

President W. Anthony Jenkins called the meeting to order at 9:40 a.m. on Friday, June 10, 2011, at the Grand Hotel on Mackinac Island, MI.

Commissioners present:

Danielle Mason Anderson
David R. Brake
Robert J. Buchanan
Lori A. Buteweg
Bruce A. Courtade, Vice President
Margaret A. Costello
Richard L. Cunningham
Brian D. Finhorn, Secretary
James N. Erhart
Elias J. Escobedo, Jr.
Julie I. Fershtman, President Elect
Stephen J. Gobbo
Edward L. Haroutunian
W. Anthony Jenkins, President

David A. Kallman
Donald E. McGinnis, Jr.
Maureen M. McGinnis
Lawrence P. Nolan
Jules B. Olsman
David A. Perkins
Victoria A. Radke
Michael J. Riordan
Brandy Y. Robinson
Donald G. Rockwell
Thomas C. Rombach, Treasurer
Laurin' C Roberts Thomas
Julie A. Sullivan
Dana M. Warnez

Commissioners absent and excused:

Commissioners Dennis M. Barnes, Lambro Niforos, Richard J. Siriani and Angelique Strong Marks were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Diversity Director
Candace Crowley, External Development Director
Dawn Evans, Director, Professional Standards
James Horsch, Director, Finance and Administration
Elizabeth Lyon, Governmental Relations Director
Naseem Stecker, Manager, Media and Communications Division
Anne Vrooman, Research and Development Director

Guests

Elizabeth M. Johnson, Former Chair of the Representative Assembly
Nell Kuhnmuensch Director, Governmental Consultants
Paul Sweeney, President Elect, Ontario Bar Association

Consent Agenda

Minutes

The Board received the minutes from the April 8, 2011 Board of Commissioners meetings and the minutes from the May 10, 2011 Executive Committee meeting.

President's Report, W. Anthony Jenkins, President

The Board received a written report on the President's recent activities.

Executive Director's Report, Janet K. Welch, Executive Director

The Board received a written report on the Executive Director's recent activities.

Professional Standards, Brian D. Einhorn, Chairperson

The Board received the Client Protection Fund Claims and the UPL Complaints Proposed for Litigation.

Finance, Thomas C. Rombach, Chairperson

The Board received the Financial Reports through April 2011, the FY2011 Financial Forecast, the SBM Retirement Plans Annual report and the SBM Retirement Health Care Trust Investment Policy and Asset Allocation.

The Board received a request from the Prisons and Corrections Section for approval of a dues increase.

A motion was offered, supported and adopted to adopt the consent agenda.

Commissioner Committee Reports

Finance, Thomas C. Rombach, Chairperson

Mr. Rombach provided the Board with a financial and investment update.

Mr. Rombach provided the Board with an update on the process being used to obtain bids to separate the water and sewer lines in the Michael Franck Building to avoid future flooding in the basement

Professional Standards, Brian D. Einhorn, Chairperson

There was no report.

Programs and Services, Bruce A. Courtade, Chairperson

There was no report.

Public Policy, Image and Identity, Julie I. Fershtman, Chairperson

The Board was provided with a written report from Governmental Consultant Services, Inc. and a written report from the Justice Initiatives co chairs.

Court proposal

2002-24 – Amendment of Rule 7.3(c)(2) of the Michigan Rules of Professional Conduct

The committee supports sending a letter to the Michigan Supreme Court requesting the reconsideration of the amendment to Rule 7.3(c)(2). Reasons to be articulated will be developed with Negligence Law Section, the Civil Procedure and Courts Committee and the Professional Ethics Committee if they are able to meet in a timely fashion. The letter will also respectfully renew the State Bar's concerns to the amendment of 7.3 in its entirety. Friendly amendment offered and accepted to include the comments previously submitted by the Family Law Section when drafting the letter. Motion was offered, supported and adopted to send a letter to the Supreme Court.

Michigan Court Rules

2011-04 - Proposed Amendments of Rule 3.911 and Rule 3.915 of the Michigan Court Rules

Motion was offered, supported and adopted to adopt the position of the committee to support these amendments.

2011-05 - Proposed Amendments of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 1.13, 1.14, 1.15, 1.16, 1.17, 3.2, 4.1, 4.3, 5.2, and 8.4 of the Michigan Rules of Professional Conduct

Authorize the Professional Ethics Committee to communicate its position to the Supreme Court.

It was moved, supported and adopted to 1) adopt the position of the Professional Ethics Committee as the position of the Board, and 2) to indicate in the letter to the Court that while the Board does not necessarily oppose the elevation of specific commentary caution to the status of a full-fledged rule prohibition, it believes that the package published for comment introduces problematic ambiguities and inconsistencies into the Michigan Rules of Professional Conduct rather than clarifying it. In addition, the position of the State Bar on desirable changes to the Model Rules of Professional Conduct, including changes to rules within the package proposed for comment under ADM 2011-05, continues to be the cumulative positions adopted by the Representative Assembly of the State Bar of Michigan on November 2003, May 2005, and March 2010

Public Policy, Image and Identity Committee Consent Agenda

Fleeing and Eluding

SB 0387 (Gleason) Crimes, fleeing and eluding; penalties for crime of fleeing and eluding a law enforcement officer; provide mandatory minimum sentence. Amends sec. 479a of 1931 PA 328 (MCL 750.479a).

