

**State Bar of Michigan
Representative Assembly
September 14, 2006**

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Thursday, September 14, 2006, at the Ypsilanti Marriott in Ypsilanti, MI.

1. Call to order by Chairperson Lori A. Buiteweg.
2. Clerk Robert Gardella declared a quorum (50) was present.
3. Upon a motion made and seconded, the revised calendar was adopted, as proposed.
4. As provided in Rule 4.8, the Summary of Proceedings of the April 29, 2006, meeting was deemed approved.
5. Carl Chioini, Chair, Nominating and Awards Committee, addressed the Assembly in regards to filling vacancies for the current meeting. Upon a motion made and seconded, Barry Paulson of Hillsdale (1st Judicial Circuit); Martin Krohner of Farmington Hills (6th Judicial Circuit); Joan Vestrand of Rochester (6th Judicial Circuit); Nelson Miller of Grand Rapids (17th Judicial Circuit); Shane Pranger of Cadillac (28th Judicial Circuit); Jeffrey Nellis of Ludington (51st Judicial Circuit); and Daniel Martin of Cheboygan (53rd Judicial Circuit) were appointed to fill immediate vacancies within their respective judicial circuits.
6. Upon a motion made and seconded the Representative Assembly unanimously approved the 2006 Award Recipients in that the Michael Franck Award be presented to Hon. William Leo Cahalan and that the Unsung Hero Award be presented to Jay D. Kaplan.
7. Upon a motion made and support the Representative Assembly unanimously approved that the Permanent Rules of Procedure regarding Awards 8.8 be amended whereby the Assembly will now vote on the recipients of the Michael Franck and Unsung Hero Awards at the April meeting of the Assembly, instead of the September meeting.
8. Tom Rombach, Chair of the Special Issues Committee moved the Assembly suspend certain and amend certain parts of the Robert's Rules of Procedure for the debate on the Jury Reform Proposals. A motion was made and seconded. Accordingly panelists will have floor privileges and will discuss the proposals that have been grouped in four different clusters. These clusters are: the Jury Reform Rules related to juror materials, proposals that affect juror participation, that affect the role of the judge, the role of the attorney, that affect the submission of evidence.
9. Chairperson Buiteweg introduce Michigan Supreme Court Justice Stephen J. Markman who addressed the Assembly with a few words on the Jury Reform proposals.

10. Chairperson Buiteweg introduced the panelists, who are going to say a few words on Jury Reform; she also indicated that the proposals were going to be introduced in clusters.
11. Tom Rombach, Chair of the Special Issues Committee introduced the first cluster of proposals, dealing with proposals affecting juror materials, namely, trial notebooks, and preliminary and final instructions. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.
12. **2.513(E) Reference Documents.** The court ~~must encourage~~ may, in the court's discretion, allow counsel in civil and criminal cases to provide the jurors with a reference document or notebook, the contents of which ~~should~~ may include, but which is not limited to, witness lists, relevant statutory provisions, and, in cases where the interpretation of a document is at issue, copies of the relevant document. The court and the parties may supplement the reference document during trial with copies of the ~~preliminary~~ jury instructions and admitted exhibits, ~~and other~~ appropriate information to assist jurors in their deliberations.
PASSED AS EDITED 59-36
13. **2.513(A) Preliminary Instructions.** After the jury is sworn and before evidence is taken, the court shall provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall provide each juror with a copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions.
PASSED
14. **2.513(N)(2) Final Instructions to the Jury.** Solicit Questions about Final Instructions. As part of the final jury instructions, the court ~~shall~~ may advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during the deliberations. Upon concluding the final instructions, the court ~~shall~~ may invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate. If questions arise, the court and the parties shall convene, in the courtroom or by other agreed-upon means. The question shall be read into the record, and the attorneys shall offer comments on an appropriate response. The court may, in its discretion, provide the jury with a specific response to the jury's question, but the court shall respond to all questions asked, even if the response consists of a directive for the jury to continue its deliberations. The sealed envelope shall be made part of the record and preserved for appeal.
PASSED AS EDITED

15. **2.513(N)(3) Copies of Final Instructions.** The court ~~shall~~ may provide each juror with a written copy of the final jury instructions to take into the jury room for deliberation. The court, in its discretion, also may provide the jury with a copy of electronically recorded instructions.
PASSED AS EDITED
16. Due to time considerations, the Assembly reviewed a different proposal before moving to the second cluster of Jury Reform proposals. Timothy O'Sullivan, Executive Director of the New York State Lawyers Fund for Client Protection introduced the proposed Rule for Trust Overdraft Notification, MRPC 1.15(A). After discussion a motion was made and seconded. The Assembly approved the proposal and authorized the State Bar of Michigan to make any subsequent editorial, clerical, or technical language changes to the proposed rule and comments that may assist in effecting the intent of the proposal after discussion with Michigan financial institutions and others prior to submitting the rule to the Michigan Supreme Court.
17. Chairperson Buiteweg, introduced the second set of the Jury Reform Proposal clusters, dealing with juror participation. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.
18. **MCR 2.513(F) Deposition Summaries.** Where it appears likely that the contents of a deposition will be read to the jury, the court should encourage the parties to prepare concise, written summaries of depositions for reading at trial in lieu of the full deposition. Where a summary is prepared, the opposing party shall have the opportunity to object to its contents. Copies of the summaries should be provided to the jurors before they are read.
FAILED UNANIMOUSLY
19. **MCR 2.513(G) Scheduling Expert Testimony.** The court may, in its discretion, craft a procedure for the presentation of al expert testimony to assist the jurors in performing their duties. Such procedures may include, but are not limited to: (1) Scheduling the presentation of the parties' expert witnesses sequentially; or (2) allowing the opposing experts to be present during the other's testimony and to aid counsel in formulating questions to be asked of the testifying expert on cross-examination; or (3) providing for a panel discussion by all experts on a subject after or in lieu of testifying. The panel discussion, moderated by a neutral expert or the trial judge, would allow the experts to question each other.
FAILED UNANIMOUSLY
20. Chairperson Buiteweg introduced the third set of clusters, which this proposal dealt with a proposal permitting the court to comment upon the evidence. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.
21. **MCR 2.513(M) Comment on the Evidence.** After the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence and comment to the jury about the weight of the evidence, if it also instructs the jury that it is to determine for itself the weight of the evidence and the credit to be given to

