

State Bar of Michigan
Representative Assembly
September 27, 2018

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Thursday, September 27, 2018, at Ballroom A in the DeVos Place located in Grand Rapids, 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.
4. As provided in Rule 4.8, the Summary of Proceedings of the April 21, 2018 meeting was deemed approved with one amendment.
5. Judge 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, the vacancies were filled via the memorandum distributed at the meeting.
6. Ellen M. Burns presented the *Unsung Hero Award* to Michele P. Fuller. Ms. Fuller accepted the award and addressed the Assembly.
7. Joseph P. McGill presented the *Michael Franck Award* to Judge Victoria A. Roberts. Judge Roberts accepted the award and addressed the Assembly.
8. Janet K. Welch, Executive Director of the State Bar of Michigan, presented to the Assembly on recent developments in First Amendment jurisprudence and mandatory bar associations.
9. Jennifer M. Grieco, President-Elect, and Richard L. Cunningham, Vice-Chair, addressed the Assembly for consideration of a proposal supporting the creation of a Task Force to examine whether changes in the structure, governance, and scope of operation of the State Bar of Michigan are advisable, and to make recommendations concerning specific changes. Upon a motion made and supported, after discussion, the proposal passed 97 to 4 with 3 abstentions.
10. Nicholas M. Ohanesian, Chair of the Assembly Review Committee, addressed the Assembly for consideration of a proposal supporting an amendment to the Permanent Rules of Procedure of the Representative Assembly to permit virtual meetings and voting and further recommend to the Board of Commissioners conforming changes to the Bylaws of the State Bar of Michigan. Upon a motion made and supported, after discussion, the proposal to amend the Permanent Rules of Procedure passed 80 to 13 with amendments. Upon a motion made and

- supported, after discussion, the proposal to recommend amending the Bylaws passed 88 to 7.
11. Daniel J. Ferris, Chair of the Drafting Committee, addressed the Assembly for consideration of a proposal supporting an amendment to the Permanent Rules of Procedure Section 7.4 regarding the Committee on Drafting. Upon a motion made and supported, after discussion, the proposal passed with amendment 94 to 1 with 1 abstention.
 12. Matthew R. Abel, Member of the Representative Assembly, addressed the Assembly for consideration of a proposal to support the ballot initiative for marijuana legalization. Upon a motion made and supported, after discussion, the proposal was determined not to be permissible under *Keller* with 85 members voting that the proposal was not *Keller*-permissible and 16 members voting that the proposal was *Keller*-permissible.
 13. Dawn M. King, Member of the Hearings Committee, addressed the Assembly for consideration of a proposal supporting an amendment to the Permanent Rules of Procedure Section 7.3 regarding the Committee on Outreach and Hearings. Upon a motion made and supported, after discussion, the proposal passed 88 to 2.
 14. Philip M. Moilanen, Member of the Rules & Calendar Committee, addressed the Assembly for consideration of a proposal supporting an amendment to the Permanent Rules of Procedure Section 4.6 regarding Written Resolutions. Upon a motion made and supported, after discussion, the proposal passed 93 to 1 with 1 abstention.
 15. Joseph P. McGill, Representative Assembly Chair, announced the election of Chelsea M. Rebeck as the 2018-2019 Clerk of the Assembly.
 16. Richard L. Cunningham was sworn in as 2018-2019 Chair of the Assembly by Judge Melissa L. Pope.
 17. Richard L. Cunningham, Representative Assembly Chair, presented a plaque to Joseph P. McGill for all his work over the past year as Assembly Chair.
 18. Adjournment.

President Rockwell called the meeting to order at 9:45 a.m. on July 27, 2018 in the Board Room of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson

David C. Anderson

Dennis M. Barnes, Vice-President

Aaron V. Burrell

Robert J. Buchanan, Secretary

Hon. Clinton Canady III

B.D. "Chris" Christenson

Richard L. Cunningham

Syeda F. Davidson

Shauna L. Dunnings

Andrew F. Fink III

Robert C. Gardella

Jennifer M. Grieco, President Elect

Edward L. Haroutunian

Krista L. Haroutunian

Kara R. Hart-Negrich

James W. Heath

Michael S. Hohaus

F. Thomas McCarthy Jr.

Joseph P. McGill

Hon. Maureen M. McGinnis

Shenique A. Moss

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:

Joseph J. Baumann

Jules B. Olsman

State Bar Staff present:

Janet Welch, Executive Director

Marge Bossenbery, Executive Coordinator

Monique Brown, Lawyer Referral Coordinator

Gregory Conyers, Director, Diversity

Candace Crowley, Senior Consultant

Peter Cunningham, Assistant Executive Director and Director, Governmental Relations

Darin Day, Director, Outreach and Constituent Development

Danon Goodrum-Garland, Director, Professional Services Division

Kathryn Hennessey, Public Policy Counsel

James Horsch, Director, Finance and Administration Division

Robert Mathis, Pro Bono Service Counsel

Samantha Meinke, Communications Manager

Laurin Roberts Thomas, Public Services Counsel

Alecia Ruswinckel, Assistant Director, Professional Standards Division

Jeanette Socia, Human Resources Manager

Melissa Thouvenin, Licensing Services Specialist

Kari Thrush, Assistant Division Director, Member Services

Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program

Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, ICLE
Timothy Denny, member
Tracey Lee, member
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. Mr. Quick asked that agenda item 7 C, Religious Liberty Law section, be removed from the agenda. Mr. Ulrich asked that item 2 A, the minutes from the June 8, 2018 Board of Commissioners meeting, be removed from the agenda.

