests

Michael Antovski, Vice Chair, Taxation Section

Tom Beam, President, Grand Rapids Bar Association

Kim Coleman, Executive Director, Grand Rapids Bar Association

Carolee Smith, Treasurer, Taxation Section

Consent Agenda

Mr. Rombach asked the Board if there were any items that needed to be removed from the consent agenda. Mr. Haroutunian and Mr. Herrmann both requested that agenda Item VI Professional Standards – Client Protection Fund Claims be removed from the consent agenda. Mr. Rombach directed that the item would be discussed during the report from the Professional Standards Committee.

The Board received the minutes from the January 16, 2015 Board of Commissioners meeting.

The Board received the minutes from the February 17 and March 3, 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 FY 2015 Financial Reports through March 2015.

The Board received the 2014 Report of the State Bar of Michigan Retirement Plans.

The Board received the State Bar of Michigan Retiree Health Care Trust Actuarial Study.

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

Local Bar Association and Section Presentations

The Board received a report from the Kent County Bar Association by its President, Tom Beam, and Executive Director, Kim Coleman.

The Board received a report from the Taxation Section by its Vice Chair, Michael Antovski, and Treasurer, Carolee Smith.

**COMMISSIONER COMMITTEES**

**Finance**, Jennifer M. Grieco, Chairperson

**FY 2014 Financial and Investment Update**

Ms. Grieco provided the Board with a FY 2015 Financial and Investment report.

Ms. Grieco reported to the Board that an SBM Investment policy will be brought before them at an upcoming meeting for action.

**FY 2015 Budget Amendment**

Ms. Grieco presented the Board with a budget amendment to the FY 2015 budget to remove a salary line item from Professional Standards budget contract line to the appropriate salary and benefits line to reflect that a contractual position had been converted to an employee position.

A motion was offered and supported to reallocate funds. The motion was approved.

The Board received recommended changes to the following policies:

SBM Contracts Policy

Ms. Grieco presented the Board with proposed amendment to the SBM Contract Policy. A motion was offered and supported to adopt the amendments to the policy. During discussion, Ms. Buiteweg suggested a drafting clarification to the proposal that would take place before implementation and there was support for her clarification. The motion was approved.

SBM Business Credit Card Policy

Ms. Grieco presented the Board with proposed amendments to the SBM Business Credit Card Policy. A motion was offered and supported to adopt the changes. The motion was approved

SBM Expense Reimbursement Policies

Ms. Grieco presented the Board with proposed amendments to the SBM Expense Reimbursement Policies. A motion was offered and supported to adopt the changes. The motion was approved.

Audit, Jennifer M. Grieco, Chairperson

There was no report.

Professional Standards, Donald G. Rockwell, Chairperson

In. Mr. Rockwell's absence, Mr. Barnes provided the Board with the Professional Standards Committee report.

ABA House of Delegates Appointment

Mr. Barnes reported that the committee recommends the re-appointment of Mr. Ulrich to the American Bar Association House of Delegates for a term ending at the end of the annual meeting in August 2017.

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

State Appellate Defender Commission Recommendations

Mr. Barnes reported that the committee recommends that the Board approve its recommendation to Governor Rick Snyder that he reappoint John Nussbaumer to the State Appellate Defenders Commission.

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

Mr. Barnes reported that the committee recommends that the Board approve its recommendation to Governor Rick Snyder that he reappoint Judith S. Gracey to the State Appellate Defenders Commission.

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

Michigan Indian Legal Services Board of Trustees

Mr. Barnes reported that due to a resignation of a current member, there is a vacancy on the Board of Michigan Indian Legal Services Board of Trustees. The vacancy is one of the appointments of the State Bar. The committee recommends the appointment of the Honorable Angela Sherigan for the remainder of the term, which ends on September 30, 2017.

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

Client Protection Fund Claims

The Client Protection Fund Claims were removed from the consent agenda at Mr. Haroutunian's and Mr. Herrmann's request. Mr. Barnes confirmed with Mr. Haroutunian that his concern about this item dealt with a discrepancy in the amount of a claim in the materials provided.

