

**State Bar of Michigan
Representative Assembly
April 21, 2018**

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Saturday, April 21, 2018 at the Lansing Community College West Campus in Lansing, Michigan.

1. Call to order by Chairperson Joseph P. McGill.
2. Clerk Aaron V. Burrell 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 28, 2017 meeting was deemed approved.
5. Michael C. Brown, Chair of the Nominating and Awards Committee, addressed the Assembly on filling vacancies for the current meeting. Upon a motion made and seconded, Amber D. Peters (2nd Circuit), Christina B. Hines (3rd Circuit), Sean M. Myers (3rd Circuit), Karen R. Geibel (6th Circuit), Colleen H. Burke (6th Circuit), Brian D. O'Keefe (6th Circuit), Margaret A. Scott (6th Circuit), Louis A. Stefanic (6th Circuit), Chadd A. O'Brien (7th Circuit), Jennifer A. Van Benschoten Jones (10th Circuit), James L. Rossiter (13th Circuit), Michael D. Adams (17th Circuit), Patrick M. Jaicomo (17th Circuit), Elizabeth J. Fossel (17th Circuit), Christopher M. Wirth (20th Circuit), Mark W. Jane (22nd Circuit), Patrick C. Greeley (25th Circuit), Cassandra R. Green (29th Circuit), Nicole A. Evans (30th Circuit), Kevin G. Klevorn (33rd Circuit), Anne M. McCarthy (38th Circuit), John L. Barnes (45th Circuit), Avery D. Rose (48th Circuit), David E. Bulson (50th Circuit), and Kristen L. Krol (56th Circuit) were appointed to fill immediate vacancies within their respective Circuits.
6. Michael C. Brown, Chair of the Nominating & Awards Committee, addressed the Assembly concerning the 2018 Award Nominations. Upon a motion made and seconded, the Assembly unanimously approved the 2018 Award Recipients. The Unsung Hero Award will be presented to Michele P. Fuller. The Michael Franck Award will be presented to Judge Victoria A. Roberts.
7. Chairperson Joseph P. McGill addressed the Assembly.
8. Thomas H. Howlett, member of the Payee Notification Workgroup, addressed the Assembly for consideration of a proposal advocate for state legislation that would implement payee notification when a claim is paid with insurance funds. Upon a motion made and supported, after discussion, the proposal passed with an amendment to proposed state legislation to enact payee notification when a claim is paid with insurance funds, including self-insured municipalities and other insurers.

9. Robert F. Gillett, Chair of the Consistent Fee Waiver Workgroup, addressed the Assembly for consideration of proposed amendments to Rule 2.002 of the Michigan Court Rules that will allow indigent persons lacking the ability to pay filing fees to have those fees waived through a process that is expeditious, humane, efficient in terms of litigant and court system administrative time, and consistent in all Michigan courts and to provide for a statewide uniform standard for Michigan courts to determine indigency. Upon a motion made and supported, after discussion, the proposal passed with an amendment.
10. Daniel D. Quick, Chair of the Civil Discovery Court Rule Review Special Committee, addressed the Assembly for consideration of proposed changes to the Michigan civil discovery rules to improve the civil discovery process by making it more cost effective; increasing access to courts; better enabling active, informed, and efficient judicial case management; and encouraging parties and lawyers to cooperate and act reasonably during the discovery process. Upon a motion made and supported, after discussion, the proposal passed with amendments.
11. Adjournment

President Rockwell called the meeting to order at 9:50 a.m. on January 26, 2018 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, Vice-President
Aaron V. Burrell
Joseph J. Baumann
Robert J. Buchanan, Secretary
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Shauna L. Dunnings
Andrew F. Fink III
Robert C. Gardella
Jennifer M. Grieco, President Elect
Edward L. Haroutunian
Krista L. Haroutunian
Michael S. Hohaus

Kara R. Hart-Negrich
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. Maureen M. McGinnis
Shenique A. Moss
Jules B. Olsman
Hon. David A. Perkins
Daniel D. Quick
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, President
Brian D. Shekell
Gregory L. Ulrich
Dana M. Warnez, Treasurer
Erane C. Washington

Commissioners absent and excused:

Syeda F. Davidson
James W. Heath

State Bar Staff present:

Janet Welch, Executive Director
Margaret Bossenbery, Executive Coordinator
Nancy Brown, Director, Member and Communication Services Division
Gregory Conyers, Director, Diversity
Candace Crowley, Senior Consultant
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director, Outreach and Constituent Development
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Kathryn Hennessey, Public Policy Counsel
Nkrumah Johnson-Wynn, Assistant General Counsel
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Communications Manager
Alecia Ruswinckel, Assistant Counsel, CPF/Ethics
Jeanette Socia, Human Resources Manager
Kari Thrush, Assistant Division Director, Member Services
Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, Institute for Continuing Legal Education

Consent Agenda

Mr. Rockwell 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 November 17, 2017 Board of Commissioners meetings.
The Board received the minutes from the November 8 and January 12, 2017 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 the FY 2017 Audited Financial Report.

The Board received the FY 2018 Financial Reports through December 2017.

The Board received a Bylaw Amendment from the Judicial Section.

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

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez reported that the Audit Committee met with the auditors on December 15, 2017 and reviewed the fiscal reports for FY 2017. She introduced Mr. Jeffrey Fineis, Audit Partner, from Andrews, Hooper, Pavlik, PLC who reviewed the auditor's letter, the annual financial report, and answered questions from the Board. The auditors provided an "unmodified" (clean) audit opinion and had no audit recommendations.

Mr. Fineis reported that there are new reporting standards included in the report due to GASB 74 reflecting new accounting standards including disclosure of retiree health care costs. He stated that additional reporting will be needed next year due to GASB 75, to reflect the other post-employment benefit net liability reporting requirement.

Ms. Warnez informed the Board that the SBM would be issuing an RFP to solicit bids and proposals for audit services. She indicated that the SBM is not dissatisfied with the current auditors, but that the committee is following SBM policy and best practices in seek bids at this time for audit services.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial reports through December 2017.

Mr. Warnez indicated that a work group had been established to review the investment policy as is consistent with SBM policy.

Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes reported that there was no new business to come before the Board.

Professional Standards, Robert J. Buchanan, Chairperson

Mr. Buchanan noted the background information about the Payee Notification System that was in the Board's materials. He reported that legislation had been enacted in other states in an effort to eliminate fraud in settlement proceedings and foster greater client trust in the legal profession. Mr. Buchanan asked Ms. Ruswinckel to provide the Board with an overview of the legislation contemplated for Michigan that has passed in other states. A discussion followed her remarks about whether this issue should be sent to the Representative Assembly for their consideration.