The Board received the minutes from May 22, 2018 Executive Committee meeting.
The Board received the recent activities of the President.
The Board received the recent activities of the Executive Director.
The Board received Client Protection Fund Claims.
The Board received Unauthorized Practice of Law Claims.
The Board received the FY 2018 Financial Reports through May 2018.
The Board received the SBM Section Annual Reports.
The Board received Section Bylaw amendments from the Environmental Law, Insurance and Indemnity Law and the Solo and Small Firm Sections

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

June 8, 2018 Board of Commissioners Minutes

Mr. Ulrich requested that the minutes be amended concerning a comment he made at the July Board meeting. A motion was made to amend the language concerning the comment to say: "Mr. Ulrich expressed concern that only "Nay" votes are called for when acting on motions before the Board, with no call for "Aye" votes." The motion was approved.

New SBM Section – Religious Liberty Law

Mr. Rockwell introduced Mr. Timothy Denny and Ms. Tracie Lee, representing the proposed Religious Liberty Law section. They addressed the Board in support of the proposed section, and offered to respond to any questions.

Mr. Quick questioned the Bar's process for establishing sections. He inquired about the extent to which the Board, aside from ensuring that the group is meeting all of the requirements for a petition, has discretion to consider whether or not a section should be formed. He noted that there are administrative expenses not covered by section dues that the Bar incurs, and asked if there were any rules or guidelines, published or unpublished, that the Board should consider when a petition is brought to them.

Ms. Welch responded by saying that the rules for the creation of a section is in the SBM bylaws and that, within those rules, as a governmental agency and a mandatory bar, we cannot discriminate on who we offer our platform to. She stated that consistent with its mission as defined by the Supreme Court, the Bar could create rules or changes to the bylaws about what the requirements are to create a section, but the application of those rules would need to be applied evenhandedly and that each member must

be allowed to join any section. She stated that the Bar needs to live with the rules we have in place and cannot after the fact restrict or deny the formation of a section. To do so would expose the Bar to litigation.

Judge McGinnis made a suggestions that from an administrative perspective the Bar should review the current process in the future and determine what is the breaking point of the SBM as far as how many sections we can support.

A motion was offered and supported to approve the Religious Liberty Law section. The motion was approved. Mr. Quick abstained.

Janus and Fleck Decisions

Ms. Welch provided the Board with an overview of the *Janus* and *Fleck* decisions along with a history of mandatory bar associations in the United States. A detailed memo and timeline were distributed to the Board members and Ms. Welch responded to questions from the Board.

She told the Board that the US Supreme Court will consider whether to grant cert in the *Fleck* case in September and that she will keep them informed as new developments arise.

Ms. Welch explained that if the SBM decides to submit an amicus brief that it should begin to consider the content now. She stated that an amicus brief was submitted by the State Bar in the *Keller* case and that some of the arguments that were made at that time were still applicable. She stated that it was too late to weigh in on the cert petition before the Court in September.

The Board members expressed their thoughts on the amicus brief including that if the SBM submitted an amicus brief, it should be on their own and not sign on to with other states, it would be irresponsible not to respond, that this might be an opportunity to inform the Court about the nature of a mandatory bar, and that caution should be used in drafting the content.

A suggestion was made to appoint a task force to monitor the issue and develop ideas about what an amicus would look like. The Board had differing opinions on the makeup of the task force and its focus, given the uncertainty of the time frame. Mr. Rockwell stated that he would begin to review the appointment process for a task force and welcomed any input from board members.

BOARD OFFICER ELECTIONS

Mr. Rockwell announced that President-Elect Grieco succeeds him as president for 2018-2019.

Mr. Rockwell announced that Vice President Barnes succeeds Ms. Grieco as president-elect for 2018-2019.

A motion was offered and supported to elect Mr. Buchanan as vice president for 2018-2019. The motion to elect Mr. Buchanan as vice president was approved.

A motion was offered and supported to elect Ms. Warnez as secretary for 2018-2019. The motion to elect Ms. Warnez as secretary was approved.

Mr. Rockwell announced that Mr. Heath and Mr. Quick submitted letters of interest and résumés for the position of 2018-2019 Treasurer of the SBM in accordance with board procedure.

Mr. Quick reported to the Board that after consideration and acknowledging the credentials of Mr. Heath he is withdrawing his name from the race.

A motion was offered and supported to elect Mr. Heath as Treasurer for 2018-2019. The motion to elect Mr. Heath as Treasurer was approved.

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez stated that there was no report, but reported that the staff will begin to meet with the auditors next week.