Mr. Barnes indicated that there was a discrepancy in the amount listed on the cover sheet and what is described in the documentation of CPF Claim #3068. The cover sheet lists \$850 and the documentation lists \$2,200. It was determined that the correct amount was \$850.

A motion was offered to approve the claim as amended. The motion was approved.

Mr. Herrmann indicated that his concern dealt with a discrepancy in the amount listed on the cover sheet and what is described in the documentation of CPF Claim #2974. The cover sheet lists \$32,419 and the documentation lists \$32,416.16. It was determined that the correct amount was \$32,416.16.

A motion was offered and supported to approve the balance of the items on the client protection fund claims as amended. The motion was approved.

Mr. Herrmann expressed his concern with the reason given for payment of funds in Items 3, 11 and 13 of the CPF Claims, specifically the term "dishonest conduct" in cases where the attorney has died. Ms. Goodrum Garland indicated that the term is defined in Rule 9c of the Client Protection Fund Rules -- failure to return an unearned fee -- and it does not matter why the fee was not returned. In order for a payment to be approved a finding must be made and the failure to return a fee was the finding in each of these cases.

After a lengthy discussion, Mr. Rombach stated the rules of the Client Protection Fund Claims are State Bar rules and that the Board has the authority to amend the rules in such a way as to alleviate the concern expressed during the discussion. Mr. Rombach charged the Professional Standards Committee with the task of reviewing the CPF rules and bringing back to the Board any proposed amendments to address the concern.

**Programs and Services**, Lawrence P. Nolan, Chairperson

50 Year Honoree Resolution

Mr. Nolan reported that the Board received the 2015 Resolution honoring members for 50-Year of membership for action. A motion was offered and supported to approve the resolution. The motion was approved.

Mr. Gobbo suggested that the date the resolution was adopted by the Board be added to the resolution.

Mr. Nolan asked that the Board members complete the registration form for the Bar Leadership Forum and return to Ms. Bossenbery.

**Public Policy, Image and Identity**, Lori A. Buiteweg, Chairperson  
The Board members received a written Justice Initiatives Report.

**Court Proposals**

**Model Criminal Jury Instructions, 20.39, 20.39a, 20.39b, 20.39c, 20.39d, 20.39e, 20.39f, 20.39g, 20.39h, 20.39i, 20.39j, 20.39k**

The MCJI Committee proposes the following instructions for use where a violation of the Sex Offenders Registration Act has been charged under MCL 28.721, et seq. There are thirteen different instructions. They include registration, notification and verification offenses, as well as school safety zone and registering agent offenses, and a special venue instruction in compliance with the Act. They are all new and, consequently, they are underlined throughout.

The committee proposed that this item be tabled.

**Model Criminal Jury Instructions, 11.38, 11.38a**

The MCJI Committee proposes amendments to M Crim JI 11.38 and 11.38a to comport with statutory amendments to MCL 750.224f, which added “ammunition” as material that could not be possessed by convicted felons under certain circumstances, and added the acts of carrying, shipping, transporting and purchasing to the list of forbidden acts.

A motion was offered and supported to support with recommended amendment from CJAP. The motion was approved

**Model Criminal Jury Instructions, 11.13, 11.14, 11.15**

The MCJI Committee proposes amendments to M Crim JI 11.13 and 11.14, and elimination of M Crim JI 11.15 to conform with statutory amendments to MCL 750.231a(c) and (d). The instructions are used where there is evidence of an exemption to the prohibition against carrying concealed weapons in a vehicle under MCL 750.227(2). Deletions are shown in strike-out and additions to the instructional language are underlined. M Crim JI 11.15 was deleted because its exemption is now entirely encompassed within M Crim JI 11.14.

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

**Model Criminal Jury Instructions, 12.1a, 12.1b, 12.1c**

The MCJI Committee proposes the following instructions for use where a violation of the drug manufacturing/laboratory statute, MCL 333.7401c, is charged. There are three instructions. Since they are new, they are underlined throughout.

