

President Fershtman called the meeting to order at 9:50 a.m. on Friday, July 27, 2012 at the State Bar of Michigan building in Lansing.

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	Donald G. Rockwell
Brian D. Einhorn, Vice President	Thomas C. Rombach, Secretary
James N. Erhart	Richard J. Siriani
Julie I. Fershtman, President	Angelique Strong Marks
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 Brandy Y. Robinson 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  
Peter Cunningham, Director, Governmental Relations  
Dawn Evans, Director, Professional Standards Division  
Cliff Flood, General Counsel  
Mary Frook, Director, Human Resources  
James Horsch, Director, Finance and Administration Division  
William Kramer, Director, Information Technology  
Rob Mathis, Pro Bono Attorney  
Anne Smith, Administrative Assistant  
Anne Vrooman, Director, Research and Development  
Geana Dulcie, Receptionist  
Gwen Fountain, Receptionist

Guests

Mary Hiniker, Institute for Continuing Legal Education

### **Consent Agenda**

The Board received the minutes from the June 8, 2012 Board of Commissioners meeting and the Executive Committee meeting that was held on May 29, 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 June 2012 and the Financial Forecast.

The Board received bylaw amendments from the Appellate Practice and Real Property Sections.

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

## **OFFICER ELECTIONS**

President Fershtman announced that, pursuant to the bylaws, President-Elect Courtade will succeed her as President of the State Bar of Michigan for 2012-13.

President Fershtman announced that, pursuant to the bylaws, Vice President Einhorn will be President-Elect of the State Bar of Michigan for 2012-13.

A motion was made and supported to elect Mr. Rombach to the position of Vice President of the State Bar of Michigan for 2012-13. Motion approved.

A motion was offered and supported to elect Ms. Buiteweg to the position of Secretary of the State Bar of Michigan for 2012-13. Motion approved.

In an election for the position of Treasurer, among candidates Mr. Nolan and Mr. Olsman, a motion was offered and supported to vote by secret ballot. Motion adopted. Ms. Johnson, Ms. Sullivan, and Judge Riordan were designated and served as tellers. Mr. Nolan was elected as Treasurer of the State Bar of Michigan for 2012-13.

A motion was offered and supported to destroy the ballots after being tabulated. Motion adopted.

## **COMMISSIONER COMMITTEES**

**Finance**, Lori A. Buiteweg, Chairperson

Ms. Buiteweg presented the Board with a FY 2012 financial and investment update.

Ms. Buiteweg reported that the Finance Committee met in July to review the budget.

Ms. Buiteweg reported that the Finance committee discussed the possible need for a policy governing hardship dues waiver and indicated that a committee of five people has been formed to review this issue. The committee hopes to bring a proposal to the Board at the September meeting.

**Professional Standards**, Thomas C. Rombach, Chairperson

**Community Outreach Program**

Mr. Rombach called the Board's attention to materials from the Community Outreach Program, which is a joint project of the Unauthorized Practice of Law Committee, the Elder Law and Disability Rights Section, and the Probate and Estate Planning Section. The materials provide details about seminars that are being held around the state dealing with the Avoiding Estate Planning Mistakes.

Mr. Rombach informed the Board that a former member of the Bar who had been referred to the Attorney General's office because he had been involved in a number of CPF claims has been charged with five felony counts.

**Programs and Services**, Brian D. Einhorn, Chairperson

**Event Summaries of 2012 BLF and UMLI**

The Board received event summaries on the 2012 Bar Leadership Forum and Upper Michigan Legal Institute.

Mr. Einhorn reported that the Committee reviewed materials on a request for recognition by the State Bar of Michigan from the Michigan Muslim Bar Association. A motion was offered and supported to recognize the bar association. Motion adopted.

Mr. Einhorn reminded the Board about their invitation to attend the SBM Legal Milestone dedication ceremony taking place on August 28 at the Capitol Building in Lansing commemorating the passage of the Elliott-Larsen Civil Rights Act.

