

State Bar of Michigan
Representative Assembly
September 28, 2017

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Thursday, September 28, 2017, at the Portside Ballroom in the Cobo Center located in Detroit, Michigan.

1. Call to order by Chairperson Fred K. Herrmann.
2. Clerk Richard L. Cunningham declared a quorum (50 members) was present.
3. Upon a motion made and seconded, the proposed revised calendar was adopted.
4. As provided in Rule 4.8, the Summary of Proceedings of the April 22, 2017 meeting was deemed approved with one amendment.
5. Fred K. Herrmann, Representative Assembly Chair, presented certificates to the outgoing Assembly members whose terms of service expired at the end of the September 2017 Annual Meeting and tokens of appreciation to the 2016-2017 Committee Chairs for their work over the past year.
6. Maureen B. Van Hoven, 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 handed out at the meeting.
7. Mary Chartier-Mittendorf presented the *Unsung Hero Award* to F. Martin Tieber. Mr. Tieber accepted the award and addressed the Assembly.
8. Julie Beth Teicher presented the *Michael Franck Award* to Mark L. Teicher. Mr. Teicher accepted the award and addressed the Assembly.
9. Judge Angela K. Sherigan, Chair of the American Indian Committee, addressed the Assembly for consideration of a resolution calling for an amendment to the Michigan Court Rules to broaden and clarify the scope of direct appeals of orders in violation of specific provisions of ICWA (25 USC 1914) and MIFPA (MCL 712B.39). Upon a motion made and supported, after discussion, the proposal passed.
10. Janet K. Welch, Executive Director of the State Bar of Michigan, and James C. Horsch, Director of Finance & Administration, presented to the Assembly on membership dues.
11. Daniel D. Quick, Chair of the Civil Discovery Court Rule Review Special Committee, presented to the Assembly on the actions of the Committee and the expected proposal for the April 21, 2018 meeting.

12. Fred K. Herrmann, Representative Assembly Chair, announced the election of Aaron V. Burrell as the 2017-2018 Clerk of the Assembly.
13. Joseph P. McGill was sworn in as 2017-2018 Chair of the Assembly by Judge Michael J. Riordan.
14. Joseph P. McGill, Representative Assembly Chair, presented a plaque to Fred K. Herrmann for all his work over the past year as Assembly Chair.
15. Adjournment

President Rockwell called the meeting to order at 9:40 a.m. on November 17, 2017 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson

David C. Anderson

Dennis M. Barnes, Vice-President

Joseph J. Baumann

Robert J. Buchanan, Secretary

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

Edward L. Haroutunian

Krista L. Haroutunian

Michael S. Hohaus

Kara R. Hart-Negrich

James W. Heath

E. Thomas McCarthy Jr.

Joseph P. McGill

Hon. Maureen M. McGinnis

Jules B. Olsman

Hon. David A. Perkins

Victoria A. Radke

Hon. Michael J. Riordan

Donald G. Rockwell, President

Gregory L. Ulrich

Dana M. Warnez, Treasurer

Erane C. Washington

Commissioners absent and excused:

Aaron V. Burrell

Hon. Clinton Canady III

Shenique A. Moss

Daniel D. Quick

Brian D. Shekell

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

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

Laurin Roberts Thomas, Assistant Counsel, LRS/UPL

Alecia Ruswinckel, Assistant Counsel, CPF/Ethics

Anne Vrooman, Director, Research and Development

Guests

Jennifer Bentley, Executive Director, Michigan State Bar Foundation

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 the September 27, 2017 Board of Commissioners meetings.
The Board received the minutes from the September 12 and October 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 Draft Financial Reports through September 30, 2017.

The Board received the Financial Safety Margin Calculation.

The Board received the District Character & Fitness Committee Appointments.

The Board received the Client Protection Fund Claims.

The Board received the Unauthorized Practice of Law Claims.

The Board received Bylaw Amendments from the Environmental Law and Marijuana Law Sections.