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

**ADM File No. 2014-02 – Proposed Amendment of Rule 6.106 of the Michigan Court Rules**

The proposed amendment of MCR 6.106(A) would clarify that a court would determine issues concerning defendant’s pretrial release, if any, at the time of defendant’s arraignment on the complaint and warrant.

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

**ADM File No. 2014-09 – Proposed Amendment of Rule 7.215 of the Michigan Court Rules**

The proposed amendments of MCR 7.215(A)-(C) were submitted by the Court of Appeals. Proposed MCR 7.215(A) would clarify the term “unpublished” as used in the rule. The proposed amendment of MCR 7.215(B) would provide more specific guidance for Court of Appeals judges regarding when an opinion should be published. Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215(C) would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal. The committee proposed the following action be taken:

No position on MCR 7.215 (A) and MCR 7.215 (B); oppose the proposed amendments to MCR 7.215 (C), and authorize Sections and Committees to transmit their positions to the Michigan Supreme Court as long as the positions are not in opposition to the official position of the State Bar.

A motion was offered and supported to support the action as described above. The motion was approved

**ADM File No. 2014-45 – Proposed Adoption of Rule 5.731a of the Michigan Court Rules**

The proposed rule would require clinical certificates to be marked and filed as confidential and would allow only persons who have been found by the court to have a legitimate interest in the confidential documents to be granted access.

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

**ADM File No. 2015-03 – Amendment of Rule 1.15 of the Michigan Rules of Professional Conduct**

The amendment of MRPC 1.15 adds “credit union” to the definition of “eligible institution” for deposit of IOLTA funds. This change reflects a recent federal statutory amendment that extends federal insurance protection to IOLTA deposits held in credit unions. PL 113-252.

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

**Legislation**

**HB 4132** (Geiss) Family law; parenting time; right to first refusal of child care for children during other parent's normal parenting time; provide for. Amends 1970 PA 91 (MCL 722.21 - 722.31) by adding sec. 7c.

This item was removed from the agenda as Keller-impermissible.

**SB 0056** (Jones) Courts; judges; salary formula for judges; modify. Amends secs. 304, 555, 821 & 8202 of 1961 PA 236 (MCL 600.304 et seq.).

A motion was offered and supported that taking action on this legislation is Keller-permissible. The motion was approved.

A motion was offered and supported to support this legislation. The motion was approved.

**SB 0094** (Schuitmaker) Law enforcement; other; certain records of probation to be provided to the Michigan commission on law enforcement standards; require. Amends sec. 7411 of 1978 PA 368 (MCL 333.7411).

This item was removed from the agenda as Keller-impermissible.

**SB 0151** (Bieda) Criminal procedure; DNA; filing deadline for petition seeking review of DNA evidence; remove sunset. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

A motion was offered and supported that this legislation is Keller-permissible. Mr. Haroutunian voted that the legislation was not Keller-permissible. The motion was approved.

A motion was offered and supported to support this legislation. The motion was approved.

**HB 4038** (Forlini) Housing; landlord and tenants; notification of evictions; allow by electronic mail. Amends sec. 5718 of 1961 PA 236 (MCL 600.5718).

A motion was offered and supported that this legislation is Keller-permissible. The motion was approved.

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

Roll Call Vote

Yes: Commissioners Anderson, Barnes, Brown, Buchanan, Burns, Dunnings, Gardella, Gobbo, Grieco, Haroutunian, Heath, Herrmann, Irons, Jane, McCarthy, McGinnis, Nolan, Olzman, Pero, Quick, Radke, Siriani, Ulrich, Williams, and Rombach

No: Commissioner Ludden

Absent: Commissioners Johnson, Riordan, Rockwell and Shovein

### **Record Expunction**

**HB 4176** (Lucido) Criminal procedure; expunction; expunction of all information in arrest record when individual is wrongly accused under certain circumstances; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 26a to ch. IV

A motion was offered and supported that this legislation is Keller permissible. The motion was approved.