the witnesses and that jurors are not bound by the court's summation or comment. The court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury.

FAILED UNANIMOUSLY

22. Chairperson Buiteweg introduced the fourth set of clusters dealing with proposals affecting the role of the attorney. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.
23. **2.513(J) Jury View.** On motion of either party, on its own initiative, or at the request of the jury, the court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. ~~During the view, no person, other than an officer designated by the court, may speak to the jury concerning the subject connected with the trial. Any such communication must be recorded in some fashion.~~
PASSED WITH A VERY STRONG YES VOTE, ALTHOUGH NOT UNANIMOUS
24. **2.513(I) Juror Questions.** The court may permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that such questions are addressed to the witnesses by the court itself, that inappropriate questions are not asked, and that the parties have an opportunity outside the hearing of the jury to object to the questions. The court shall inform the jurors of the procedures to be followed for submitting questions to witnesses.
PASSED 60 YES VOTES TO 40 NO VOTES
25. **2.513(H) Note Taking by Jurors.** The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes, and they should not permit note taking to interfere with their attentiveness. If the court allows jurors to take notes, jurors must be allowed to refer to their notes during deliberations, but the court must instruct the jurors to keep their notes confidential except as to other jurors during deliberations. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.
PASSED UNANIMOUSLY
26. **2.513(K) Juror Discussion.** After informing the jurors that they are not to decide the case until they have heard all the evidence, instructions of law, and arguments of counsel, the court may instruct the jurors that they are permitted to discuss the evidence among themselves in the jury room during trial recesses. The jurors should be instructed that such discussions may only take place when all jurors are present and that such discussions must be clearly understood as tentative pending final presentation of all evidence, instructions and argument.
FAILED UNANIMOUSLY

27. **MCR 2.513(D) Interim Commentary.** Each party may, in the court's discretion, present interim commentary at appropriate junctures of the trial.
FAILED BY A SUBSTANTIAL MARGIN ALTHOUGH NOT UNANIMOUS
28. **MCR 2.513(C) Opening Statements.** Unless the parties and the court agree otherwise, the plaintiff or the prosecutor, before presenting evidence, must make a full and fair statement of the case and the facts the plaintiff or the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a similar statement. The court may impose reasonable time limits on the opening statements.
PASSED
29. Chairperson Buiteweg informed the Assembly that the proponents of the remaining proposals on the agenda: Emeritus Attorney Referral Fees, the Patient Compensation Act, MCR 2.519 pertaining to Special Masters and Electronic Discovery have all agreed to table their proposals to the next meeting in April 2007.
30. Terri Stangl, member of the Justice Initiatives reported on the consideration of Proposed Amendments to SCAO Garnishment Court Forms MC-13 and MC-14. Upon a motion made and seconded the Assembly unanimously approved the amendments to MC-13 and MC-14 to be revised to include a provision that expressly directs a bank or financial institution to protect SSI from garnishment.

Upon a motion made and seconded the Assembly unanimously approved the amendments to cover the other forms of income, which would be SCAO garnishment form M-13 and garnish form M-14 to be revised to include a provision that expressly directs a bank or financial institution protect exempted income from garnishment.
31. Chairperson Buiteweg proposed the adoption of a resolution commemorating John T. Berry for serving as the Executive Director of the State Bar for the last five years. Upon a motion made and seconded the proposal was adopted and Chairperson Buiteweg read the resolution to the Assembly.
32. John Berry made a few brief comments about leaving the State Bar and thanked the Assembly for the resolution commemorating him.
33. Janet Welch, Director, General Counsel of the State Bar gave a report on her attendance at the National Conference of Uniform State Laws, which was held in South Carolina.
34. Upon a motion made and seconded, Kathy Kakish was unanimously elected Clerk of the Representative Assembly.

35. Chairperson Buiteweg presented plaques to the 2005-2006 Committee Chairs for their work over the past year.
36. Chairperson Buiteweg presented certificates to the outgoing Assembly members whose terms of service expired at the end of the September 2006 Annual Meeting.
37. Edward L. Haroutunian was sworn in as 2006-2007 Chairperson of the Assembly by Hon. Brian Zahra, Chief Judge Pro Tem for the Michigan Court of Appeals.
38. Mr. Haroutunian presented a plaque to Ms. Buiteweg for all her work over the past year as Assembly Chairperson.
39. Adjournment