Mr. Einhorn reported that a member benefits brochure is being developed and will be sent to all members that will include a description of all of the benefits and programs that are offered to the SBM members.

Nancy Brown provided the Board with a video demonstration of the State Bar's new Mentor Board, and the new Practice Management Resource Center Digital Library.

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

The Board received written reports from Justice Initiatives and a copy of the Indigent Defense Advisory Commission Report.

**Court Rules**

**ADM File No. 2010-32 – Proposed Amendment of Rule 3.210 of the Michigan Court Rules**

The proposed amendments of MCR 3.210 were submitted to this Court by the Michigan Judges Association after conclusion of its work and input from its Domestic Relations Committee. The proposal would govern the entry of default and default judgment in domestic relations cases and would cover and clarify related procedural issues. While this proposal adds provisions that may be found in Chapter 2 of the Michigan Court Rules, these proposed amendments of MCR 3.210 attempt to clarify procedures to be used in domestic relations cases. The proposed amendment of MCR 3.210 also would allow parties to reach agreement on issues related to property division, custody, parenting time, and support, and enter a consent judgment on those issues if the court approves it.

The committee deferred this item.

**ADM File No. 2010-34 - Proposed Amendment of Rule 6.519 of the Michigan Court Rules**

Alternative A would revise MCR 6.419 to be similar to the federal corollary of this rule (FR Crim P 29[b]). Under this language, the trial court would be entitled to reserve judgment on a motion for directed verdict. Alternative B would allow a trial court to reconsider its decision to grant a directed verdict. This language was proposed based on the United States Supreme Court decision of *Smith v Massachusetts*, 543 US 462 (2005).

A motion was offered and supported to support Alternative B of the proposed amendment. Motion adopted.

**ADM File No. 2011-03 - Proposed Amendment of Rule 9.113 of the Michigan Court Rules**

This proposed amendment would clarify that the grievance administrator is required to disclose an answer in a Request for Investigation to the complainant, but may decline to disclose supporting documents if there is good cause not to do so.

A motion was offered and supported to oppose this proposed amendment. Motion adopted.

**ADM File No. 2011-06 - Proposed Amendment of MCR 2.603**

The proposed amendment of MCR 2.603 would clarify that a court clerk could enter a default judgment if the requested damages are less than the amount claimed in the original complaint, to reflect payments that may have been made or otherwise credited.

A motion was offered to support this proposed amendment adopting the Civil Procedure and Courts Committee position. Motion adopted.

**ADM File No. 2011-08 - Proposed Amendment of Rule 2.116 of the Michigan Court Rules**

Inclusion of the revised proposed clarifying language in MCR 2.116(C)(7) would clarify the procedure for bringing a motion for summary disposition on the grounds of a forum selection clause.

A motion was offered and supported to the proposed amendment adopting the position of the Civil Procedure and Courts Committee with the removal of the ‘forum non conveniens’ recommendation. Motion adopted.

**ADM File No. 2011-10 - Proposed Amendment of Rule 7.118 of the Michigan Court Rules**

The concept for this proposal was submitted by the State Bar of Michigan Prisons & Corrections Section. The section asserts that if a prosecutor or victim files an appeal of a decision of the Michigan Parole Board to grant parole, the appellee (the prisoner) should be entitled to be represented by counsel if the prisoner is indigent. The proposed amendments would require a prisoner to request representation within 14 days of notice of the appeal, and establish other procedural steps.

A motion was offered and supported to take no position on this proposed amendment and authorize the Criminal Jurisprudence and Practice Committee and the Criminal Law Section to advocate their positions.

Position adopted by roll call vote. Commissioners voting in favor of the position: Barnes, Brake, Buchanan, Buiteweg, Courtade, Erhart, Gobbo, Grieco, Haroutunian, Johnson, Maureen McGinnis, Nolan, Perkins, Pero, Riordan, Rockwell, Sullivan, Ulrich, Warnez.

