

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES

President Heath called the meeting to order at approximately 9:35 a.m. on Friday, January 20, 2023, in the Boardroom at the Michael Franck building in Lansing, Michigan.

Commissioners present:

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| David C. Anderson | Gerard Mantese |
| Kristina A. Bilowus | Gerrow D. “Gerry” Mason |
| Erika L. Bryant, Treasurer | Joseph P. McGill, Vice President |
| Aaron V. Burrell | Thomas P. Murray Jr. |
| Hon. B. Chris Christenson | Valerie R. Newman |
| Thomas P. Clement | Nicholas M. Ohanesian |
| Sherrice Detzler | Hon. David A. Perkins |
| Robert A. Easterly | Daniel D. Quick, President-Elect |
| Hon. Kameshia D. Gant | John W. Reiser |
| James W. Heath, President | Hon. Kristen D. Simmons |
| Thomas H. Howlett | Delphia T. Simpson |
| Suzanne C. Larsen | Matthew B. Van Dyk |
| James W. Low | Danielle Walton |
| | Hon. Erane C. Washington |

Commissioners absent:

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| Yolanda Bennett | Tanya Cripps-Serra |
| Lisa J. Hamameh, Secretary | Takura N. Nyamfukudza |
| Colemon L. Potts | Mark Wisniewski |

State Bar staff present:

Peter Cunningham, Executive Director
April Alleman, Succession Planning Program Counsel
Drew Baker, General Counsel
Margaret Bossenbery, Executive Coordinator
Alecia Chandler, Professional Responsibility Programs Director
Gregory Conyers, Program Director, Diversity Development Program
Darin Day, Program Director, Outreach
Katherine Gardner, UPL Counsel
Tatiana Goodkin, Chief Financial Officer
Robert Mathis, Pro Bono Services & Justice Initiatives Counsel
Molly Ranns, Director, Lawyers & Judges Assistance Program
Marjory Raymer, Director of Communications
Jeanette Socia, Director of Human Resources
Melissa Thouvenin, Character & Fitness Investigator
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Director of Governmental Relations
Diane VanAken, Director of Character & Fitness
Victoria Vargas, Applicant Licensing Services Specialist
Anne Vrooman, Program Director, Research & Development
Meng Xiong, IT Director

Consent Agenda

The Board received the minutes from the November 18, 2022, Board meeting.
The Board received the minutes from the October 13, 2022, 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 2022 draft financial reports through November 30, 2022.
The Board received Unauthorized Practice of Law (UPL) claims.
The Board received Michigan Indian Legal Services (MILS) Board of Trustee appointment.
The Board received Model Criminal Jury Instructions.
The Board received section bylaw amendments from the Senior Lawyers Section.

Audit: Erika L. Bryant, Chairperson

Ms. Bryant reported that the audit committee met in early December to review the final draft of the fiscal year 2022 final report. The committee also met with the auditors. No issues were reported, and a clean audit was provided. The audit committee also reviewed the services of AHP and found no issues.

Ms. Jamie Rabe from Andrews Hooper Pavlik (AHP) was present at the meeting and provided a brief, high-level report of the audit conducted at the conclusion of FY 2022. SBM received a clean, unmodified opinion, which is the best that can be given. The administrative fund ended FY 2022 with a total net position in the administrative fund of negative \$1.96 million, which was largely made up of the operating loss of negative \$806,000 and negative \$1.2 in investment performance in retiree healthcare trust.

The Client Protection Fund saw an increase in net position for FY 2022, with a total of \$287,000, which is primarily due to a decrease in claims expenses for the year. Sections also saw an increase in net position for FY 2022 for revenue and expenses, mainly due to events and activities resuming. The sections had a positive net change position of \$93,000.

LEADERSHIP REPORTS

President and Executive Director's Report: James Heath, President and Peter Cunningham, Executive Director.

Mr. Heath reported that he has attended many events over the past few months and is looking forward to attending the ABA Mid-Year meeting in New Orleans with Mr. Cunningham in early February. A highlight of this trip is expected to be the National Council of Bar Presidents meeting where the attendees get together to share accomplishments, updates, and ideas with one another. Additionally, there will be a presentation of the ABA Spirit of Excellence Award, which celebrates the efforts and accomplishments of lawyers who work to promote more racial and ethical diversity in the legal profession. SBM Past President, Reggie Turner, will be honored with this award on February 4, 2023.

Mr. Heath announced that he has named members to the strategic planning committee. Mr. Thomas Howlett has been named chairperson of this committee. Besides Mr. Howlett, also serving on this committee will be Kristina Bilowus, Tom Clement, Lisa Hamameh, James Lowe, Joe McGill, Nick Ohanesian, Coleman Potts, Hon. Erane Washington, and immediate past-president, Dana Warnez. SBM staff member Anne Vroom will serve as the liaison.

Mr. Cunningham thanked State Bar staff, especially the finance team, for their diligence and hard work throughout the year to make the audit process so smooth.

