

Amended

The meeting was called to order by President Brinkmeyer at 9:30 a.m. on Friday, November 21, 2003, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

Scott S. Brinkmeyer, President	Craig H. Lubben
Lori A. Buiteweg	Richard D. McLellan
Kimberly M. Cahill, Secretary	Stephen J. Murphy, III
Thomas W. Cranmer, Vice President	Hon. William B. Murphy
Kathryn M. Day	Lambro Niforos
Nancy J. Diehl, President-elect	Edward H. Pappas
Kim Warren Eddie	D. Andrew Portinga
James N. Erhart	Kurt E. Schnelz
Elias J. Escobedo, Jr.	Hon. Cynthia D. Stephens
Michael S. Hohausser	Angelique Strong Marks
Elizabeth A. Jamieson	Charles R. Toy
W. Anthony Jenkins	Gregory L. Ulrich
Allyn D. Kantor	Debra A. Walling
Ronald D. Keefe, Treasurer	Rodger D. Young
Daniel M. Levy, Assembly Chair	

Commissioners Julie I. Fershtman and Randolph P. Piper were absent and excused.

State Bar Staff Present:

John T. Berry – Executive Director
Lisa Allen-Kost – Director, Programs & Services
Thomas K. Byerley – Director, Professional Standards
Gregory Conyers – Program Administrator
Janie L. Cripe – Administrative Assistant, Executive Office
Candace A. Crowley – Access to Justice Manager
James C. Horsch – Director, Administration and Finance
Elizabeth K. Lyon – Legal Secretary
Caryl Markzon – Events Planner
Glenna D. Peters – Executive Coordinator
Amy Pierce – Member Services Representative
Chad E. Sluss – Member Services Manager
Lesa Smith – Program Administrator
Janet K. Welch – General Counsel

Present for such portions of the meeting as pertained to a specific agenda item were Lynn Chard, Executive Director, ICLE; Max Hoffman, Annual Meeting Committee Chair; and Linda Rexer, Executive Director, Michigan State Bar Foundation.

President Brinkmeyer welcomed new commissioners Richard D. McLellan, former commissioner from Dykema Gosset in Lansing, and Rodger D. Young of Young & Susser in Southfield. All other new commissioners were welcomed in September.

A moment of silence was observed in memory of Jan Schnelz.

President Brinkmeyer asked that any commissioner who had not signed an oath of office please do so and return to Glenna Peters by the end of the day.

The April Board meeting originally scheduled for April 16th has been moved to April 23rd. President Brinkmeyer also noted that the dates for the Annual meeting are now September 30th and October 1st, 2004. A revised list of dates for upcoming Board meetings is attached to these minutes.

CONSENT AGENDA

A motion was made and seconded to approve the Consent Agenda. Motion carried.

Minutes

The Board approved the minutes of the July 25, September 11 and 12, 2003 Board meetings.

The Board accepted the minutes of the following Executive Committee meetings:

October 13, 2003
November 10, 2003

President's Report – Scott S. Brinkmeyer, President

The Board received the President's report.

Executive Director's Report – John T. Berry, Executive Director

The Board received the Executive Director's report and the UPL litigation report.

Bylaw Article VIII Amendment – Janet Welch, General Counsel

The Board approved the adoption of this amendment.

Professional Standards Committee – Kimberly M. Cahill, Chairperson

The Board approved Character and Fitness Committee appointments to Districts A, B, D, E, G and I.

LEADERSHIP REPORTS

President's Report – Scott S. Brinkmeyer

Mr. Brinkmeyer reported that the trip to the Upper Peninsula was productive and enjoyable, and thanked Ron Keefe for acting as local guide. He reported that as he traveled throughout the state he has not seen strong resistance regarding the dues increase or complaints about the dues statement, though there is some consternation regarding senior dues. He is hopeful that the Michigan Supreme Court will consider an adjustment for senior lawyers to include some type of emeritus status. He noted that a majority of states offer some reduction for senior dues, if not a complete exemption. He reported that approximately 700 resignations have been received, with the majority being from senior lawyers who want to remain connected to the Bar.

Representative Assembly Chairperson's Report – Daniel M. Levy

Mr. Levy reported on the special meeting that was held on November 14th to address Administrative Order 2002-29 regarding the Proposed Standards for Attorney Sanctions and the Proposed Michigan Rules for Professional Conduct. Over twenty positions were taken by the Assembly and a formal report will be issued, along with a brief description of what the debate was about on each of the positions. It will be mailed to Assembly and Board members and will also be posted on the website. Mr. Brinkmeyer acknowledged the efforts of the Assembly leadership and congratulated them on a job well done.

The next regular meeting of the Assembly is scheduled for January 10th.

Executive Director's Report – John T. Berry

Mr. Berry thanked Assembly leaders Dan Levy, Elizabeth Jamieson and Lori Buiteweg, along with staff members Tom Byerley and Glenna Peters for their hard work associated with the success of the Assembly meeting.