Finance, Dana M. Warnez, Chairperson

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

Professional Standards, Robert J. Buchanan, Chairperson

Nominations for Michigan Indian Legal Services Board of Trustees

A motion was offered and supported to reappoint Kendra K. Robbins and appoint Briana Green to the Michigan Indian Legal Services Board of Trustees. The motion was approved.

Nominations for Institute for Continuing Legal Education Executive Committee

A motion was offered and supported to re-appoint Miriam Blanks-Smart to the Institute for Continuing Education Executive Committee. The motion was approved.

Regulatory Objectives Workgroup Report

A motion was offered and supported to approve the recommendations received in the report from the regulatory objectives workgroup.

Mr. Quick expressed an interest in receiving more information about the background of the recommendations before the Board takes action on the report.

A motion was offered and supported to table this item. The motion was approved.

Proposed Formal Ethics Opinion R-25

A motion was offered and supported to adopt Proposed Formal Ethics Opinion R-25.

During discussion on the motion, Mr. Buchanan reminded the Board that this item was not adopted at a previous board meeting and that at the suggestion of the Board this opinion was posted for comment by all members. Those comments are included in today's board meeting materials. Mr. Buchanan referenced a letter from Mr. Ken Mogill and stated that because he had similar concerns to those expressed by Mr. Mogill expressed, he recommended that the opinion be sent back to the ethics committee for further review. Discussion followed.

A motion was offered and supported to table this item. A roll call vote was taken and the motion failed.

AYES: Anderson David, Barnes, Buchanan, Christenson, Davidson, Dunnings, Grieco, Hart-Negrich, Hohausler, Ulrich. Warnez, Washington

NAYS: Anderson Danielle, Burrell, Canady, Cunningham, Fink, Gardella, Haroutunian Edward, Haroutunian Krista, Heath, McCarthy, McGill, McGinnis, Moss, Perkins, Quick, Radke, Riordan, Shekell, Rockwell

The Board took a vote on the original motion and the motion to adopt Proposed Formal Ethics Opinion R-25 was approved. Mr. McGill abstained.

Withdrawal of Outdated Ethics Opinion C-211

A motion was offered and supported to support the withdrawal of outdated ethics opinion C-211. The motion was approved.

Proposed Amendments of MRPC 1.1 and 1.6 to add a Comment on Technical Competence

A motion was offered and supported to adopt the proposed amendments of MRPC 1.1 and 1.6 and to add a comment on technical competence. The motion was approved.

Communications and Member Services, Dennis M. Barnes, Chairperson

Event Summary

The Board received summaries from the BLF and UMLI events.

SBM Endorsement Letter for MCCE Bid for National Mock Trial Finals

A motion was offered and supported for the SBM to send a letter of support for the MCCE bid for the National Mock Trial Finals. 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 support the proposed amendments of Rule 3.223 with additional language proposed by the Family Law Section to 3.223(D) that both parties be present to provide the court with verification that the agreement is by consent. The motion was approved.

ADM File No. 2002-37/2018-20: Proposed Amendment of Rule 2.002 of the Michigan Court Rules

The Court is considering two different proposals regarding fee waivers for indigent individuals. Alternative A is a version prepared internally in anticipation of implementation of a statewide e-Filing system. Alternative B is a proposal submitted by the State Bar of Michigan. The two versions are similar in some respects, but have significant differences. For example, the Bar's version would establish a standard for indigency as living in a household whose gross household income is under 200% of the

federal poverty level, would create a status of “financial hardship,” would allow the court to conduct further inquiries if necessary to determine whether a party is indigent, and would create a right to request a hearing if a petition for indigency is denied. The alternative version does not include such provisions.

A motion was offered and supported to support Alternative C proposed by the Consistent Fee Waiver Workgroup with the amendments presented. The motion was approved.

ADM File No. 2017-16: Proposed Amendment of Rule 6.302 of the Michigan Court Rules

The proposed amendment of MCR 6.302 would require a trial court judge to advise a defendant that if a plea is accepted, the defendant will give up the right to appeal issues that might have been available after the conclusion of a trial.

A motion was offered and supported to support the proposed amendment to Rule 6.302. The motion was approved.

ADM File No. 2013-05/2014-46: Proposed Amendment of Rule 6.502 of the Michigan Court Rules

The proposed amendments would make several substantive changes in MCR 6.502 regarding post judgment relief from judgment motions. First, the proposed new language in MCR 6.502(G)(2) would insert an “actual innocence” waiver provision similar to that in MCR 6.508(D)(3). Further, MCR 6.502(G)(3) would be added to clarify that shifts in science are included in the definition of “new evidence” for purposes of the exemption from the successive motion limitation.

A motion was offered and supported to support the amendments MCR 6.502 as amended below:
(3)(a) in a field of scientific knowledge, including shifts in scientific consensus or the emergence of differing or contradictory scientific theories that were not previously available to the defendant. The motion was approved.

Rule 3.8 of the Michigan Rules of Professional Conduct

new language would be added to MRPC 3.8 to require certain actions by a prosecutor who knows of new, credible, and material evidence creating a reasonable likelihood that defendant did not commit the offense of which defendant was convicted, or who knows of clear and convincing evidence that shows defendant did not commit the offense. The proposed additional language of MRPC 3.8 is taken from the ABA Model Rules of Professional Conduct 3.8.