Mr. Cunningham acknowledged Ms. VanAken who has been with the Bar for 33 years and has been the director of the character and fitness department for over 20 years. Ms. VanAken is retiring, effective February 20, 2023. Mr. Cunningham shared a timeline of Ms. VanAken's ascension to director as well as the many accomplishments and updates that she has guided the department through over the years.

Mr. Cunningham also noted that Keith Wilkinson, who has been an SBM character and fitness investigator for many years, will take over as director upon Ms. VanAken's departure next month.

Ms. VanAken introduced Ms. Thouvenin and Ms. Vargas. Ms. Thouvenin has been with the Bar since June 2018 as a character and fitness applicant licensing services specialist, and in August 2022, she was promoted to investigator for character and fitness upon the retirement of the previous investigator. Ms. Vargas was hired in October 2022 to replace Ms. Thouvenin in her former role as an applicant licensing services specialist.

Ms. Chandler introduced Ms. Alleman who was hired as the new interim administrator program director. Ms. Alleman previously worked as an estate planning attorney and brings a wealth of succession planning experience to the position.

Mr. Cunningham provided an update on the status of dues and membership. As of November 30, 2022, there were 46,844 attorneys with an active, inactive, or emeritus status. That is a net increase of 71 members since the beginning of the Bar year.

Last week, pre-suspension letters were sent to 2,150 active attorneys and 342 inactive attorneys who have not yet paid their dues. These members have until February 14, 2023, to pay their dues before being suspended for non-payment of dues. The Bar is exactly on pace with previous years with 96% of active members having already paid their Bar dues.

Mr. Cunningham provided an update on the credit card processing fees that the Board authorized at its July 2022 meeting. Last year the Bar was charged approximately \$217,000 in credit card processing fees. There is now a 2.5% surcharge for members who choose to pay their dues using a credit card. With the new credit card surcharge implemented, the Bar is estimated to have reduced the net cost of processing credit card fees to \$34,000. In addition to the use of credit cards, members are still able to pay their dues using three methods for which there is no surcharge: check, debit card, or ACH transfer.

The Economics of Law Practice Survey will be sent out on January 31, 2023. There are two primary objectives to this survey: 1) To provide timely, relevant, and accurate information, to inform and guide practical management and planning decisions by Michigan attorneys, including private and non-private practitioners; and 2) To monitor key trends within the legal professional. This survey has been conducted for over two decades. This year's survey will also include specific questions about the impact of Covid-19 on the legal profession.

Representative Assembly (RA) Report: Gerrow D. Mason, Chairperson

Mr. Mason shared that the next RA meeting is scheduled for April 29, 2023, and he reported that he has asked Mr. Ohanesian to lead a special committee to make recommendations for improvements for the RA.

Mr. Mason also asked commissioners to support the Access to Justice Fund. He would like to say that 100% of the commissioners are supporting the ATJ Fund. Mr. Mason also encouraged commissioners to share their volunteer activities with the “A Lawyer Helps” program to highlight the important contributions that attorneys make in their communities.

Young Lawyers Section (YLS) Report: Colemon L. Potts, Chairperson

Kristina Bilowus provided the report on behalf of Mr. Potts. The YLS has been busy and is continuing its mission of pay it back and pay it forward. Their last meeting was on January 7, and its next meeting is scheduled for February 18, 2023. Their work continues to plan and solidify the YLS 2023 Summit, which is expected to occur in late August. YLS also intends to solicit nominations for both the 2022 and 2023 Outstanding Lawyer Award. Ms. Bilowus encouraged commissioners to pass this information along to others.

The YLS will be launching a new outreach initiative at the February 18 meeting. They will be working with each of the law schools throughout the state. The first will be with Michigan State University College of Law and working with the Ingham County Bar’s Young Lawyers Sections, and with WLAM.

In February, YLS will be hosting a webinar that will teach about the use of add-ins and add-ons with Microsoft Word, as well as helping young lawyers accommodate hybrid work opportunities.

COMMISSIONER COMMITTEES

Public Policy: Dan D. Quick, Chairperson

Mr. Quick provided the report for the Public Policy committee.

Court Rules

1. ADM File No. 2021-50: Proposed Amendments of MCR 2.421

The proposed addition of MCR 2.421 would address notice of a bankruptcy proceeding that affects a pending state court action.

A motion was offered and supported to support ADM File No. 2021-50 with the amendments proposed by Trent Collier in his letter dated December 16, 2022. The motion was approved.

2. ADM File No. 2022-34: Proposed Amendments of Rules 3.913, 3.943, 3.977, and 3.993 and Proposed Addition of MCR 3.937

The proposed amendments of MCR 3.913 and 3.943 and proposed addition of MCR 3.937 would provide greater due process protections for juveniles in the justice system by ensuring that they are fully advised of their appellate rights at appropriate times and in a manner that is designed to ensure understanding of those rights. The proposed amendments of MCR 3.977 and 3.993 would extend the timeframe for requesting appointment of appellate counsel to 21 days, which mirrors the timeframe for filing a claim of appeal in cases subject to those rules.