Mr. Berry reported that there is good news to report on the strategic plan and noted that the Programs and Services Committee would be providing information regarding Michigan Online, a joint research venture between the Bar and ICLE. He recognized Lynn Chard and thanked her for her efforts and cooperation.

Mr. Berry also reported that he and Janet Welch had a met with a group of federal judges regarding dues and membership status.

Mr. Berry reported that he and President Brinkmeyer have been working with law schools that have shown interest in Cooley's professionalism efforts and as Chair of ABA's Professionalism Committee this year, he will be working to help further those efforts nationwide.

Tier II Update

Janet Welch provided a summary of this issue and reported that resolution is anticipated in the near future. Discussions will take place with the Executive Committee and by the next Board meeting a detailed explanation should be provided that details the resolution of this issue.

RA Voting Bylaw Change Notification

RA Chairperson Dan Levy explained that at its September meeting, the Assembly voted to amend Article IV Section 4 of the Bylaws that would now allow for voting for only one individual on a ballot where multiple vacancies exist in a circuit. Previous language required voting for at least half the number of seats that were vacant.

Staff Introductions

Glenna Peters introduced Janie Cripe, new Administrative Assistant in the Executive Office. Ms. Peters and Mr. Berry welcomed her to the Bar.

Lisa Allen-Kost welcomed Amy Pierce, (previously receptionist) to the Programs and Services Division replacing Judy Clark as Membership Services Representative.

Board Orientation

Mr. Berry led a discussion regarding the content and timing of board orientation and asked for input from commissioners. President Brinkmeyer encouraged commissioners to e-mail John with their thoughts. Based on a show of hands, scheduling an orientation in conjunction with a Board meeting was preferred.

Young Lawyers Section Report – D. Andrew Portinga, Chairperson

Mr. Portinga reported that Young Lawyers Section had their annual retreat in Lansing on November 1st to map out the upcoming year. Activities include seminars, a moot court competition, an annual holiday dinner for the homeless with locations in Highland Park and Pontiac and an annual Supreme Court swearing-in trip.

COMMITTEES, COMMISSIONS & TASK FORCES

Finance and Human Resources – Ronald D. Keefe, Chairperson

Mr. Keefe reported that the Finance Committee approved an investment policy after working on it for almost a year but since it was just approved they will prepare it in final form for consideration at the January Board meeting.

Mr. Keefe also reported that the committee approved a debt reduction recommendation that would save approximately \$26,000 annually in interest. Following discussion, a motion was made and seconded to approve the recommendation as presented. Motion carried.

Mr. Keefe stated that a clean audit report was received for FY 2003. The annual report and management letter was distributed to the Board, and Jim Horsch presented a brief powerpoint presentation. Mr. Horsch indicated that because of inflation, even if no more strategic plan spending occurred, another dues increase would be needed as soon as 2 years, and not later than 4 years to maintain a reasonable fund balance.

Mr. Keefe noted that there was discussion in their committee meeting regarding inactive/retired members of the Bar who have objected to at least portions of the dues increase. Mr. Brinkmeyer stated that in addition to discussing it further in Executive Committee meetings, he hopes to include it on the agenda at the luncheon with the Supreme Court in December. Following discussion, Mr. Brinkmeyer introduced Lori Buiteweg as the newly-elected Clerk of the Representative Assembly.

Professional Standards – Kimberly M. Cahill, Chairperson

Ms. Cahill led a discussion regarding the proposed changes to the Client Protection Fund Rules included in the Board packet, noting that most of the changes would bring us in line with the new ABA rules. Based on the fact that there is now a separate assessment for the fund, it is recommended that the limit per claimant be increased from \$25,000 to \$50,000 with an aggregate of \$200,000 per attorney. The recommended changes would be effective after January 1, 2004. Ms. Cahill reported that the committee approved another \$100,000 in claims in their meeting this morning.

Following discussion a motion was made and seconded to approve the rules as amended and presented. Motion carried.

Programs and Services – Thomas W. Cranmer, Chairperson

Mr. Cranmer provided historical information on the Annual meeting and noted that due to the revised format and hard work of the staff, we came in under the \$60,000.00 that was budgeted for this past annual meeting.

Mr. Cranmer recognized Max Hoffman, Annual Meeting Committee Chair, who provided a brief oral report on the Annual meeting and thanked staff and leadership for their efforts in making it successful. The meeting will remain a one and a half day format next year to be held on September 30-October 1, 2004. Mr. Brinkmeyer and Mr. Berry thanked Mr. Hoffman for his leadership.

A motion was made and seconded to approve an amendment to Article VII, Section 4 that would allow inactive members, who as of this year must pay annual dues, to become members of sections. Following discussion, a friendly amendment was accepted, as follows:

Membership in each Section shall be voluntary and limited to active and inactive members of the State Bar of Michigan.