A motion was offered and supported to support the amendments MPRC 3.8 as drafted. The motion was approved.

ADM File No. 2017-20: Proposed Amendment of Rule 7.202 of the Michigan Court Rules

The proposed amendment of MCR 7.202 clarifies what constitutes a final post judgment order in a domestic relations case for purposes of appeal by right. This issue was raised in *Marik v Marik*, docket 154549, during oral arguments held earlier this term.

A motion was offered and supported to support the amendments MCR 7.202 as drafted. The motion was approved. The motion was approved.

ADM File No. 2017-29: Proposed Amendment of Rule 4.4 of the Michigan Rules of Professional Conduct

The proposed amendment of MRPC 4.4 would define the responsibilities of a lawyer who receives a document that was inadvertently sent. This proposal was submitted by the State Bar of Michigan. Note that the Court adopted MCR 2.302(B)(7) in 2008 to address the issue of discovery material inadvertently transmitted, and that rule requires the inadvertent recipient to return or destroy the alleged protected material, and may promptly submit the material to the trial court for a determination of the claim. To the extent that the final paragraph of the proposed new comment language apparently leaves such a decision to the discretion of the lawyer, this proposed new language may conflict (or at least exist in tension) with the existing language in MCR 2.302(B)(7).

Support what position already taken and pass along comments.

A motion was offered and supported to support the amendments MCR 4.4 as drafted and support the Professional Ethics Committee response to the Court's staff comment. The motion was approved.

ADM File No. 2017-25: Proposed Amendment of Rule 7.1 of the Michigan Rules of Professional Conduct

The proposed amendment of MRPC 7.1 would restrict and regulate the use of the terms "retired" or "former" for a justice, judge, referee, or magistrate who returns to the practice of law. This proposal is a narrower version than the one submitted by the State bar of Michigan Representative Assembly.

A motion was offered and supported to support the proposed amendment to MCR 7.1. The motion was approved.

Legislation

HB 5386 (LaSata) Human services; other; eligibility requirements for Medicaid and supplemental nutrition assistance (SNAP) programs; enhance. Creates new act.

A motion was offered and supported to table this item. The motion was approved.

Jurisdiction for Prosecution

SB 0951 (Gregory) Criminal procedure; jurisdiction; jurisdiction for prosecution for delivery of a controlled substance causing death; modify. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 5a to ch. II.

SB 0952 (Zorn) Criminal procedure; jurisdiction; venue for prosecution of delivery of a controlled substance causing death; modify. Amends sec. 317a of 1931 PA 328 (MCL 750.317a).

A motion was offered and supported that the two pieces of legislation are Keller permissible in that it affects the functioning of the court. The motion was approved.

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

HB 5396 (Lucido) Civil procedure; evictions; proceedings to recover possession of premises because of assault, battery, or unlawful drugs; modify to require a conviction. Amends sec. 5714 of 1961 PA 236 (MCL 600.5714).

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

HB 6096 (Lucido) Property; other; entry by owner to evict; modify process. Amends sec. 2918 of 1961 PA 236 (MCL 600.2918).

A motion was offered and supported that this legislation is not Keller permissible. 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.

A motion was offered and supported to table this item to allow time to solicit input from Michigan law schools. The motion was approved.

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 noted that some of the changes to the Public Policy web site that were recommended by the steering committee have been implemented. She stated that the changes make it easier for SBM members to weigh in on public policy issues.

LEADERSHIP REPORTS

President’s Report, Donald G. Rockwell, President
In Memoriam* policy for *Michigan Bar Journal

Mr. Rockwell reported that each month in the *Michigan Bar Journal* there is an *In Memoriam* section, which lists members who have passed away. In a recent edition, a former member, who happened to be a judge who was removed from the bench and disbarred, was listed. The State Bar received a few comments about the appropriateness of this listing. Current practice is to include in the *In Memoriam* notice any person who is in our membership database and who we learn has passed away, even if the

person has been removed from membership by disbarment. Staff is looking for guidance on future practice.

A motion was offered and supported to continue the current practice. The motion was approved.

Michigan Indigent Defense Commission (MIDC) Re-Appointment

A motion was offered and supported to recommend the reappointment of Ms. Nancy Diehl to the Governor's office as a representative of the State Bar on the MIDC. The motion was approved.

Executive Director's Report, Janet K. Welch, Executive Director FY 2019 Proposed Budget

Ms. Welch asked Mr. Horsch to provide the Board with an overview of the FY 2019 Proposed Budget. Mr. Horsch stated that the budget was reviewed by the Finance Committee on July 11 and was approved to move forward for Executive Committee and the Board for review. A motion was offered and supported to adopt the FY 2019 Proposed Budget as presented, with a reduction of \$35,000 for IT telephone expense proposed by staff. The motion was approved.

SBM Standing and Special Committees 2018-2019 Resolution and Matrix

Ms. Welch asked Ms. Crowley to explain the process that was used to prepare and develop the standing and special committee resolution and matrix for 2018-2019. Ms. Crowley described the changes and stated that the proposed changes represent a determination about the best way to proceed in accomplishing the strategic plan.