SB 0388 (Nofs) Criminal procedure; sentencing guidelines; sentencing guidelines for crime of fleeing and eluding a peace officer; revise to reflect increased penalties. Amends sec. 16x, ch. XVII of 1927 PA 175 (MCL 777.16x). Committee voted unanimously to oppose these bills

The following three bills were deferred until July:

IIB 4327 (Brunner) Civil procedure; evidence; testimony of a vulnerable adult; allow to be presented by videotape or closed-circuit television under certain circumstances.

HB 4392 (Segal) Crimes; other; court to defer prosecution of person less than 18 years convicted of cyberbullying; allow under certain circumstances. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 4b to ch. IX.

IIB 4472 (Pescholka) Corrections; parole; appointment of legal counsel for prisoner based upon appeal of parole by victim or prosecutor; prohibit under certain circumstances. Amends sec. 34 of 1953 PA 232 (MCL 791.234).

SB 0361 (Bieda) Criminal procedure; DNA; deadline for filing petition for DNA testing of felony conviction cases; revise. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

Committee voted unanimously to support this bill.

Motion offered, supported and adopted to approve the PPIAC consent agenda

Leadership Reports

President's Report, W. Anthony Jenkins, President

Introduction of Guests

Mr. Jenkins introduced Mr. Paul Sweney, President Elect of the Ontario Bar Association, who extended greetings to the Board from the members of the Ontario Bar Association.

Mr. Jenkins recognized Ms. Elizabeth Johnson, former Chair of the Representative Assembly.

Mr. Jenkins acknowledged Mr. Michael Riordan as the newly sworn in President of the Federal Bar Association for the Eastern District.

Strategic Planning

At the request of Mr. Jenkins, Ms. Vrooman provided the Board with an update on the status of the SBM's strategic planning committee. The committee met in May and its second meeting is scheduled for the end of June.

SBM Advisory Group on Public Statements

Mr. Jenkins provided the Board with an update on the SBM Advisory Group on Public Statements. The Board was provided with a memo that contained the committee's recommendations. A motion was offered and supported to adopt the internal policy recommendations of the committee. Motion carried.

Board Officer Election Update

Mr. Jenkins reported that the election of officers would take place at the July 22 Board meeting and that letters of interest for the office of Treasurer for 2011 – 2012 were received from Commissioners Butweg, Costello and Nolan. Mr. Jenkins indicated that Mr. Nolan wanted to address the Board and Mr. Nolan informed the Board that after careful consideration that he would be withdrawing his name for the Treasurer position.

Presidential Diversity and Inclusion Advisory Group

At the request of Mr. Jenkins, Mr. Conyers provided the Board with an update concerning the status of members who have signed the SBM's diversity pledge. The Board was provided with a pamphlet that contains more information about the diversity pledge signatories.

Executive Director's Report, Janet K. Welch, Executive Director

FY2012 Budget Process, Roles and Calendar

At the request of Ms. Welch, Mr. Horsch provided the Board with an update on the FY 2012 Budget process. Mr. Horsch reported that the final approval of the budget will take place at the September 7, 2011 Board meeting. The Finance Committee is meeting with Ms. Welch and the Senior Management Team on August 11 to review the budget.

Creation of the John W. Reed Michigan Lawyer Legacy Award

The SBM Awards committee recommends the creation of a new award, the John W. Reed Lawyer Legacy Award. A motion was offered and supported to approve the creation of this award. Motion carried.

Motion offered and supported to approve the Awards Committee's recommendation for the recipient of this award. Motion carried.

2011 SBM Award Committee recommendations

Motion offered and supported to approve the 2011 SBM Award Committee recommendations. Motion carried.

2011 John W. Cumiskey Award Nominee

Motion offered and supported to approve the 2011 SBM John W. Cumiskey nominee. Motion carried.

Election Update

At the request of Ms. Welch, Ms. Bossenbery provided the Board with an update on the progress of the 2011 SBM elections.

Litigation Report

There is no report for this meeting as there is currently no pending litigation.

Representative Assembly Report, Victoria Radke, Chairperson

2011 Representative Assembly (RA) Awards

Ms. Radke informed the Board that Professor Clarke Johnson has been nominated to receive the Michael Frank Award and that Karen Gullberg Cooke and Myra Lorenzana-Miles were nominated to receive the Unsung Hero Award. These nominations were approved at the April 9 RA meeting.

Nomination for the 2011 – 12 RA Clerk

Ms. Radke informed the Board that the deadline for submission of names for the 2011 – 12 RA clerk position is Friday, July 22, 2011.

Agenda for September 15 RA meeting

Ms. Radke informed the Board that she will discuss the agenda for the September 15 Representative Assembly meeting at the July meeting and mentioned that submission of issues, resolutions, proposals and/or reports for the September meeting must be submitted no later than Thursday, August 4, 2011.

American Bar Association (ABA) Report, Reginald Turner, State Delegate

Mr. Jenkins informed the Board that the ABA Annual Meeting will take place in Toronto in August and indicated that if there were any questions about the tentative agenda or reports that Mr. Turner would be the person to contact.

Young Lawyers Section Report, Maureen M. McGinnis, Chairperson

Ms. McGinnis provided the Board with a report on the Young Lawyers Section activities.

Comments or questions from Commissioners

Ms. Buiteweg recognized Martha Burkett and the IJAP program for the terrific production at the Evening of Enlightenment.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 11:35 a.m.