A motion was offered and supported to oppose HB 4176 as written, but support the idea of expungement of criminal files of people found not guilty or have their charges dropped in appropriate cases. The motion was approved.

**HB 4177** (Lucido) Law enforcement; law enforcement information network (LEIN); promulgation of rules to effectuate expunction and destruction of all arrest record information from LEIN and other databases by C.J.I.S. under certain circumstances; require. Amends sec. 4 of 1974 PA 163 (MCL 28.214).

This item was removed from the agenda as Keller-impermissible.

**HB 4178** (Lucido) Criminal procedure; pretrial procedure; expunction and destruction of biometric data; eliminate certain exceptions. Amends sec. 3 of 1925 PA 289 (MCL 28.243).

This item was removed from the agenda as Keller-impermissible.

**SB 0100** (Brandenburg) Taxation; administration; prepayment of tax, penalty, and interest requirement as a prerequisite to filing a case regarding the assessment of tax in the Michigan court of claims; eliminate. Amends sec. 22 of 1941 PA 122 (MCL 205.22).

A motion was offered and supported that this legislation is Keller-permissible. The motion was approved.

The committee recommends that the Board take no position and to allow the sections to engage in future discussions.

**President's Report**, Thomas C. Rombach, President  
**21<sup>st</sup> Century Practice Task Force Update**

Mr. Rombach provided the Board with an update on the progress of the 21<sup>st</sup> Century Practice Task Force. The task force will meet for the first time on Monday, April 27, 2015. Three committees have been assigned tasks, co-chairs have been identified and volunteer appointments to these committees are being considered.

**State Bar of Michigan Strategic Planning Committee**

Mr. Rombach reported that although he had appointed a committee to review the current SBM Strategic Plan and appointed Ms. Buiteweg as chair, full Board review of the strategic plan will be placed on hold until the 21<sup>st</sup> Century Practice Task Force completes its work. Ms. Buiteweg will convene one meeting to review the current strategic plan to insure that there are no areas that the board needs to review this year. Ms. Buiteweg will report to the Board at a future meeting if there are any such findings.

**ABA Day**

Mr. Rombach reported to the Board that he, along with former State Bar President, Reggie Turner, SBM President Elect, Lori Buiteweg, Judge Ward Clarkston from Corunna, Robert Mossel from Ford Motor Credit, ABA Law School Division Chair, Aaron Sohaski and SBM Director of Governmental Relations and Assistant Director, Peter Cunningham, met with representatives from Congress during ABA Days in Washington. They advocated for Legal Services Corporation funding and for the reauthorization of the Juvenile Justice & Delinquency Prevention Act.

**Taxation Section Compliance with AO 2004-01**

Mr. Rombach discussed with the Board a recent violation of AO 2004-1 and State Bar bylaws by the Taxation Section. At this point, steps have been taken by the Taxation Section, with the assistance of the Governmental Relations staff to remedy the error. The section has done everything that the SBM has asked them to do to remedy this situation.

A motion was offered and supported to send a letter to the SBM Taxation Section regarding compliance with AO 2004-01. The motion was approved.

It was suggested that a reminder be sent to all sections indicating that knowledge of AO 2004-1's provisions concerning section is expected, and compliance with AO 2004-01 is required.

**Executive Director's Report**, Janet K. Welch, Executive Director  
**FY 2016 Budget Process, Roles and Calendar**

Ms. Welch reported to the Board that the budget process for the next FY budget is the same as in past and is described in their materials.

**Michigan Supreme Court Update**

Ms. Welch reported to the Board that there have been no formal communications from the Court regarding the comments that were submitted by the Board to the Supreme Court on the Report to the Court from the Supreme Court Task Force on the Role of the State Bar of Michigan.

Ms. Grieco asked Ms. Welch if she or Mr. Rombach received a copy of the letter that was sent by some of the Past Presidents to the Supreme Court regarding this issue and should it be disseminated to the Board. Ms. Welch said that she had, and that at Ms. Grieco's request she would seek authorization from the authors to convey the letter to the Board.