A motion was offered and supported to authorize SBM to advocate for Payee Notification legislation with the elements listed in the memo of the work group recommendations provided in the Board materials, and to also refer this proposal to the Representative Assembly for their consideration. The motion was approved.

Roll Call Vote taken:

Ayes: Anderson, Danielle, Anderson, David, Barnes, Buchanan, Burrell, Christenson, Cunningham, Dunnings, Fink, Gardella, Grieco, Haroutunian, Edward, Haroutunian, Krista, Hart-Negrich, Hohausner, McCarthy, Moss, Olsman, Quick, Radke, Riordan, Warnez, Washington, and Rockwell

Nays: Baumann, McGill, Shekell, and Ulrich

Absent and Excused: Canady, Davidson, Heath, McGinnis, Perkins

Public Policy, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

Court Rules

ADM File No. 2017-19: Proposed Amendment of Rules 2.410 and 2.411 and Proposed Addition of Rule 3.970 of the Michigan Court Rules

The proposed amendments of MCR 2.410 and MCR 2.411 and adoption of the new MCR 3.970 would provide explicit authority for judges to order mediation in child protection proceedings.

A motion was offered and supported to adopt the position of the Access to Justice Policy Committee and authorize the Alternative Dispute Resolution Section to advocate its position of support, while also notifying the Section that it cannot oppose any of the amendments proposed by the State Bar position. The motion was approved.

ADM File No. 2015-26: Proposed Addition of Rule 3.808 of the Michigan Court Rules

The proposed addition of Rule 3.808 is consistent with § 56 of the Michigan Adoption Code, MCL 710.56. This new rule arises out of *In re JK*, 468 Mich 202 (2003), and *In re Jackson*, 498 Mich 943 (2015), which involved cases where a final order of adoption was entered despite pending appellate proceedings involving the adoptee children. Although the Michigan Court of Appeals has adopted a policy to suppress in its register of actions and online case search tool the names of children (and parents) who are the subject of appeals from proceedings involving the termination of parental rights, this information remains open to the public. Therefore, in order to make the determination required of this new rule, a trial court may contact the clerk of the Michigan Court of Appeals, the Michigan Supreme Court, or any other court where proceedings may be pending.

A motion was offered and supported to support the proposed addition and recommend an amendment to expedite these cases for the best interest of the children be included in the letter to the Court. The motion was approved.

ADM File No. 2016-13: Proposed Addition of Rule 3.810 of the Michigan Court Rules

The proposed new rule would require a court to provide an indigent putative father whose rights are terminated under the Adoption Code with transcripts for the purposes of appeal, similar to the requirement in MCR 3.977(J) for putative fathers whose rights are terminated under the Juvenile Code.

A motion was offered and supported to support the proposed addition with this amendment: **Rule 3.810 Transcripts for the Purposes of Appeal. In appeal following the involuntary termination of the parental rights of a putative father, if the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.** The motion also included that the letter to the Court should make it clear that the term “respondent” encompasses all persons with standing to appeal. The motion was approved.

ADM File No. 2017-18: Proposed Amendment of Rule 3.903 of the Michigan Court Rules

The proposed amendment of MCR 3.903 would make juvenile guardianship information public. This change would resolve the conflict between the child protective proceeding social file (which is considered nonpublic) and the juvenile guardianship file (which is public) and would make the rule consistent with current court practices.

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

ADM File No. 2017-08: Proposed Amendment of Rules 3.977 and 6.425 of the Michigan Court Rules

The proposed amendments of MCR 3.977(J) and MCR 6.425(G) were submitted by the Court of Appeals. The proposed amendments would require the production of the complete transcript in criminal appeals and appeals from termination of parental rights proceedings when counsel is appointed by the court. The proposed amendments would codify existing practice in many courts, and the Court of Appeals believes they would promote proper consideration of appeal issues and eliminate unnecessary delays to the appellate process.

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

ADM File No. 2016-25: Proposed Amendment of Rule 7.212 of the Michigan Court Rules

The proposed amendment of MCR 7.212 was submitted by the Court of Appeals. Proposed amendments of MCR 7.212 would require an appellant to file an appendix with specific documents within 14 days after filing the appellant’s principal brief. The proposal is intended to identify for practitioners the key portions of the record that the Court deems necessary for thorough and efficient review of the issues on appeal.

A motion was offered and supported to support the proposed amendment as drafted and to authorize the sections and committees to submit their comments to the Court. The motion was approved.

MIDC Standard 8

Attorneys must have the time, fees, and resources to provide the effective assistance of counsel guaranteed to indigent criminal defendants by the United States and Michigan Constitutions. The MIDC Act calls for a minimum standard that provides: "Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided." MCL 780.991(2)(b). Fair compensation for assigned counsel may optimally be achieved through a public defender office, and the MIDC recommends an indigent criminal defender office be established where assignment levels demonstrate need, together with the active participation of a robust private bar. MCL 780.991(1)(b). In the absence of, or in combination with a public defender office, counsel should be assigned through a rotating list and be reasonably compensated. Contracted services for defense representation are allowed, so long as financial disincentives to effective representation are minimized. This standard attempts to balance the rights of the defendant, defense attorneys, and funding units, recognizing the problems inherent in a system of compensation lacking market controls.

A motion was offered and supported to support the standard as written. The motion was approved.

Model Criminal Jury Instructions

M Crim JI 10.9, 10.9a, 10.9b, 10.9c and 10.9d

The Committee proposes new instructions, M Crim JI 10.9, 10.9a, 10.9b, 10.9c and 10.9d, for the organized retail crime statutes found at MCL 752.1083 and 752.1084.

A motion was offered and supported to support the jury instructions as written. The motion was approved.

M Crim JI 11.39, 11.39a and 11.39b

The Committee proposes new instructions, M Crim JI 11.39, 11.39a and 11.39b, for the "explosives" statutes found at MCL 750.204, 750.204a, 750.207 and 750.212.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 15.11a and 15.12a

The Committee proposes amendments to M Crim JI 15.11a and 15.12a, the instructions for driving with Schedule 1 or 2 substances causing death or serious injury under MCL 257.625(4), (5) and (8). The amendments are intended to correct over-broad language in paragraph (4) that included all Schedule 2 substances, where only certain of those substances are included within the purview of the statute. Deletions are in strike-through; new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 17.20 and 17.20c

The Committee proposes an amendment to M Crim JI 17.20 and a new instruction, M Crim JI 17.20c, instructions for violations of MCL 750.136b(3), second-degree child abuse. The amendment to M Crim JI 17.20 is intended to conform the instruction to statutory language that was omitted in the original instruction and to make technical corrections; deletions are in strike-through; new language is underlined. The new instruction, M Crim JI 17.20c, is for second-degree child abuse charges that were committed by a child care organization where there has been a violation of MCL 722.111 et seq.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 17.33

The Committee proposes an amendment to M Crim JI 17.33, the instruction for violations of MCL 750.145n, which was amended to expand the scope of the statute, and to make technical corrections to the first and third paragraphs. Deletions are in strike-through; new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 36.5

The Committee proposes an amendment to M Crim JI 36.5, the instruction that provides the aggravating factors found in MCL 750.462f that apply to the human trafficking instructions. The amendment accommodates an amendment to that statute. The new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

Legislation

Competency Evaluation

HB 5244 (Kesto) Mental health; other; time limitation on completion of examination to evaluate issue of incompetence to stand trial; implement. Amends sec. 1028 of 1974 PA 258 (MCL 330.2028).