Proposed changes include eliminating the strategic plan steering committees and forming a new Strategic Planning Commissioner Committee, eliminating the Delivery of Legal Services for All special committee currently in place, transforming the Access to Justice and Affordable Legal Services Initiatives into standing committees, and the Lawyer Referral Service Initiative has been converted into the Online Legal Resource and Referral special committee.

A motion was offered a motion and supported to approve the SBM Standing and Special Committee 2018– 2019 Resolution and Matrix. The motion was approved.

Commissioner Committee and Liaison Appointment Process

Ms. Ruswinckel described the commissioner committee and liaison appointment process. She informed the Board that they would receive an email next week describing the method they should use to indicate their preferences to serve as a section liaison and on a commissioner committee.

LRS Update

An update will be provided at the September Board meeting.

Receivership Workgroup Update

An update will be provided at the September Board meeting.

ABA Appointment

Ms. Welch reported that she has been appointed as a member of the American Bar Association's Standing Committee on Bar Activities and Services.

Detroit Satellite office

Ms. Welch stated that the lease agreement with University of Detroit Mercy Law School for a SBM Satellite office has been signed.

Introduction of new SBM staff

Ms. Goodrum Garland introduced Ms. Melissa Thouvenin, Licensing Services Specialist to the Board and Ms. Roberts Thomas introduced Ms. Monique Brown, Lawyer Referral Services Coordinator.

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

Mr. McGill reported that the RA officers and chairs continue to move forward with the introspective analysis of the RA and are in the process of reviewing the Permanent Rules of Procedure in an effort to reinvigorate the RA and make it more nimble and responsive. He stated that they are focusing on outreach to the general membership, sections, geographic bar associations, and specialty bar associations asking how the RA can be more responsive to each of them.

Mr. McGill stated that plans are underway for the September meeting, where agenda items may include discussion and action on the use of cell phones in the courtroom, attorney receiverships, proposed revisions to the Permanent Rules of Procedure, and the retention of an outside consultant. He reported that awards will be given to Judge Victoria Roberts and Ms. Michelle Fuller, and that staff will give a presentation on governance issues.

Mr. McGill informed the Board that there will be a contested election for the 2018-19 RA Clerk.

Other Reports

American Bar Association (ABA) Report

Mr. Ulrich mentioned that the ABA is struggling with a decrease in memberships and is looking at ways to address that issue.

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

Ms. Davidson provided the Board with an update on recent activities of the YLS.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Ms. Grieco suggested that if they have not already done so, Board members should listen to the SBM "On Balance" podcasts as they provide useful information.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at 2:45 p.m.

President Grieco called the meeting to order at 3:45 p.m. on September 26, 2018 in the Gerald R. and Betty Ford Presidential Ballroom in the Amway Grand Plaza Hotel in Grand Rapids, MI.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, President-Elect
Joseph J. Baumann
Aaron V. Burrell
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Josephine A. DeLorenzo
Shauna L. Dunnings
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Edward L. Haroutunian

Kara R. Hart-Negrich
James W. Heath, Treasurer
Michael S. Hohaus
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. David A. Perkins
Barry R. Powers
Daniel D. Quick
Victoria A. Radke
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Ryan Zemke

Commissioners absent and excused:

Robert J. Buchanan, Vice President

Travis W. Weber

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
Candace Crowley, Assistant Executive Director and Director, External Development
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Johnson-Wynn, Assistant General Counsel
Jeanette Socia, Human Resources Manager
Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, Institute for Continuing Legal Education
Jeff Kirkey, Institute for Continuing Education

President's Report

Welcome

Ms. Grieco welcomed the members of the 2018 – 2019 SBM Board of Commissioners, introduced the newly elected members of the Board, and administered the oath of office to the Commissioners.

Appointment of the Executive Committee

A motion was offered and supported for Ms. Grieco to appoint an Executive Committee. The motion was approved.

Appointment of the Commissioner Committees

A list of Ms. Grieco's appointments to the Commissioner Committees was distributed.

Fiscal Matters

A motion was offered and supported to allow all officers of the State Bar of Michigan and all Lansing-based Commissioners authority to provide a second signature for checks that are written for amounts greater than \$15,000. The motion was approved.

Ms. Bossenbery informed the Board about the procedure that will take place for Board members to submit travel expenses through the Nexonia program.

Pictorial Directory Information

The Board members were asked to complete the pictorial directory information form and return it to Ms. Bossenbery.

Dates for the 2018-2019 Board and Representative Assembly Meetings

A list of the dates for the 2018-2019 Board and Representative Assembly meetings was distributed.

Adjournment

The meeting was adjourned at 4:10 p.m.