#### ZeekBeek Contract Amendments

At Ms. Welch's direction, Mr. Flood discussed the ZeekBeek contract amendments with the Board. A motion was offered and supported that the Board adopt the changes to the two contracts the SBM has with ZeekBeek. The motion was approved.

#### Conflict of Interest Policy

At Ms. Welch's direction, Mr. Flood discussed both the staff and the Board's Conflict of Interest policies.

A motion was offered and supported to approve both the staff and board conflict of interest policies. The motion was approved.

Ms. Pero suggested that the conflict of interest policy be reviewed again to address the concerns surrounding the disclosure and waiver issues. Mr. Rombach referred the review of the Conflict of Interest policy to the Executive Committee for further review.

#### Personnel Update

Ms. Welch asked Mr. Hildreth to introduce new employees from the Information Technology Division. Mr. Hildreth introduced Jason Buton, Developer and Tom Faes, Data Base Professional.

#### Litigation Status Report

There is no written report for this meeting as there have not been any developments since the last report.

#### **Representative Assembly (RA) Report**, Vanessa Peterson Williams, Chairperson Meeting on April 25, 2015

Ms. Williams reported that the Representative Assembly is meeting tomorrow, April 25. She indicated that the RA Executive team has been hard at work all year accomplishing the goals that we set in September and keeping the members connected. Ms. Williams reported that at the RA meeting tomorrow discussions will take place on instituting a Keller process, adding a minority report opportunity for the RA as well as formalizing the electronic vote process so that it will be in the rules. The drafting committee will also present a power point presentation on the process for submitting proposals.

#### **American Bar Association (ABA) Report**

Mr. Ulrich reported that the ABA Annual Meeting is taking place in August and that he is traveling to Newport RI in July for a Navy JAG school which is tied into the Michigan section on military veterans.

#### **Young Lawyers Section Report (YLS)**, Andrea Irons, Chairperson

Ms. Irons provided the Board with an update on the activities of the Young Lawyers Section. She reminded the commissioners of the Laser Tag Challenge taking place today and that at the 8<sup>th</sup> Annual RA summit, Justice Richard Bernstein is the featured speaker.

#### **Comments from Commissioners**

Mr. Haroutunian recognized the 100<sup>th</sup> anniversary date of the Armenian genocide of 1915 by the Ottoman Turkish Empire. He reported that his father, Lewis Haroutunian, was a survivor of that genocide.

Mr. Nolan reported to the Board that former SBM President Wally Riley stepped down from his position as President of the Michigan Supreme Court Historical Society.

**Adjournment**

The meeting was adjourned at 3:00 p.m.

President Rombach called the meeting to order at 9:15 a.m. on Friday, June 12, 2015 in the Grand Pavilion room at the Grand Hotel on Mackinac Island.

Commissioners present:

Dennis M. Barnes	Thomas E. McCarthy Jr.
Danielle M. Brown	Hon. Maureen M. McGinnis
Robert J. Buchanan	Lawrence P. Nolan, Vice President
Lori A. Buiteweg, President-Elect	Colleen A. Pero
Shauna L. Dunnings	Daniel D. Quick
Robert C. Gardella	Victoria A. Radke
Stephen J. Gobbo	Hon. Michael J. Riordan
Jennifer M. Grieco, Treasurer	Donald F. Rockwell
Edward L. Haroutunian	Thomas C. Rombach, President
James W. Heath	Hope V. Shovein
Fred K. Herrmann	Richard J. Siriani
Andrea Irons	Gregory L. Ulrich
Mark W. Jane	Vanessa Peterson Williams
C. Thomas Ludden	

Commissioners absent and excused: Commissioners Danielle Mason Anderson, Timothy J. Burns E. Christopher Johnson Jr., and Jules B. Olsman were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director  
Marge Bossenbery, Executive Coordinator  
Candace Crowley, Director, External Development  
Peter Cunningham, Director, Governmental Relations  
Cliff Flood, General Counsel  
Danon Goodrum-Garland, Director, Professional Services Division  
James Horsch, Director, Finance and Administration Division  
Robert Mathis, Pro Bono Attorney  
Anne Vrooman, Director, Research and Development