HB 5246 (Kesto) Mental health; facilities; examination to evaluate issue of incompetence to stand trial; modify process and expand certain resources. Amends sec. 1026 of 1974 PA 258 (MCL 330.2026).

A motion was offered and supported that this legislation is *Keller*-permissible because it affects the availability of legal services to society. The motion was approved.

A motion was offered and supported to support the concept of improving the speed and accuracy of competency evaluations, but to also note that these bills are not the vehicle in which to improve these due to lack of deadlines, funding, and standards. The motion was approved. Mr. Shekell abstained.

HB 4433 (Neeley) Juveniles; criminal procedure; automatic record expungement of nonviolent juvenile offenses; provide for. Amends sec. 18e, ch. XIA of 1939 PA 288 (MCL 712A.18e).

A motion was offered and supported that this legislation is *Keller*-permissible because it improves the functioning of the courts. The motion was approved.

A motion was offered and supported to support the position of the Access to Justice Policy Committee. The motion was approved.

HB 4728 (Geiss) Criminal procedure; defenses; legal aid for individuals in deportation proceedings; establish. Creates new act.

Action on this legislation was tabled.

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson
Mr. Barnes reported that the next steering committee meeting is scheduled on February 7 and as such there is not an update for the Board at this time.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson

Ms. Warnez reported that the I & I committee met via conference call on January 23 and received reports from all of the different initiatives out the delivery program as well as a Diversity and Inclusion update. She stated that the committee specifically talked about the Access to Justice proposal for a consistent fee waiver, the Modest Means pilot program, which continues moving forward, the Diversity and Inclusion work group that is looking into working with communities regarding a grant supported by the Kellogg Foundation, and the Lawyer Referral pilot program, which is also moving forward.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson

Mr. Buchanan reported that the Regulatory Objectives work group met and agreed on core values and is continuing its work on preparing regulatory objectives based on the core values. The work group hopes to develop proposals to bring before the Board for consideration soon. He stated that a work group on multi-disciplinary practices is being formed with the help of SBM Member Jeffrey Paulsen and SBM staff, and that SBM staff is in the process of collecting data and developing a work group plan as well as identifying names of attorneys who might be interested in serving on a receivership program work group.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the Timely & Responsive Public Policy and the Communicating Public Policy Issues to Members sub groups met via conference calls in January and stated that some really good ideas came out of both conference calls. She informed the Board that there is a full steering committee meeting call in February and they expect to have some suggestions and proposals to bring before the Board at a future meeting including one which would allow the Board to react to legislation in a more timely fashion in between Board meetings.

President's Report, Donald G. Rockwell, President

Mr. Rockwell recognized Ms. Welch for receiving the Carolyn A. Stell Award from the mid-Michigan chapter of the Women Lawyers Association of Michigan and Ms. Grieco for being one of the Notable Women Lawyers in 2017 as awarded by Crain's Detroit Business.

Structure and Governance Meeting

Mr. Rockwell informed the Board that the officers of the Board and the RA, Mr. Herrmann, Mr. Quick Ms. Welch, Mr. Cunningham, Ms. Hennessey and Ms. Sharlow met yesterday for a brainstorming retreat about the governance of the State Bar, specifically how and what the Board and the RA do relative to public policy decisions. Mr. Rockwell stated that two sub-committees were formed and will meet in the upcoming months and report back to the Board with recommendations.

Mr. Rockwell informed the Board that he and Ms. Welch received an email from a colleague who mentioned that a SBM member, who was the defense attorney in a local case, received death threats because of a client he was representing. After listening to comments and suggestions from Board members, Mr. Rockwell stated that he and Ms. Welch will discuss the immediate request from their colleague and then in broader terms talk about how the SBM can aid in the process of educating the public about our system of justice.

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

SBM Year in Review

Ms. Welch provided the Board with a review of the key accomplishments of the SBM during 2017.

SBM Building closure update

Ms. Welch reported that during the SBM holiday closure there were minimal phone calls and that she responded to all of them.

Economics of Law Practice

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the Economics of Law Practice survey. Ms. Vrooman reported that over 5,000 members responded, which is an increase of 60% from the last survey, and described the collection process that was used. She reported that once the results are in they will be analyzed and compiled, posted on the website, and available in hard copy to any board member who would like one.

Lawyer Referral Services Update

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the ongoing work of the Lawyer Referral Services Steering committee. Ms. Vrooman reported that the committee is continuing to make progress with the building of the Lawyer Referral Services platform, developing the administrative tools for tracking, monitoring, automated notices, and generating reports. Ms. Vrooman informed the Board that the next steps will focus on the administrative and attorney side of the platform and then the consumer's side.

Ms. Welch reported that ZeekBeek, which has changed its name to CloudLaw, is now a public benefit corporation. She informed the Board that in addition to the state bars of Ohio, Indiana, and Illinois, the state bars of Georgia and South Carolina have recently joined the CloudLaw Consortium. She also reported that the American Bar Association (ABA) has entered into an agreement with CloudLaw to help promote individual state bar directories which will be available for ABA members, and to develop a national lawyer to lawyer service.

Mr. Flood then summarized SBM's financial arrangement with CloudLaw. Mr. Flood reported that the agreement with CloudLaw provided the SBM with a twenty percent stock interest in CloudLaw as compensation for our "sweat equity" contribution to product development, subject to meeting certain vesting requirements, all of which have now been met. The stock is non-voting, and the SBM's percentage will likely be diluted as additional stock grants are issued, for example to investors or as more states participate. Ms. Welch emphasized that the focus of the bar in our participation with CloudLaw has always been on the product we are helping develop as a tool to aid SBM members and the public and not on the potential for revenue.

Florida Bar Association Request

Ms. Welch asked Mr. Flood to provide the Board with a review of the request from the Florida Bar Association for the emails or addresses of SBM members in Florida.