Commissioners voting in opposition of the position: Allen, Costello, Einhorn, Olsman, Rombach, Siriani, Strong Marks, Thomas, Fershtman. Commissioner Robinson was excused. (19 yea, 9 nay)

**Motion for Reconsideration**

Position adopted by roll call vote. Commissioners voting in favor of the position: Allen, Buchanan, Buiteweg, Costello, Courtade, Einhorn, Gobbo, Grieco, Maureen McGinnis, Nolan, Olsman, Pero, Rockwell, Rombach, Sirani, Strong Marks, Sullivan, Warnez. Commissioners voting in opposition of the position: Barnes, Brake, Erhart, Haroutunian, Johnson, Perkins, Riordan, Thomas, Ulrich and Fershtman. Commissioner Robinson was excused. (18 aye, 10 nay)

On reconsideration, the vote to take no position on the proposed amendment and authorize the Criminal Jurisprudence and Practice Committee and the Criminal Law Section to advocate their position was defeated.

Motion offered and supported to the support the proposed amendment to the court rule. Motion adopted.

**ADM File No. 2012-03 - Proposed Adoption of Rule 1.111 and Rule 8.127 of the Michigan Court Rules**

This proposal includes two separate proposed rules that relate to foreign language interpreters. The first proposed rule, MCR 1.111, would establish the procedure for appointment of interpreters, and establish the standards under which such appointment would occur. The proposed rule includes alternative language for subrules (B) and (F)(4).

The second proposed rule, MCR 8.127, would create a board to oversee certification of interpreters and other interpreter-related functions, and provide a procedure for imposing discipline upon interpreters who commit misconduct. The board's structure and responsibilities are similar to those of the Court Reporting and Recording Board of Review described in MCR 8.108.

A motion was offered and supported to adopt the report of Justice Initiatives on the proposal, and support Alternative B. Motion adopted.

**ADM File No. 2012-10 - Proposed Amendment of MCR 3.979**

The proposed amendment of MCR 3.979 implements the judicial action requirements of 2011 PA 225 and 2011 PA 229 by: (1) acknowledging court jurisdiction over guardianships for which the Department of Human Services will continue providing subsidies after the wards reach age 18; and (2) requiring that the supervising courts conduct annual review hearings and make appropriate findings. Adoption of the proposed amendment will enable Michigan to receive federal Title IV-E funding for the post-18 guardianship program.

A motion was offered and supported to support this proposed amendment. Motion adopted.

**Legislation**

**SB 0743** (Jones) Children; abduction; uniform child abduction prevention act; create. Creates new act.

The committee deferred this legislation.

**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 recommendation that no position be taken as this legislation is not Keller permissible.

**HB 5191** (LeBlanc) Courts; judges; magistrates; require to be licensed attorneys. Amends sec. 8507 of 1961 PA 236 (MCL 600.8507).

A motion was offered and supported to support the proposed legislation. Motion adopted.

Position adopted by roll call vote. Commissioners voting in favor of the position: Allen, Barnes, Brake, Buchanan, Buiteweg, Costello, Courtade, Cunningham, Einhorn, Erhart, Gobbo, Grieco, Haroutunian, Johnson, Maureen McGinnis, Nolan, Perkins, Pero, Riordan, Rockwell, Rombach, Siriani, Strong Marks, Thomas, Ulrich and Warnez. Commissioners voting in opposition of the position: Sullivan. Commissioner Robinson was excused.

**HB 5124** (Cotter) Courts; circuit court; concurrent jurisdiction in certain courts; establish. Amends secs. 401, 406, 407, 408, 410, 601, 841 & 8304 of 1961 PA 236 (MCL 600.401 et seq.) & repeals sec. 411 of 1961 PA 236 (MCL 600.411).

The committee deferred this legislation.

**HB 5413** (Jackson) Criminal procedure; evidence; certain requirements for retention of evidence; establish. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 23 to ch. XVI.

The committee deferred this legislation.

**HB 5600** (Haveman) Juveniles; criminal procedure; set-aside convictions for juvenile adjudications; clarify eligibility. Amends sec. 18e, ch. XIIA of 1939 PA 288 (MCL 712A.18e).