Guests

David Carl Anderson, President, Oakland County Bar Association  
Bruce Courtade, past President of State Bar of Michigan  
Anne Flood  
Terri Ticknor Gilbert, Executive Director, Oakland County Bar Association  
Chris Ianuzzi, Governmental Consulting Services, Inc.  
Lalla Shishkevish, Associate Director, Institute of Continuing Legal Education  
Victoria A. Valentine, Vice President, Oakland County Bar Association

Consent Agenda

Mr. Rombach 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 April 24, 2015 Board of Commissioners meeting.  
The Board received the minutes from the April 7 and May 5, 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 FY 2015 Financial Reports through April 2015.  
The Board received the Client Protection Fund and the Unauthorized Practice of Law Claims.  
A motion was offered and supported to approve the consent agenda. The motion was approved.

Local Bar Association and Section Presentations

The Board received a report from the Oakland County Bar Association by its President, David Carl Anderson, Vice President, Victoria A. Valentine, and Executive Director, Terri Ticknor Gilbert.

**COMMISSIONER COMMITTEES**

**Finance**, Jennifer M. Grieco, Chairperson

Ms. Grieco provided the Board with a FY 2015 Financial and Investment report.  
Ms. Grieco presented the Board a revised SBM Investment Policy recommended by the Finance Committee. A motion was offered and seconded to adopt the revised investment policy. The motion was approved.

**Audit**, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the finance staff is meeting with the auditors on July 22, 2015 to begin planning for the FY 2015 audit.

**Professional Standards**, Donald G. Rockwell, Chairperson

No report.

**Programs and Services**, Lawrence P. Nolan, Chairperson

No report.

**Public Policy, Image and Identity**, Lori A. Buiteweg, Chairperson

The Board members received a written Justice Initiatives Report.

**Legislative Update**

Mr. Cunningham provided the Board with an update on two pieces of legislation that the SBM had previously taken positions. He reported that HB 4038, which the SBM voted to oppose in April 2015 and that allowed for email notification in landlord tenant eviction proceedings, was signed by the Governor. He also reported that HB 4476, which the SBM voted to oppose in November 2014 and that prohibited judges from ordering mediation in domestic relations disputes if there was any indication of domestic violence, has been amended. The SBM worked with the sponsor on these changes and the bill now includes language that the SBM supports.

Mr. Cunningham provided the Board with an update on Legal Services Corporation funding as budget discussions begin in Congress.

Mr. Cunningham introduced Mr. Christopher Ianuzzi from Governmental Consulting Services Inc. (GCSI) and informed the Board that the SBM would continue its relationship with GCSI working with Ms. Marcia Hune and Mr. Ianuzzi due to Ms. Kuhnmuench's retirement from the firm.

### **Court Rules**

#### **ADM File No. 2013-38 – Proposed Amendment of Rule 1.5 of the Michigan Rules of Professional Conduct**

In *In Re Fryhoff*, 495 Mich 890 (2013), the Michigan Supreme Court invited the Attorney Grievance Commission, the State Bar of Michigan Family Law Section and the State Bar of Michigan Standing Committee on Professional Ethics to submit proposed language that would clarify the Michigan Rules of Professional Conduct with regard to whether it should be permissible for an attorney to charge a "results obtained" or "value added" fee in addition to the customary hourly or other fee a client pays for services. The AGC and the SBM's Committee on Professional Ethics submitted similar language that would prohibit the charging of such a fee. The SBM's Family Law Section submitted a proposal that would explicitly allow such a fee to be charged, with the understanding that the fee must still meet the "reasonable" standard for all fees described in MRPC 1.5(a) and with the agreement of the client. The committee recommended that no action be taken on this item.

#### **ADM File No. 2014-11 – Proposed Amendment of Rule 3.613 of the Michigan Court Rules**

The proposed amendments of MCR 3.613 would provide clarification that the signature of a minor is required on the consent document (not the petition) for the minor's change of name and that the minor must sign the document in the presence of the judge.