Mr. Flood stated that there is a new emeritus rule in Florida that allows lawyers who are not members of the Florida Bar to practice law in Florida pro bono with a recognized legal aid corporation or program. The Florida Bar association is interested contacting emeritus or retired SBM members who reside in Florida to advise them of the new rule.

A motion was offered and supported to allow the SBM to provide SBM members who are inactive, retired, or on emeritus status and have provided SBM with a Florida address with the information about this program that Florida provided. The motion was approved.

Representative Assembly (RA) Report, Joseph P. McGill, Chairperson

Mr. McGill reported that preparation is underway for the April 21 Representative Assembly meeting where he indicated the primary focus will be on the proposal dealing with amendments to the civil discovery rules. He updated the Board on the Assembly's review process of the civil discovery rule proposal aimed at providing feedback on the proposal in advance of the April meeting.

Mr. McGill reported that the RA Nominations committee has been busy filling vacancies and that all but thirteen seats have been filled and stated that there are contested races in two of the circuits which results in a need for a special election to take place.

Mr. McGill informed the Board that he, along with Mr. Peter Cunningham and Ms. Hennessey, were working on a work flow document that lists the tasks for each RA committee and provides the chairs with specific objectives and goals to meet during the upcoming year.

Mr. McGill reported on his perspective on the governance and board retreat and stated that he wanted the retreat in an effort to refocus and repurpose the RA to meet its mission. He reported that at the conclusion of the retreat, two sub committees were formed, one on governance composition and the other on process. Once those groups meet and have recommendations the entire group will meet again. Mr. McGill stated that there is conflict between the policy roles of the Board and the RA and what exactly the term, "final policy making body" means, which governance group gets what content and when, and who has veto power.

American Bar Association (ABA) Report

Mr. Ulrich reported to the Board that the mid-year meeting is taking place in Vancouver in February. He mentioned that he had been notified about the possibility that attorney's electronic devices may be subjected to scrutiny when crossing the border and that an attorney may be required to provide passwords if requested.

Young Lawyers Section (YLS) Report, Syeda F. Davidson, Chairperson

In Ms. Davidson absence, Ms. Hart-Negrich, Chair Elect, updated the Board on the activities of the YLS. She reported that the YLS Annual Summit is taking place at Bay Harbor Inn on June 15-17 and that they are holding an Expungement Fair on February 24 in Detroit.

Ms. Hart-Negrich reminded the Board that the annual YLS Executive Council v Board of Commissioners bowling challenge would take place after the April 20 Board meeting and that more details will follow.

Comments from Commissioners

There were none.

Adjournment

The meeting was adjourned at 12:50 p.m.

President Rockwell called the meeting to order at 9:45 a.m. on April 20, 2018 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson
Dennis M. Barnes, Vice-President
Aaron V. Burrell
Joseph J. Baumann
Robert J. Buchanan, Secretary
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Shauna L. Dunning
Andrew F. Fink III
Robert C. Gardella
Jennifer M. Grieco, President Elect
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James W. Heath
Michael S. Hohaus
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. Maureen M. McGinnis
Shenique A. Moss
Jules B. Olsman
Daniel D. Quick
Victoria A. Radke
Donald G. Rockwell, President
Brian D. Shekell
Gregory L. Ulrich
Dana M. Warnez, Treasurer
Erane C. Washington

Commissioners absent and excused:

David C. Anderson
Krista L. Haroutunian
Kara R. Hart-Negrich

Hon. David A. Perkins
Hon. Michael J. Riordan

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Member and Communications Services
Gregory Conyers, Director, Diversity
Candace Crowley, Assistant Executive Director and Director, External Development
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director, Outreach and Constituent Development
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Kathryn Hennessey, Public Policy Counsel
Nkrumah Johnson-Wynn, Assistant General Counsel
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Communications Manager
Jeanette Socia, Human Resources Manager
Kari Thrush, Assistant Division Director, Member Services
Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, Institute for Continuing Legal Education
Chelsea Rebeck, SBM Finance Committee member

Consent Agenda

Mr. Rockwell 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 January 26, 2018 Board of Commissioners meeting.
The Board received the minutes from the January 9, February 13, and March 20, 2018 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 the FY 2018 Financial Reports through February 2018.

The Board received the 2017 Report of the SBM Retirement Plans

The Board received Client Protection Fund Claims.

The Board received Unauthorized Practice of Law Claims.

The Board received Model Criminal Jury Instructions

The Board received a Business Law Section Dues Amendment.

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

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Auditor Selection and Rotation Policy

A motion was offered and supported to adopt a new auditor rotation and selection policy, which requires the SBM to conduct an RFP for audit services every three years, an audit firm rotation at least every 9 years, and an audit partner rotation every 5 years, unless waived by the Board upon recommendation of the audit committee. The motion was approved.

Auditor Recommendation

A motion was offered and supported to contract with the firm of Andrews Hooper Pavlik as the SBM auditor for FY 2018-19 and FY 2019-20 with a partner rotation. The motion was approved.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial report.

SBM Proposed Investment Policy

Ms. Warnez indicated that a recommendation from the work group is included in the board book.

A motion was offered and supported to approve the amendment to the Investment Policy. The motion was approved.

Computer consulting firm K2DNN.net

A motion was offered and supported to ratify the existing contract with K2DNN.net to the extent that it exceeded 100K for the current contract. The motion was approved.

Professional Standards, Robert J. Buchanan, Chairperson

Proposed Formal Ethics Opinion R-25 - For-Profit Online Matching Services

Mr. Buchanan stated that the proposed formal ethics opinion R-25 that addresses for-profit online matching services is included in the Board materials for initial review and discussion. He informed the Board that this item will not be voted on before the June meeting.

House of Delegates Appointments

A motion was offered and supported to re-appoint Mr. James W. Low and Mr. Thomas C. Rombach as SBM delegates to the ABA House of Delegates for two-year terms. The motion was approved.

Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes reported that the deadline for registration for BLF is Monday, April 23 and that online registration for the 2018 NEXT Conference will begin in May.

Mr. Barnes provided the Board with information regarding the Michigan Center for Civic Education's bid to host the National High School Mock Trial Championship in Kalamazoo, MI in 2021.

50 Year Honoree resolution

A motion was offered and supported to approve the SBM 50-Year Golden Celebration Resolution. The motion was approved.

2018 John W. Cumiskey Award

A motion was offered and supported to award the Access to Justice Initiative John W. Cumiskey Award to Mr. Charles "David" Jones. The motion was approved.