A motion was offered and supported to support ADM File No. 2022-34 with an addition to proposed amendment to Rule 3.993(F) as follows:

“If a party was denied the right to appellate review or the appointment of appellate counsel due to errors by the party's prior attorney or the court, or other factors outside the party's control, the trial court must issue an order restating the time in which to file an appeal or request counsel, except that the court must not issue any order which would extend the time for appealing an order terminating parental rights beyond 63 days from entry of the order terminating rights.”

The motion was approved.

3. ADM File No. 2022-05: Proposed Amendments of MCR 3.977, 3.993, 7.311, and 7.316

The proposed amendments of MCR 3.977, 3.993, 7.311, and 7.316 would establish a procedure for assessing whether a respondent in a termination of parental rights case was denied the effective assistance of appellate counsel, and if so, provide relief.

A motion was offered and supported to support ADM File No. 2022-05 as drafted. The motion was approved.

4. ADM File No. 2022-32: Proposed Amendments of MCR 7.201, 7.202, 7.203, 7.204, 7.205, 7.206, 7.207, 7.208, 7.209, 7.210, 7.211, 7.212, 7.213, 7.215, 7.216, 7.217, and 7.219

The proposed amendments of subchapter 7.200 would make technical amendments of the ~~COA~~ rules in an effort to modernize them and ensure they reflect the COA's established practices.

A motion was offered and supported to support ADM File No. 2022-32 as drafted. The motion was approved.

Juvenile Justice Task Force Report & Recommendations

Report and Recommendations of the Michigan Task Force on Juvenile Justice Reform

A motion was offered that Recommendations 1, 2, 9, 11, 12, 13, 14, 15, 16, 18, 19, 29, 30, 31, and 32 are *Keller* permissible. The motion to support was seconded and approved.

A motion was offered to support Recommendation 3, with an additional recommendation of (a) a broader definition of the youth defense mandate and (b) establishing appellate attorney fee incentives consistent with MIDC Act and a requirement for the state to reimburse local systems for these fees, with emphasis to prioritize funding. The committee recommended that specialized juvenile justice training for all attorneys (i.e., both prosecutors and juvenile defenders) be required. The motion was seconded and approved.

A motion was offered to support Recommendations 7, 8, 10, and 17, with an additional recommendation that any statements made during an assessment must not be admitted as evidence at an adjudicative hearing. Additionally, risk assessment tools must be peer validated and free from bias. Any information, written policies, data, etc. used to develop or validate such tools must be open to public inspection, auditing, and testing. Any case party to review the calculations and data of the pretrial risk assessment. The motion was seconded and approved.

A motion was offered to support Recommendations 1, 2, 9, 11, 12, 13, 14, 15, 16, 18, 19, 29, 30, 31, and 32 as written. The motion was approved.

Finance: Erika L. Bryant, Chairperson

Tatiana Goodkin provided a report on the financial status of the Bar. The net position of the administrative fund is \$10.7 million, which is an increase of \$932,000 since the beginning of the year, which is favorable to budget. The retiree healthcare trust has seen a positive trend since last year. The Client Protection Fund also has a net position of \$2.1 million, with a \$23,000 increase since the beginning of the year. Increases in costs have been observed across the board, which will be likely discussed at the next meeting.

Drew Baker provided a report on the ADS/SBM Retiree Healthcare Trust Merger, which was initially brought to the attention of the Board of Commissioners in November 2022. Ms. Baker discussed the benefits of merging the trusts. A motion was offered to support the merger. The motion was approved.

Ms. Bryant shared that a budget amendment is necessary to increase the capital expenditure line item. Mr. Cunningham provided a description of the purpose for this amendment. The State Bar building's main sewer line out of the building, which is the original that was placed with the building, needs to be replaced. There is one bid of \$110,000, and other bids are being sought. The budget amendment requested is for \$120,000. A motion was offered to increase the capital expenditure line item. The motion was approved.

Professional Standards: Lisa J. Hamameh, Chairperson

There was no report.

Communications and Member Services (CAMS): Joseph P. McGill, Chairperson

Mr. McGill reported that the committee met on January 10, 2023. Mr. McGill reported that a new business credit card option is being considered as a SBM Partner Program. The Bar had a previous partnership with Bank of America that was discontinued in 2018. A motion was made to move forward with the program pending general counsels review and approval of a contract with the card provider. The motion was approved.

The 50 Year Celebration for this year will take place at the Inn at St. Johns on May 25, 2023. Former State Bar presidents Ed Pappas and Ron Keefe and Tom Ryan will be honored at this year's event. Mr. McGill encouraged commissioners to attend.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

On behalf of the Social Action Committee of her sorority's Detroit chapter, Ms. Bryant shared that January is Human Trafficking Awareness month. Ms. Bryant's sorority is hosting a Zoom event next Thursday, January 26, 2023. She passed around information pamphlets. The purpose of the event is to make the public aware. Survivors have been invited to share and celebrate their survival.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 11:00 a.m.