President Grieco called the meeting to order at 9:45 p.m. on November 16, 2018 in the Boardroom of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, President-Elect
Joseph J. Baumann
Robert J. Buchanan, Vice President
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Josephine A. DeLorenzo
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Edward L. Haroutunian
Kara R. Hart-Negrich

James W. Heath, Treasurer
Michael S. Hohausser
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. David A. Perkins
Barry R. Powers
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Travis W. Weber
Ryan Zemke

Commissioners absent and excused:

Aaron V. Burrell
Syeda F. Davidson

Shauna L. Dunnings
Daniel D. Quick

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Communications and Member Services Division
Candace Crowley, Senior Consultant
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director, Outreach and Constituent Development
Katherine Gardner, UPL Attorney
Danon Goodrum-Garland, Director, Professional Services Division
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Wynn Johnson, Assistant General Counsel
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Media Manager
Alecia Ruswinckel, Assistant Director, Professional Standards Division
Kari Thrush, Assistant Director, Communications and Member Services Division

Guests

Jennifer Bentley

Consent Agenda

The Board received the minutes from both of the September 26, 2018 Board meetings.

The Board received the minutes from the September 11 and October 9, 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 July 2018.

The Board received the Financial Safety Margin Calculation

The Board received the District and Fitness Committee Appointments

The Board received Client Protection Fund Claims.

The Board received Section Bylaw Amendments from the Alternative Dispute Resolution, Animal Law, Labor and Employment, and Master Lawyer Sections.

Ms. Grieco asked the Board if there were any items that needed to be removed from the consent agenda.

Mr. Ulrich requested that the amendments to the Master Lawyers Section bylaws be removed.

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

A motion was offered and supported to have the amendments to the bylaws of the Master Lawyers Section be referred back to the section for the changes as proposed. The motion was approved.

LEADERSHIP REPORTS

President's Report, Jennifer M. Grieco, President

Professionalism Summit

Ms. Grieco provided the Board with an overview of what took place at the Promoting Professionalism in the 21st Century Summit in October. The Board received a report that contained a program summary that described the speakers, workshops, panels, and breakout sessions that took place. Ms. Grieco anticipates that this report will be distributed to bar and section leaders and courts.

Ms. Welch reported that she had met with the Executive Directors from the AGC, ADB, and JTC, along with Milt Mack, State Court Administrator, to follow up on the Summit recommendations, specifically on the involvement of judges.

Great Rivers Bar Leadership Conference

Ms. Grieco reported that the President, President-Elect, and Executive Director of the State Bar attended the Great Rivers Bar Leaders Conference in October. The conference consists of the state bars from Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Nebraska and Colorado state bars; of those bars, only Wisconsin and Michigan are funded by mandatory dues.

Executive Director's Report, Janet K. Welch, Executive Director
Janus\Fleck

Ms. Welch provided the Board with an overview of the current status of *Fleck v Welch*, challenging the mandatory status of the State Bar of North Dakota, and the possible implications for 32 mandatory bars. The Supreme Court has relisted this case five times.

SBM is leading an effort to collect relevant data from all 32 mandatory bars on their regulatory and nonregulatory activities to determine how to collaborate on responding to the ongoing challenges to the mandatory bar.

The Board members discussed possible content of an amicus brief in *Fleck*.

LRS Update

Ms. Welch provided the Board with an overview of SBM's LRS program and provided some background information about the commercial lead generators. Our revamping of the classic lawyer referral system, operating within the objectives of the regulatory scheme, will not achieve its potential without significantly more resources to publicize and market the program.

Issues Related to Online Dues Processing

Ms. Welch reported that the Bar experienced a number of glitches in the new e-commerce system designed to collect member dues online. All of the members who experienced problems have been contacted and their issues resolved.

Mr. Horsch provided the Board with an update on the current dues payments, 96% of which have been made online.

A Lawyer Helps Pro Bono Honor Roll

Ms. Welch asked Mr. Mathis to review the "A Lawyer Helps Pro Bono Honor Roll" proposal with the Board. Mr. Mathis referenced the memo regarding the proposal provided in the Board materials. He described the Voluntary Pro Bono Standard as adopted by the RA. The Circle of Excellence, which recognized firms and corporations that demonstrated full compliance with the Voluntary Standard, was phased out in 2018. Beginning in 2019, the Access to Justice Campaign will recognize, on tiered recognition lists, individuals, law firms, and corporate legal departments that make significant total donations, as well as law firms that achieve a per-attorney average donation, of at least \$300, starting with tiered levels of \$300, \$500, \$750 or \$1,000 per lawyer. Also beginning in 2019, the ALH Pro Bono Honor Roll proposal, if adopted, will recognize, on tiered recognition lists, both individual Michigan attorneys who provide 30 or more hours of pro bono legal services in a calendar year and also law firms and corporations that achieve a per-attorney average of at least 30 hours of pro bono legal services in a calendar year, per the Voluntary Standard. The recognition lists will use tiered levels of 30, 50, and 100 hours. An online application will be available for individual attorneys, law firms, and corporations to submit pro bono service hours to the State Bar. A motion was offered and supported to adopt the proposal. The motion was approved.

Introduction of New Employee

Ms. Welch asked Ms. Goodrum-Garland to introduce Ms. Katherine Gardner, SBM's new UPL Counsel, to the Board members.