The committee deferred this legislation.

**LEADERSHIP REPORTS**

**President's Report**, Julie I. Fershtman, President

Diversity and Inclusion Advisory Committee

Ms. Fershtman provided the Board with an update on the work of the Diversity and Inclusion Advisory Committee Caregiver Work Group Report.

Ms. Fershtman informed the Board that the Practice Management Resources Advisory Committee Report and Recommendations is expected soon.

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

Ms. Welch and Mr. Horsch presented the Proposed FY 2013 State Bar Budget to the Board. A motion was offered and supported to adopt the FY 2013 budget. Motion adopted.

SBM Standing and Special Committee 2012-2013 Resolution and Matrix

Ms. Welch presented the Board with the 2012-2013 Resolution and Matrix for the SBM Standing and Special Committees. Ms. Welch informed the Board that there is an error in the description of the Judicial Ethics Committee and that the Michigan Rules of Professional Conduct needs to be included the language of the resolution. A motion was offered and supported to approve the Resolution and Matrix as amended. Motion adopted with Ms. Costello abstaining.

Commissioner Committee and Liaison Appointment Process

Ms. Welch indicated that the commissioner committee liaison role is under review and that appointments to the committees are on hold and that more discussion on this issue will be forthcoming.

Solutions on Self Help Task Force Update

Ms. Welch provided the Board with an update on the Solutions on Self Help Task Force. Ms. Welch asked Ms. Evans to discuss the ethical issues surrounding limited representation or unbundling legal services. Ms. Welch informed the Board that the Michigan State Bar Foundation Board approved a resolution to develop an unbundled legal services pilot project in conjunction with the State Bar and the SOS Task Force. She asked the Board to consider doing the same.

A motion was offered that the State Bar of Michigan Board of Commissioners support developing, in conjunction with the Michigan State Bar Foundation and the SOS Task Force, an unbundled legal services pilot project. Motion adopted.

2012 Election Update

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

New Proposed Section – Agricultural Law

The Board was provided with materials to approve the creation of a new section called the Agricultural Law Section. A motion was offered and supported to approve the new section. Motion adopted.

Personnel Matters

Ms. Welch introduced Mr. Cunningham, Director of Governmental Relations.

Mr. Horsch introduced Ms. Fountain and Ms. Dulcie from the Administration Division.

Litigation Status Report

The Board was provided with a litigation status report.

Public Statement Policy and the Guidelines for Social Media

As a follow up to an issue raised by Mr. Ulrich at the June Board meeting, Ms. Welch informed the Board that she and Mr. Ulrich had discussed the interplay between the newly adopted policy on public statements and the Bar's guidelines for sections using social media. Ms. Welch informed the Board that the guideline language is being changed to remove any confusion and or concern that it is inconsistent with the new public statement policy.

Ms. Welch informed the Board that the public statement policy has not been, and cannot be, incorporated into the SBM bylaws as recommended by the Task Force, without further steps being taken, consistent with requirements for bylaw amendments.

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

Mr. Gobbo reported to the Board that petitions for the R.A. Clerk position were received from Dan Quick, Alissa Schwartz, Vanessa Williams, and Fred Hermann. The election takes place at the September 20 meeting of the R.A.

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

In Ms. Robinson's absence, Ms. Johnson provided the Board with a report of the activities of the YLS.

Comments from Commissioners

Ms. Fershtman recognized Ms. Warnez as the new President of the Macomb County Bar Association. She also informed the Board that Ms. Crowley will receive that Michigan State Bar Foundation Access to Justice Award and that Ms. McGinnis is recently engaged.

Ms. Fershtman reminded the Board that they should complete the SBM Annual Meeting registration form and send to Ms. Bossenbery as soon as possible.

Mr. Nolan expressed his appreciation to the Board on his election as Treasurer.

Executive Session

The Board went into Executive Session at 3:00 p.m. The Board returned to open session at 4:00 p.m.

Adjournment

The meeting was adjourned at 4:01 p.m.