2018 SBM Awards Committee Recommendations

A motion was offered and supported to award the Roberts P. Hudson Award to Bruce A. Courtade and Julie I. Fershtman; the Frank J. Kelley Distinguished Public Service Award to the Hon. Marilyn J. Kelly and Robert P. Young Jr.; the Champion of Justice Award to Miriam J. Aukerman and Robert J. Heimbuch; the Kim Cahill Bar Leadership Award to the Women Lawyers Association of Michigan; and the John W. Reed Michigan Lawyer Legacy Award to Professor Lawrence Dubin. The motion was approved.

Public Policy, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

Court Rules

ADM File No. 2017-12: Proposed Addition of Rule 2.228 of the Michigan Court Rules

MCL 600.6404(3) allows defendant to transfer a case to the Court of Claims. This proposed rule would require such a transfer to be made at or before the time the defendant files an answer, which is the same period mandated for change of venue under MCR 2.221. This proposal arose from the Court's consideration of *Baynesan v Wayne State University* (docket 154435), in which defendant waited until just a month before trial before transferring a case he could have transferred nearly a year sooner.

A motion was offered and supported to approve the proposed addition to the rule with the amendments proposed by the Civil Procedure and Courts Committee. The motion was approved.

ADM File No. 2017-10 - Proposed Addition of Rule 6.417 of the Michigan Court Rules

This proposed new rule, based on FR Crim P 26.3, would require a trial court to provide parties an opportunity to comment on a proposed order of mistrial, to state their consent or objection, or suggest alternatives. The proposal was pursued following the Court's consideration of *People v Howard*, docket 153651.

A motion was offered and supported to support the addition of Rule 6.417 with the following amendment: Before ordering a mistrial, the court must give each defendant and the government prosecutor an opportunity to comment on the record regarding the propriety of the order, to state whether that party consents or objects, and to suggest alternatives. The motion was approved.

ADM File No. 2015-04 - Proposed Amendment of Rule 6.429 of the Michigan Court Rules

This proposed amendment is intended to provide trial courts with broader authority to *sua sponte* address erroneous judgments of sentence, following the Court's recent consideration of the issue in *People v Comer*, 500 Mich 278 (2017).

For purposes of publication, the Court included a six-month time period in which such a correction must be made *sua sponte*, and the Court is especially interested in input related to this aspect of the proposed amendments. In balancing the interest in correcting a sentence at any time against the interest in promoting finality and definiteness, adoption of a prescribed time period seems appropriate. Parties have six months to file such a motion under MCR 6.429(B)(3), and a good argument can be made that if the Court adopted a different time period for *sua sponte* corrections, the six-month period for parties would be irrelevant, as a party could simply ask the court to do *sua sponte* what the party could not do by motion. But there may be good reason to adopt a time period longer than that allowed for parties, or to consider a more flexible provision that does not include a specific time period but focuses on application of a standard such as "reasonableness," "good cause," or other language that leaves the determination to the trial court. Therefore, the Court is particularly interested in comments that address this issue.

The Access to Justice Policy Committee recommended supporting the proposal with amendments. The Criminal Jurisprudence & Practice Committee opposed amending Rule 6.429 and support the addition of Rule 6.430.

Rule 6.429 Correction and Appeal of Sentence of an Illegal Sentence

(A) The court may correct an illegal sentence at any time, either on its own motion after a hearing, or on motion filed by either party.

(B) An illegal sentence is one the maximum or minimum of which does not conform to the applicable statutory provision, which omits a term required by law, or which includes a term unauthorized by law. The court may not modify a valid sentence after it has been imposed except as provided by law.

(B) Time For Filing Motion:

(1) A motion to correct an invalid sentence may be filed before the filing of a timely claim of appeal.

(2) If a claim of appeal has been filed, a motion to correct an invalid sentence may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).

(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence may be filed within 6 months of entry of the judgment of conviction and sentence.

(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

~~(C) Preservation of Issues Concerning Sentencing Guidelines Scoring and Information Considered in Sentencing. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.~~

A motion was offered and supported to support the proposed amendments recommended by Timothy A. Baughman, and listed above, which differentiates between an invalid and an illegal sentence. The motion was approved

ADM File No. 2017-14 - Proposed Adoption of Administrative Order 2018-XX

This administrative order would direct circuit courts in collaboration with county clerks to establish an agreed upon plan that outlines those duties not codified in statute or court rule that must be performed within the scope of the county clerk's role as clerk of the circuit court. The plan would be required to be approved by the Supreme Court.

A motion was offered and supported to support the concept provided in ADM File No. 2017-14 compelling the administrator and the court to enter into an agreement. However, courts that already have an agreement in place should not be forced to renegotiate that agreement until and unless a dispute arises, and SCAO should also provide a model agreement as an example. The motion was approved.

ADM File No. 2016-49 - Proposed Addition of Rule 1.18 and Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct

The proposed addition of new rule MRPC 1.18 and amendment of MRPC 7.3 would clarify the ethical duties that lawyers owe to prospective clients and create consistency in the use of the term "prospective client." This proposal was submitted to the Court by the Representative Assembly of the State Bar of Michigan.

This proposal was approved by the Representative Assembly with no changes made in this version published by the Court for comment. No action was taken on this amendment.

ADM File No. 2016-27 - Proposed Alternative Amendments of Rule 7.2 of the Michigan Rules of Professional Conduct

The first proposed amendment of Rule 7.2 of the Michigan Rules of Professional Conduct (Alternative A) would require certain lawyer advertisements to identify the lawyer or law firm providing services. This proposal was submitted by the State Bar of Michigan Representative Assembly. Alternative B is the model rule provision that relates to providing information about the lawyer or law firm responsible for the advertisement's content.

A motion was offered and supported to support Alternative A and to direct the Executive Director to include the essence of the Board discussion on the proposal in the letter to the Court. The motion was approved.

Legislation

HB 5702 (Runestad) Criminal procedure; forfeiture; prosecutorial review of civil asset forfeiture in controlled substances cases; require. Amends sec. 7523 of 1978 PA 368 (MCL 333.7523).

A motion was offered and supported that this legislation is not *Keller*-permissible. The motion was approved.

Wrongful Imprisonment Compensation Legislation

SB 0895 (Bieda) Civil procedure; other; court of claims notification requirements and statute of limitations; exempt claims under the wrongful imprisonment compensation act. Amends secs. 6431 & 6452 of 1961 PA 236 (MCL 600.6431 & 600.6452).

SB 0896 (Jones) Civil procedure; other; wrongful imprisonment compensation act; extend the time for claims by individuals who were released before the effective date of the act. Amends sec. 7 of 2016 PA 343 (MCL 691.1757).

A motion was offered and supported that this legislation is *Keller*-permissible because it impacts the availability of legal services to society. The motion was approved.