A motion was offered and seconded to oppose this amendment. The motion passed.

#### **ADM File No. 2014-49 – Amendments of Rules 3.903, 3.920, 3.961, and 3.965 of the Michigan Court Rules**

The amendments of MCR 3.203, 3.920, 3.961, and 3.965 were prompted by the Michigan Supreme Court's decision in *In re Sanders*, 495 Mich 394 (2014), to provide clarification and procedural provisions consistent with the Court's holding in that case.

A motion was offered and seconded to support these amendments. The motion passed.

### **Legislation**

**SJR J** (Bieda) Courts; judges; election of or appointment to a judicial office of person who has reached 70 years of age; remove prohibition. Amends sec. 19, art. VI of the state constitution.

The Committee recommends that no action be taken so that the Representative Assembly can review at its October 2015 meeting.

**SB 0149** (Brandenburg) Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.1 - 600.9947) by adding sec. 2912i.

A motion was offered and seconded that taking action on this legislation is Keller permissible because it would affect the functioning of the courts and potentially restrict access to the courts. The motion was approved. Mr. Haroutunian voted no.

A motion was offered and seconded to oppose this legislation. The motion passed. Ms. Radke abstained.

### **Model Jury Instructions**

#### **Model Criminal Jury Instructions, 20.39, 20.39a, 20.39b, 20.39c, 20.39d, 20.39e, 20.39f, 20.39g, 20.39h, 20.39i, 20.39j, 20.39k**

The Committee proposes the following instructions for use where a violation of the Sex Offenders Registration Act has been charged under MCL 28.721, et seq. There are thirteen different instructions. They include registration, notification and verification offenses, as well as school safety zone and registering agent offenses, and a special venue instruction in compliance with the Act. They are all new and, consequently, they are underlined throughout.

A motion was offered and seconded to support these new instructions. The motion passed.

#### **Model Criminal Jury Instructions 25.6**

The Committee proposes an instruction for use where the defendant has been charged with occupying a dwelling without consent (squatting) in violation of MCL 750.553. This instruction is entirely new.

A motion was offered and seconded to support this new instruction. The motion passed.

#### **Model Criminal Jury Instructions 11.37, 11.37a, b, and c**

The Committee proposes amending one instruction and adding three new instructions to accommodate statutory amendments to the discharging of firearms from vehicles, or at or in occupied buildings: MCL 750.234a and 750.234b.

A motion was offered and seconded to support these amendments and new instructions, as shown in Attachment A. The motion passed.

### **President's Report**, Thomas C. Rombach, President

Mr. Rombach introduced Lalla Shishkevish, Associate Director of the Institute of Continuing Legal Education, and Anne Flood.

### **6th Circuit Judicial Conference**

Mr. Rombach informed the Board that he had attended the 6<sup>th</sup> Circuit Federal conference hosted in Detroit.

### **21<sup>st</sup> Century Practice Task Force Update**

Mr. Rombach provided the Board with an update on the 21<sup>st</sup> Century Practice Task Force. He reported that the Task Force met for the first time on Monday, April 27, 2015, will next meet on November 12, 2015, and that committee groups are have also begun to meet.

### **Board Officer Election**

Mr. Rombach informed the Board that three Commissioners have submitted their names for consideration for the position of Treasurer of the SBM Board in the 2015 – 16 board year. Those Commissioners are Mr. Barnes, Mr. Buchanan and Mr. Ulrich. Mr. Rombach indicated that the election will take place at the July 24, 2015 meeting.

### **Strategic Planning Work Group**

Mr. Rombach indicated that the strategic planning work group continues to meet and will provide report back to the Board at a future meeting.

**Executive Director's Report**, Janet K. Welch, Executive Director  
**FY 2016 Preliminary Budget - Key Budget Assumptions**

Ms. Welch discussed the process in developing the preliminary budget and asked Mr. Horsch to introduce the Key Budget Assumptions. Mr. Horsch reviewed the FY 2016 Preliminary Budget - Key Budget Assumptions along with and a FY 2016 preliminary budget projection of \$10,389,366 in operating expenses, using \$775,366 from our reserve fund to achieve a balanced budget.