Motion carried.

A motion was made and seconded to add the following new Section to Article VII:

Section 7 – Section Activity During the Annual Meeting of the State Bar

A section may not hold its annual meeting or other meetings, programs, or activities of the section during the Annual Meeting of the State Bar, unless the section's annual meeting or other activities are held in conjunction with the Annual Meeting of the State Bar.

Motion carried.

Candace Crowley provided an Access to Justice year-end campaign report and noted that approximately \$100,000 was raised from the fundraising dinner held on October 16th honoring Reginald Turner. The year-to-date total is nearly \$1 million dollars, due in large part to a significant grant from the Kellogg Foundation and the cumulative total has surpassed \$4 million dollars.

Mr. Cranmer reported on the creation of the Justice Initiatives Committee, a new commissioner committee, and the standing committee that is co-chaired by commissioners Richard McLellan and Hon. Cynthia Stephens. Mr. Brinkmeyer thanked them for serving.

Mr. Cranmer reported that the new Bar card has been well-received.

Mr. Cranmer deferred to Lynn Chard who provided a report on Michigan Law Online, a joint research service that would be offered as a new benefit to members at no cost to them. The Bar would pay a licensing fee of \$250,000 over a three-year period (\$150,000 the first year, and \$50,000 the second and third years). Mr. Cranmer noted that this is included in this year's budget, would essentially replace Loislaw, and would especially be an excellent tool for smaller firms and solo practitioners. Mr. Berry added his encouragement. The service would go live on April 1st.

A motion was made that the Board of Commissioners support the establishment of a legal research partnership agreement between the State Bar of Michigan and the Institute of Continuing Legal Education for the provision of online legal research available to all State Bar members at a cost to the State Bar not to exceed \$250,000, and asks that the Board authorize the staff to finalize the details of the service with input from the Member Services Committee and the Program Services Commissioner Committee, subject to final approval by the Executive Committee. Following discussion, the motion was approved.

Public Policy, Image and Identity – Nancy J. Diehl, Chairperson

Janet Welch provided an update on Appellate Delay Reduction and reported that the Order issued by the Court on the subject did not adopt the proposals concerning the briefing times opposed by the State Bar, and that the Court of Appeals was directed to develop a “just in time” briefing plan for civil cases in cooperation with the State Bar. The deadline for the development of the plan is February 1, 2004. President Brinkmeyer added that we were asked to make recommendations for membership on the committee that will develop the plan.

Michigan Court Rules

Proposed Amendment of Rules 3.977 & 7.204 – Appointment of Counsel and Parental Termination Deadline Issues

Oppose in Principle

Proposed Amendment of Rule 404 of Michigan Rules of Evidence– Domestic Violence
Support in Principle Option A

Legislation

HB 4208 –Juveniles; other; procedure in family division of circuit court for truant juveniles; revise and give court jurisdiction of over parents and guardians of truants.

Oppose in Principle

HB 4260 – Crimes; embezzlement; definition of “persons in a relationship of trust with a vulnerable adult”

Active Support

HB 4661 – Courts; district court; district court magistrates who are attorneys; allow to accept guilty or nolo contendere pleas for certain offenses.

Support in Principle

HB 4706 – Records, medical; medical records access act; create; **HB 4755** – Health; medical records; sanctions for violation of medical records access act;

No position taken; authorize committees to advocate their positions

SB 232 – Criminal procedure; evidence; prior acts of domestic violence; allow to be admissible as evidence; **SB 233** – Crime victims; statements; hearsay rule; exempt certain statements of domestic violence victims

Oppose in Principle

(Consistent with prior position that items such as these should be dealt with in the Court Rules, not by legislation)

A motion was made and seconded to go into Executive Session. Motion carried.

A motion was made and seconded to approve the recommendation of the Executive Committee to approve the compensation of Executive Director John Berry for the forthcoming year. Motion carried. Mr. Brinkmeyer announced that he and President-elect Diehl would discuss this with Mr. Berry and he would appoint someone to submit a proposed contract addendum to him.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Mr. Brinkmeyer asked for comments or questions from the Commissioners.

Commissioner McLellan talked about the Michigan Law Revision Commission, which he has chaired for many years. The commission is appointed by the legislature and their statutory duty is to look for anachronisms and defects in the law, including proposed uniform state laws and other reforms in the law. They have no paid staff and have historically used law professors and students to do research and take on projects but it is getting more difficult to find adequate help. He asked that if any commissioners could help personally or motivate lawyers to help it would be appreciated.

Commissioner Diehl noted, for those interested in attending, that former State Bar President Al Butzbaugh would be sworn in as Circuit Court Judge in Berrien County on December 16th.

Comments or questions from the public

Mr. Brinkmeyer asked for comments or questions from the public, but there were none.

Old Business

There was none.

New Business

There was none.

The meeting was adjourned at 12:10 p.m.