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

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson
Mr. Barnes reported that the steering committee met three times during the year with the charge to monitor and coordinate the Awards, Michigan Bar Journal, Professional Education and Events, Public Education and Outreach, and Social Media and Website committees, together with all of their affiliated work groups.

Mr. Barnes stated that the work of the committee is to provide important insight about the work of each committee and work group under the committee's jurisdictions, and that sharing that information provided for better bar services and insured that all committees remain focused on the strategic plan and goals of the State Bar.

Mr. Barnes commented that it was the consensus of the committee that its work can be accomplished in one in-person meeting, with further communications by email. If there is an item of particular concern an in-person meeting could be scheduled. Mr. Barnes reported that the annual reporting process worked very effectively and that the new form and format for reporting was very good.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson
Ms. Warnez reported that the I & I committee covers the umbrella of the Delivery of Legal Services for All, Diversity and Inclusion Advisory Standing Committee, Law School Deans Standing Committee, Past President Advisory Standing Committees and within those committees are subcomponents such as Access to Justice, Affordable Legal Services Initiatives, Limited Scope Representation, and Modest Means Program.

Ms. Warnez stated that it was the opinion of the committee that the current structure has too many layers. Although the new structure had proponents, the primary focus of the discussion of the steering committees on concerns and ideas for improvements. That discussion is ongoing, but there is a consensus that the structure and the committee needs to be tweaked to be more effective. There are no concerns about all of the initiatives being on task.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson

Mr. Buchanan reported that the Professional Standard Steering Committee has met two times to date with another meeting scheduled in May. He stated that the committee deals with the regulatory side of the profession and has responsibility for the Character and Fitness Standing committee, Client Protection Fund Standing committee, Payee Notification workgroup, Judicial Ethics Standing committee, Judicial Qualifications Standing committee, Lawyers and Judges Assistance Standing committee, Professional Ethics Standing committee, Unauthorized Practice of Law and the Regulatory Objectives workgroup.

Mr. Buchanan reported that the committee has had substantial background to review to fully understand how the standing committees and workgroups operate and what they are doing and Steering Committee members are now just getting their hands around it all. The plan is to get any recommendations they may have during the upcoming meeting. He reported that he thinks that the Bar is doing an excellent job of meeting the objectives of the strategic plan.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the Public Policy Steering committee has a number of public policy committees underneath it, including Civil Procedure and Courts, Discovery Special committee, U.S. Courts, Criminal Jurisprudence, and American Indian Law Standing committees.

Ms. Grieco stated that Public Policy steering committee functioned almost like a workgroup, looking at proactive issues of timely and responsive public policy positions, proactive public policy work, and communicating public policy issues to members.

The steering committee had three full meeting and a number of subcommittee meetings and will have recommendations for the Board to consider at its June meeting. The proposals include changes to the public policy website and how it reaches our members, and on how the board handles public policy issues in between board meetings. The members of the steering committee want to continue next year as there remain many issues still to address.

Ms. Grieco stated that if any of the Board members would like to serve on a steering committee and get more involved in the process, to let her know because she is making committee appointments soon.

LEADERSHIP REPORTS

President's Report, Donald G. Rockwell, President

Board Officer Election Procedure, Matrix, and 2018 Timeline

Mr. Rockwell informed the Board that the deadline to submit a letter of interest, resume, and completed matrix for an officer position, other than for president and president-elect, for the 2018-2019 Bar year is June 12, 2018. Materials should be submitted to him and Ms. Welch.

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

FY 2019 Budget Process, Roles, and Calendar

Ms. Welch asked Mr. Horsch to describe the FY 2019 budget process to the Board. He reported that current plans are for the FY 2019 key budget assumptions to be reviewed with the Board at its June meeting and for the proposed FY 2019 budget to be brought before the Board at its July meeting.

Meeting with the Michigan Supreme Court

Ms. Welch reported that she has had individual meetings with Chief Justice Markman and Justice Zahra on a regular basis over the course of the last year. She stated that she was invited to meet with the Court in an Administrative Conference on March 28, where she provided them with information on the status of the State Bar, spoke on issues impacting bar associations around the country, and answered questions. Key points made to the Court:

- The State Bar continues to be in very good financial shape.
- We are on the downward side of the dues cycle.
- In the big picture, professional associations in the U.S. are struggling, and voluntary bar associations are struggling to maintain membership and services and develop more meaningful services for members and the public.
- What the SBM did with the 21st Century Task Force and the output of that included in our strategic plan is really vital to our success and future success
- The status of mandatory bars is uncertain given a case pending in the US Supreme Court, *Janus v American Federation of State, County and Municipal Employees (AFSCME)*. Other challenges are in the pipeline.
- The State Bar is committed to continuing its focus on legal service industry innovation and using technology to advance access to justice. The Court appeared interested in SBM innovation efforts, as well as on how the regulatory structure it oversees responds to changes in the legal services marketplace, including the draft ethics opinion R-25.
- We are working on transitioning the AGC's receivership responsibilities to the State Bar, and developing the gold standard for a program that protects the public when a lawyers are unable to carry out responsibilities to their clients due to death or disability.

Ms. Welch reported that, consistent with the recommendations of the 21st Century Task Force to create an Innovation Center to assist with the delivery of legal services, she is in conversation with the ABA Center for Innovation on collaboration, particularly in terms of data sharing among state bars and courts. Alecia Ruswinckel will be the SBM point person for this effort.

Annual Reports from SBM Committees and Work Groups

Ms. Welch asked Ms. Crowley to provide the Board with information about the annual reports. Ms. Crowley stressed the importance of reading the annual committee and work group reports because they will inform the Board of the progress of the strategic direction that has been set for the Bar. She stated that the reports lead to the development of the committee structure that will operate in the next Bar year. She also noted the challenge of managing the volunteer appointment process, with applications received and appointments for the upcoming bar year made in the spring and early summer, but confirmation of the committee structure not taking place until July or August.

Satellite Office

Ms. Welch informed the Board that she had a conversation with the Dean of the University of Detroit Mercy Law School about the possibility of occupying space at the law school for a satellite office in Southeast Michigan. Dean Crocker was interested, the school had space, and a price was negotiated for a possible office. Similar arrangements at other law schools could be an option.

Additional Items

Ms. Welch responded to a question from Mr. Ulrich regarding the need for a succession plan for the Executive Director. She will continue to work with SBM officers and the Executive Committee on succession issues.

Mr. Ulrich asked if the SBM has ever been contacted to verify if person is in fact an attorney when he or she registers to use a .law domain. Ms. Goodrum Garland responded that we do not have that requirement in Michigan, but that in some jurisdictions that practice is in place.