**Discussion regarding Retiree's Health Care and Pension funding options**

Mr. Horsch told the Board that staff is in the preliminary stages of exploring the feasibility and benefits of paying off the remaining retiree health care and pension obligation to the State of Michigan. This initiative is in the early stages of consideration and we are waiting for information from the State of Michigan. Additional information will be provided to the Finance Committee and Board as it becomes available.

**2015 SBM Awards Committee Recommendations**

A motion was offered and seconded to award the Roberts P. Hudson Award to Edward H. Pappas. The motion was approved.

A motion was offered and seconded to award the Frank J. Kelley Distinguished Public Service Award to Timothy Baughman, Adam A. Shakoor, and posthumously to James L. Shonkwiler. The motion was approved.

A motion was offered and seconded to award the Champion of Justice Awards to David W. Christensen, Stephanie Dawkins Davis, Nora M. Hudson, and Alicia J. Skillman. The motion was approved.

A motion was offered and seconded to award the Kimberly M. Cahill Bar Leadership Award to the St. Clair County Bar Association Mock Trial Program. The motion was approved.

A motion was offered and seconded to award the John W. Reed Lawyer Legacy Award to Professor Joseph Kimble. The motion was approved.

A motion was offered and seconded to award the Liberty Bell Award to Matthew R. Branding. The motion was approved.

**2015 John W. Cummiskey Award Nominee**

A motion was offered and seconded to award the 2015 John W. Cummiskey Award to Paul Scheidermantel. The motion was approved.

**2015 State Bar Election Update**

Ms. Welch reported that the deadline for members to vote in the 2015 SBM elections is midnight on June 15 and that voter participation has been consistent with past years.

**Litigation Status Report**

No report.

**Representative Assembly (RA) Report,** Vanessa Peterson Williams,

Ms. Williams reported that at its April 25 meeting the RA voted to make three changes to its permanent Rules of Procedure. They are: 1) to allow the use of electronic voting using electronic tabulation devices(used at the April meeting), and allow the potential for an electronic tally outside of a meeting; 2) allow for minority reporting so that if a vote passes by less than 75% there could be a minority report offered by a member of the RA as long as the report is requested at the time of the meeting and submitted to the clerk for review to make sure that it is consistent with the transcript reflecting the minority points that were made on the record; and 3) adopt a Keller voting procedure and its similar to the Board's procedure in terms of requiring a two thirds vote of the body that an item is Keller permissible before a vote on the merits..

Ms. Williams reported that the RA did not take any action on ADM File No. 2013-38, Proposed Amendment of Rule 1.5 of the Michigan Rules of Professional Conduct, but plans to include the item on the agenda for the October 2015 RA meeting.

Ms. Williams informed the Board that the Michael Franck Award is being awarded posthumously to Vernon K. Korterling and the Unsung Hero award to is being awarded to the Hon. Allie Greenleaf Maldonado.

**American Bar Association (ABA) Report**

No report.

**Young Lawyers Section Report (YLS),** Andrea Irons, Chairperson

Ms. Irons reported that the YLS Annual Summit was well attended, that the YLS took 2<sup>nd</sup> place in the ABA Next Step Diversity Challenge, and that the leadership of the Executive Council submitted an application to host the ABA Young Lawyers Division Fall Conference and was successful in lining up the conference, which is taking place in Detroit in October 2016. Ms. Irons also mentioned that the YLS Executive Council defeated the Board of Commissioners in the laser tag event in April.

**Comments from Commissioners**

Ms. Buiteweg reminded Board members of their responsibility to attend the BLF events and to interact with the leaders of the local affinity bars and sections of the State Bar.

Ms. Radke stated that the UMLI begins promptly at 12:30 p.m. and commented on the lack of geographic diversity of the candidates for the SBM awards. Ms. Pero and other Commissioners concurred.

**Adjournment**

The meeting was adjourned at 12:05 p.m.