Letter from Legal Services Association of Michigan

Ms. Welch informed the Board that the co-chairs of the Access to Justice Policy Committee received a letter from the Legal Services Association of Michigan (LSAM). LSAM forwarded the letter to SBM for a response. Ms. Welch said that no action is required at this time, but asked the Board for input on how to respond to the letter. The Board requested that SBM refer the letter to all relevant sections and that staff create a template for relevant section liaisons to respond. Mr. Haroutunian asked that the definition of "Low-Income Consumer" be clarified.

Representative Assembly (RA) Report, Richard L. Cunningham, Chairperson.

Mr. Cunningham reviewed the items that were addressed at the RA's September 26, 2018 meeting. The RA adopted a resolution in support of the creation of a Task Force on Structure and Governance of the State Bar. The Board approved the same resolution at its September 26, 2018 meeting.

The RA passed an amendment to its Permanent Rules of Procedures to allow for the RA to conduct virtual meetings. A motion was offered and supported to approve an amendment to Article IV, Section 6 of the Bylaws of the State Bar of Michigan to allow for the RA to conduct virtual meetings. The motion was approved.

Young Lawyers Section (YLS) Report, Kara R. Hart-Negrich, Chairperson

Ms. Hart-Negrich provided the Board with an update on some of the recent activities of the YLS and reported that as required in their bylaws, an YLS bylaw review committee has been created. She reported that the Annual YLS Summit will take place in June in Detroit.

Michigan State Bar Foundation

Ms. Jennifer Bentley provided the Board with an update on the Access to Justice Campaign, which is a partnership with the State Bar of Michigan and Legal Aid providers in Michigan. After a review of the Campaign and national research on best practices, during the past year, it was decided to institute a collaborative centralized campaign that will raise money for fifteen statewide programs, down from the forty-five programs. She stated that there will be an email sent from President Grieco and Mr. Pappas, Chair of the State Bar Foundation, to all SBM members asking for year-end donations. Ms. Bentley indicated that there will be three donor lists published that will show firms, members and corporate donations and that additional information can be found at atjfund.org/champions.

COMMISSIONER COMMITTEES REPORTS

Finance, James W. Heath, Chairperson

Mr. Heath reported that at the committee meeting this morning, Mr. Horsch provided the members with an overview of the responsibilities and duties of the committee members and thanked the former Chair, Ms. Warnez, and returning members, Mr. Hohausser, Ms. Rebeck, and Mr. Ulrich, for their assistance as well. Mr. Heath reviewed the FY 2018 financial reports and asked Mr. Horsch to review the FY 2018 financial results and trends. Mr. Horsch provided a PowerPoint presentation of the information.

Audit, James W. Heath, Chairperson

Mr. Heath reported that the auditors have completed their review of the financial status of the Bar and that the Audit Committee will meet with them in December to review the final audit report. He stated

Professional Standards, Dana M. Warnez, Chairperson

Ms. Warnez reported that the Professional Standards Committee met and were provided with an overview of the committee's duties as it relates to Character and Fitness, the Judicial Qualifications Committee, and the Client Protection Fund. She stated that other than the action item already approved on the consent agenda, there were no further items to come before the Board.

Communications and Member Services, Robert J. Buchanan, Chairperson
2018 SBM NEXT Conference Summary

Mr. Buchanan stated that there was an event summary of the NEXT Conference 2018 included in the Board materials.

Communications & Member Services Committee Jurisdiction Revision

Mr. Buchanan told the Board that in July 2018, the Board had approved in principle a revision to the jurisdiction statement of the Communications and Member Services Committee, and now asked the Board to approve language changes to that statement, confirming the committee's jurisdiction over all requests to establish new State Bar sections, all requests to amend existing section bylaws and dues structures, and all proposals to discontinue existing State Bar sections. A motion was offered and supported to approve the revised jurisdiction statement. The motion carried.

Michigan Bar Journal Plain Language Column

Mr. Buchanan reviewed the SBM's overview of the State Bar's policy on SBM Awards and asked the Board to approve the continuation of the plain language column editing award that is included each month in the *Michigan Bar Journal*. A motion was offered and supported to approve the continuation of the *Michigan Bar Journal's* Plain Language column editing contest. The motion was approved.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File No. 2016-27: Proposed Amendment of MRPC 7.2

The proposed amendment of MRPC 7.2 would require media lawyer advertisements to identify the name and contact information of at least one lawyer providing services. This proposal is being republished in light of the ABA's recent adoption of revisions of the model rules regarding attorney advertising.

A motion was offered and supported to support the language adopted by the Court on May 30, 2018 as preferred over the language proposed on September 27, 2018. The motion was approved.

ADM File No. 2016-05: Proposed Amendment of MCR 2.513

The proposed amendment of MCR 2.513 would explicitly provide that a court must orally recite its preliminary and final jury instructions for the jury (in addition to providing them in writing). The proposed amendment would clarify that even though a juror is entitled to a written set of instructions, the judge must still orally instruct the jury. This proposed amendment would conform the rule to the opinion issued by the Court in *People v Traver*.

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

ADM File No. 2018-21: Proposed Administrative Order to Require Courts to Establish Security Committees

This administrative order would direct courts to establish a standing courthouse security committee to be chaired by the chief judge or his/her designee. The attached appendix is a proposed model local administrative order developed by the SCAO.