Ms. Welch reported that the SBM learned three days ago that a member of the Negligence Law section submitted an amicus brief in violation of 2004-1. She stated that we are in the process of gathering facts about this and that an update will be provided to the Board at its June meeting. The case is the Ann Arbor gun case.

Representative Assembly (RA) Report, Joseph P. McGill, Chairperson

Mr. McGill reported that at its April 21 meeting, the Assembly will empanel 145 RA members or 97% of the allotted membership. Ms. Michelle Fuller will be nominated for the Unsung Hero award and the Hon. Victoria Roberts will be nominated to receive the Michael Franck Award. Matters to be considered are Payee Notification, Indigent Fee waiver applications, and Civil Discovery rules. Plans are underway for the September meeting that center around RA procedure and governance issues and the manner in which the RA does business. Mr. Richard Cunningham suggested that this is a process that will take two or three years to complete.

OTHER REPORTS

American Bar Association (ABA) Report

No report was provided.

Young Lawyers Section (YLS) Report, Syeda F. Davidson, Chairperson

Ms. Davidson provided the Board with an update on recent activities of the YLS. The 11th Annual YLS Summit is taking place at Boyne Highlands on June 15 and 16. Justice Bridget McCormack is the keynote speaker. The deadline for nominations for the Regeana Myrick Outstanding YLS Award is April 27. The award will be presented at the Summit.

Ms. Davidson reminded the Board that the “Bowling Challenge” event between the Board of Commissioners and the Young Lawyers Section Executive Council will take place after today’s Board meeting beginning at 3:00 p.m.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Ms. Radke inquired about ongoing challenges to the mandatory status of the state bars, and their implications for SBM planning, budgetary and otherwise. Ms. Welch responded that staff is monitoring, analyzing, and evaluating options on an ongoing basis.

Comments or Questions from the Public

Mr. Rockwell recognized Mr. David Watson, Executive Director, ICLE who expressed his pleasure at being affiliated with the SBM and the work that it accomplishes. Ms. Welch noted that at the meeting with the Court that a mini discussion took place about mandatory CLE. She stated that Michigan is now one of only four states without mandatory CLE, but that Michigan's ICLE is widely recognized as the best in the country, and that the Court was aware of that. She stated that the other three states are Maryland, Massachusetts and South Dakota.

Adjournment

The meeting was adjourned at 12:25 pm.

President Rockwell called the meeting to order at 9:20 a.m. on June 8, 2018 in the Grand Pavilion Room of the Grand Hotel on Mackinac Island.

Commissioners present:

David C. Anderson	Kara R. Hart-Negrich
Dennis M. Barnes, Vice-President	James W. Heath
Aaron V. Burrell	Michael S. Hohaus
Joseph J. Baumann	Joseph P. McGill
Robert J. Buchanan, Secretary	Hon. Maureen M. McGinnis
Hon. Clinton Canady III	Shenique A. Moss
B.D. "Chris" Christenson	Jules B. Olsman
Richard L. Cunningham	Daniel D. Quick
Syeda F. Davidson	Victoria A. Radke
Shauna L. Dunning	Hon. Michael J. Riordan
Andrew F. Fink III	Donald G. Rockwell, President
Robert C. Gardella	Brian D. Shekell
Jennifer M. Grieco, President Elect	Gregory L. Ulrich
Edward L. Haroutunian	Dana M. Warnez, Treasurer
Krista L. Haroutunian	Erane C. Washington

Commissioners absent and excused:

Danielle Mason Anderson	Hon. David A. Perkins
E. Thomas McCarthy Jr.	

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director, Outreach and Constituent Development
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Service Counsel
Alecia Ruswinckel, Assistant Director, Professional Standards Division
Carrie Sharlow, Administrative Assistant
Kari Thrush, Assistant Division Director, Member Services
Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program
Anne Vrooman, Director, Research and Development

Guests

Chief Justice Stephen J. Markman, Michigan Supreme Court
Justice Kurtis T. Wilder, Michigan Supreme Court
Justice Brian K. Zahra, Michigan Supreme Court
David Watson, Executive Director, ICLE
John McAllister, Intern for Justice Wilder
Nicholas Aukerman, Intern for Justice Wilder

Consent Agenda

Mr. Rockwell 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 April 20, 2018 Board of Commissioners 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 2018 Financial Reports through April 2018.

The Board received Model Criminal Jury Instructions.

The Board received a Bid Waiver and Independent Contractor Extension for K2dnn.net.

Ms. Radke identified a typo in the Finance Committee section of the April 20, 2018 meeting minutes. The minutes will be corrected. A motion was offered and supported to approve the consent agenda as amended. The motion was approved.

Mr. Rockwell introduced Chief Justice Markman, who addressed the Board.

Mr. Rockwell introduced Justice Wilder, who addressed the Board

Mr. Rockwell introduced Justice Zahra, who addressed the Board.

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez stated that there was no report.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial report.

Professional Standards, Robert J. Buchanan, Chairperson

Mr. Buchanan stated that proposed formal ethics opinion R-25 was published for comment from SBM members and that action on this item will take place at a future meeting.

Communications and Member Services, Dennis M. Barnes, Chairperson

A motion was offered and supported to award the Liberty Bell Award to the Grand Rapids Urban League. The motion was approved.

Public Policy, Jennifer Grieco, Chairperson

Court Rules

ADM File No. 2018-03: Proposed Amendments of Rules 3.201, 3.210, and 3.211 and Proposed Addition of Rule 3.222 and 3.223 of the Michigan Court Rules

The proposed amendments of MCR 3.201, 3.210, and 3.211 and proposed addition of MCR 3.222 and 3.223 would integrate the collaborate law process designed under the Uniform Collaborate Law Act (159 PA 2014; MCL 691.1331-691.1354) into the state's trial court system for practical use and would add a similar process for parties not represented by counsel who seek to submit a consent judgment.

A motion was offered and supported to adopt the proposed amendments to Rules 3.201, 3.210, 3.211 and the addition of Rule 3.222 and to adopt the Access to Justice Policy committee position on Rule 3.222. The motion was approved.

Rule 3.223 was tabled for further comment from the Family Law Section

ADM File No. 2017-26: Proposed Amendments of Canon 3 and Canon 7 of the Judicial Code of Conduct

The proposed amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct would incorporate the ABA Model Code of Judicial Conduct 2.10 language and clarify its application to public comments made by judges.

A motion was offered and supported to adopt the proposed amendments with the recommendations from the Judicial Ethics and Professional Ethics Committees. The motion was approved.