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

ADM File No. 2002-37: Proposed Amendments of MCR 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618

The proposed amendments are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

A motion was offered and supported to encourage the Court in its work developing and implementing a statewide electronic-filing system, take no position on the proposed amendments, to forward the comments received from the committees and sections to the Court, and to authorize the Alternative Dispute Resolution and Probate & Estate Planning sections to advocate their positions. The motion was approved.

Legislation

HB 6110 (Iden) Occupations; individual licensing and regulation; use of criminal record to determine eligibility for occupational licensing; restrict. Amends title & secs. 1, 2, 3, 4, 5, 6 & 7 of 1974 PA 381 (MCL 338.41 et seq.).

A motion was offered and supported that this bill is Keller permissible in the regulation and discipline of attorneys, lawyer competency, and integrity of the legal profession. The motion was approved.

A motion was offered and supported to request an amendment that the bill not apply to the licensing of attorneys. The motion was approved. Mr. Weber abstained.

HB 6277 (LaFave) Courts; judges; judges to fully instruct jury of its authority; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 29b to ch. VIII.

A motion was offered and supported that this bill is Keller permissible in affecting the functioning of the courts. The motion was approved.

A motion was offered and supported to oppose the bill. The motion was approved. Mr. Weber abstained.

SB 1092 (Jones) Courts; juries; postponement of jury service; allow for farmers during certain months. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335).

A motion was offered and supported that this bill is Keller permissible in affecting the functioning of the courts. The motion was approved.

A motion was offered and supported to oppose the bill. The motion was approved. Mr. Weber abstained.

SB 1103 (Jones) Civil procedure; small claims; general amendments related to e-filing provisions; provide for. Amends secs. 8401a, 8402, 8403, 8404, 8405, 8406, 8409, 8412, 8420 & 8423 of 1961 PA 236 (MCL 600.8401a et seq.).

A motion was offered and supported that this bill is Keller permissible in affecting the functioning of the courts. The motion was approved.

A motion was offered and supported to support the bill. The motion was approved. Mr. Weber abstained.

OTHER REPORTS

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA Mid-year in taking place in January in Las Vegas with only one day scheduled for the meeting of the House of Delegates. He reported on the activities of the Legal Assistance for Military Personnel committee that he is a member of and mentioned that there are three Gold Star families around the board table.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Mr. Haroutunian asked Ms. Welch about the status of CloudLaw and Ms. Welch reported that there are no new developments.

Mr. Ulrich inquired about the possibility of providing new digital recording equipment to the chairs of the Character and Fitness panels. Ms. Goodrum-Garland reported that she would look into the request.

Mr. Buchanan reminded the Commissioners that each Board member had received the 2019 Award nomination brochure and asked that each Board member reach out to those sections and affinity bars that they are affiliated with and ask for nominations.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at 12:30 p.m.

President Grieco called the teleconference meeting of the Board to order at 4:05 p.m. on December 4, 2018.

Commissioners present:

David C. Anderson
Dennis M. Barnes, President-Elect
Joseph J. Baumann
Aaron V. Burrell
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Josephine A. DeLorenzo
Shauna L. Dunning
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Edward L. Haroutunian

Michael S. Hohaus
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. David A. Perkins
Barry R. Powers
Daniel D. Quick
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Travis W. Weber
Ryan Zemke

Commissioners absent and excused:

Danielle Mason Anderson
Robert J. Buchanan, Vice President

Kara R. Hart-Negrich
James W. Heath, Treasurer

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Kathryn Hennessey, Public Policy Counsel
Carrie Sharlow, Administrative Assistant

Legislation

SB 1182 and SB 1183

Loser-Pay Legislation

SB 1182 (Shirkey) Civil procedure; costs and fees; attorney fees; require award to prevailing party. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2443.

SB 1183 (Shirkey) Civil procedure; costs and fees; attorney fee awards in frivolous civil actions; modify. Amends secs. 2445 & 2591 of 1961 PA 236 (MCL 600.2445 & 600.2591) & adds sec. 2446.

A motion was offered and supported that the legislation is Keller permissible because it affects the availability of legal services to society. A roll call vote was taken and the motion was approved.

Roll Call Vote

Ayes: Anderson, David, Barnes, Burrell, Canady, Christenson, Cunningham, Davidson, DeLorenzo, Dunning, Grieco, Haroutunian, Hohaus, Howlett, McCarthy, McGill, Perkins, Powers, Quick, Radke, Rebeck, Ulrich, Warnez, Washington, and Zemke

Nays: Baumann, Fink, Hamameh, Weber

A motion was offered and supported to oppose this legislation. A roll call vote was taken and the motion was approved.

Roll Call Vote

Ayes: Anderson, David, Barnes, Burrell, Canady, Christenson, Cunningham, Davidson, DeLorenzo, Dunnings, Grieco, Haroutunian, Hohausser, Howlett, McCarthy, McGill, Perkins, Powers, Quick, Radke, Rebeck, Ulrich, Warnez, Washington, and Zemke

Nays: Baumann, Fink

Abstention: Weber

(Commissioner Hamameh was not on the call when this vote was taken.)

The meeting was adjourned at 5:00 p.m.