Legislation

Juvenile Mental Health Courts

HB 5806 (Calley) Courts; other; juvenile mental health courts; establish. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding ch. 10C.

HB 5807 (Calley) Courts; other; references to juveniles in mental health court in revised judicature act; remove to reflect creation of juvenile mental health court. Amends secs. 1088, 1091, 1093, 1094, 1095 & 1098 of 1961 PA 236 (MCL 600.1088 et seq.).

HB 5808 (Calley) Courts; other; reference to chapter of revised judicature act in the probate code; modify. Amends sec. 6, ch. XIIA of 1939 PA 288 (MCL 712A.6).

A motion was offered and supported that this legislation is Keller permissible because of its effect on the improvement of the functioning of the courts and the availability of legal services to society. The motion was approved.

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

HB 5820 (Kesto) Mental health; code; procedure for involuntary mental health treatment and judicial admissions; revise. Amends subheading of ch. 5 & secs. 500, 501, 502, 503, 504, 505, 508, 509, 510, 511, 512, 515, 516, 517, 518, 519, 520, 521, 525, 526, 527, 528, 531, 532, 536, 537, 540 & 541 of 1974 PA 258 (MCL 330.1500 et seq.).

A motion was offered and supported that this legislation is Keller permissible because of its effect on the improvement of the functioning of the courts and the availability of legal services to society. The motion was approved.

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

Young Lawyers Section

“A Way Forward: Transparency in 2018” by Law School Transparency (Iowa State Bar Association Young Lawyers Division)

The report recommends that the American Bar Association and law schools take steps to improve legal education: (a) young lawyer representation in accreditation; (b) increased data transparency; (c) user-friendly data presentation; (d) disclosures at time of admission; and (e) voluntary disclosures by law school.

This item was tabled to allow time to solicit input from Michigan law schools.

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson
Mr. Barnes reported that there was nothing new to report.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson
Ms. Warnez reported that there was nothing new to report.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson
Mr. Buchanan reported that there was nothing new to report.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson
Ms. Grieco called the Board's attention to that Public Policy Steering committee recommendations listed in a memo that each Board member received.

Ms. Grieco referred to the first focus area of the steering committee, Timely and Responsive Public Policy Positions. She stated that to improve the responsiveness of the Board to fast-moving legislation, the committee recommends that the Board set monthly placeholder meetings to consider public policy issues via teleconference. If there are no time-sensitive public policy items pending, the teleconference meetings will be canceled.

A motion was offered and supported to adopt this proposal. The motion was approved.

Ms. Grieco referenced the second focus area of the steering committee, Improving Communication of Public Policy Issues to Members. She reported that the committee recommends changes that will more effectively disseminate information to members through the enhanced use of technology and social media.

A motion was offered and supported to implement the proposed changes described in the memo. The motion was approved.

Mr. Ulrich expressed concern that only "Nay" votes are called for when acting on motions before the Board, with no call for "Aye" votes. Mr. Rockwell invited discussion and hearing no support for Mr. Ulrich's suggestion, offered to speak to Mr. Ulrich at a later time.

LEADERSHIP REPORTS

President's Report, Donald G. Rockwell, President

Mr. Rockwell stated that he is enjoying his presidency and speaking with members who are present at the meetings he attends.

Executive Director's Report, Janet K. Welch, Executive Director
FY 2019 Preliminary Budget – Key Budget Assumptions

Ms. Welch introduced the preliminary budget to the Board and asked Mr. Horsch to describe the key budget assumptions built into the FY 2019 preliminary budget. Mr. Horsch reviewed the assumptions with the Board. The Finance Committee will review the proposed budget on July 11.

SBM Election Update

Ms. Welch asked Ms. Bossenbery to provide the Board with an update on the 2018 elections. Ms. Bossenbery reported that the number of members who have voted is slightly higher than last year, the election ends on June 15, and the results will be certified by the Board of Tellers on June 26 and sent to the Clerk of the Supreme Court.

Committee Restructuring Work Product.

Ms. Welch reminded the Board that last year the officers reviewed the SBM Strategic Plan to see if it was as effective as it could be. As a result of that undertaking, the SBM committee structure was revised and four steering committees were created. Staff is currently digesting the lessons learned and are in the process of making recommendations about what might be changed. These proposed changes will be incorporated into the SBM Standing and Special Committees 2018-2019 Resolution and Matrix, which will come before the Board in July.

Ms. Welch echoed the remarks given by Justices of the Supreme Court today regarding the current relationship between the Court and the State Bar. As an example she mentioned the pending request from the State Bar to the Supreme Court for an increase in the Character and Fitness fee. Ms. Welch emphasized the term working relationship because both the Court and the State Bar have been responding to the request for more information and she recognized the effort put forth on both ends and the value of the Justices attendance at today's meeting to see how the Board conducts its business.

Representative Assembly (RA) Report, Joseph P. McGill, Chairperson

Mr. McGill reported that the April meeting went well. Judge Victoria Roberts was nominated for the Michael Franck Award and Ms. Michelle Fuller for the Unsung Hero Award. The Assembly voted to support the Payee Notification proposal, the Indigent Fee Waiver proposal, and the Civil Discovery Rules proposal.

Plans are underway for the September meeting, which will center on RA procedure and governance issues and the manner in which the RA does business. Questions are being developed for a survey that would be sent to RA members.

Mr. McGill informed the Board that the deadline for nominations for the RA clerk is July 25 and the deadline for proposals for the September meeting is August 16.

Other Reports

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA House of Delegates will look at number of motions to restructure the Legal Education Council which sets accreditation for the law schools and that the ABA is beginning an initiative to restructuring and streamline their committees.

Ms. Welch stated that because the SBM is a mandatory bar, it is limited in its collaboration efforts with external entities and that the ABA is one of those. She said that the ABA is a large and complicated entity; there are parts of it that take public policy positions that the SBM cannot be associated with, but noted that the ABA does have great value to the SBM in the terms of the data it collects and the services it to bar associations on non-ideological issues. One of the new services is the Center for Innovation, with which the SBM is exploring collaboration.

Young Lawyers Section (YLS) Report, Syeda F. Davidson, Chairperson

Ms. Davidson provided the Board with an update on recent activities of the YLS. She stated that the 11th Annual YLS Summit is taking place at Boyne Highlands on June 15 and 16 and that Justice Bridget McCormack is the keynote speaker.

Ms. Davidson reported that the SBM Board of Commissioners were the victors in the 2018 bowling contest with the Young Lawyers Section Executive Committee.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Mr. Rockwell reminded the Board that the Bar Leadership Forum begins at 1:00 p.m. with opening remarks from the Chief Justice and that all members are encouraged to attend.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at 10:45 a.m.