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

Recognition of Outgoing Commissioner Pero

Commissioner Riordan recognized Ms. Collen Pero for her time on the Board of Commissioners.

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez informed the Board that the Audit Committee had completed their audit and that the SBM Audit Committee met with the auditors to review their findings. She reported that the auditors will attend the January Board meeting and present the results to the entire Board.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez introduced Mr. Horsch to review the FY 2017 financial results with the Board. Mr. Horsch provided a PowerPoint presentation of the 2017 financial results and trends.

Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes provided the Board with a summary of the 2017 SBM NEXT Conference. Attendance was excellent, with the highest attendance the annual meeting has seen in 17 years, up over 20 percent.

Professional Standards, Robert J. Buchanan, Chairperson

A motion was offered and supported to appoint Mr. Thomas Rombach as a State Bar delegate to the ABA House of Delegates due to a mid-year vacancy. The motion was approved.

Public Policy, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

Court Rules

ADM File No. 2002-37 – Proposed Rules Related to E-Filing and Electronic Records

The amendments in this proposal are intended to begin moving trial courts toward a statewide uniform e-Filing process. The rules are required to be in place to enable SCAO's e-Filing vendor to begin programming the statewide solution. In addition, the proposal would move existing language into MCR 1.109 as a way to, for the first time, include most filing requirements in one single rule, instead of scattered in various rules. The proposal largely mirrors the administrative orders that most e-Filing pilot projects have operated under, but contains some significant new provisions. For example, courts would be required to maintain documents in an electronic document management system, and the electronic record would be the official court record.

A motion was offered and supported to support this proposed court rules related to e-filing and electronic records with the amendments provided by the committees and sections; staff is to prepare a chart for inclusion in the letter to the Court. The motion was approved.

ADM File No. 2014-29 – Proposed Alternative Amendments of MCR 2.602

The proposed amendments of MCR 2.602(B) would provide procedural rules regarding entry of consent judgments. Alternative A was submitted by the Representative Assembly of the State Bar of Michigan and was previously published for comment. Alternative B was developed by the Michigan District Judges Association and the Michigan Creditors Bar Association as an alternative to the published version.

A motion was offered and supported to-instruct the staff to work with the proponents of the original court rule amendment (Alternative A) to draft a new Alternative C that encompasses elements of both Alternative A and B. The motion was approved.

Proposed Amendments to Local Rules 5.3 Civil Material Filed Under Seal

A motion was offered and supported to support this proposed court rule amendment with the amendments from the US Courts Committee. The motion was approved.

Legislation

HB 4754 (Barrett) Courts; jurisdiction; inter-circuit concurrent jurisdiction plan; authorize. Amends secs. 401, 405, 841 & 8304 of 1961 PA 236 (MCL 600.401 et seq.) & adds sec. 403.

A motion was offered and supported that this legislation is Keller permissible because it relates to 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 bill with an amendment addressing the training needs for specialty courts. The motion was approved.

HB 4797 (Gay-Dagnogo) Courts; juries; jury pool selection; provide for municipality wide jury pool under certain circumstances. Amends sec. 1301b of 1961 PA 236 (MCL 600.1301b).

A motion was offered and supported that this legislation is Keller permissible because it relates to the improvement in the functioning of the courts. The motion was approved.

A motion was offered and supported to take no position on this legislation, but to allow staff to work with the bill's sponsor with the possibility of forming a task force to look into the issue of obtaining a more representative jury pool.

HB 5073 (Kesto) Civil procedure; alternate dispute resolution; procedures for mediation and case evaluation of civil actions; revise. Amends heading of ch. 49 & secs. 4901, 4903, 4905, 4907, 4909, 4911, 4913, 4915, 4917, 4919, 4921 & 4923 of 1961 PA 236 (MCL 600.4901 et seq.); adds sec. 4902 & repeals ch. 49A of 1961 PA 236 (MCL 600.4951 - 600.4969).

A motion was offered and supported that this legislation is Keller permissible because it relates to the improvement in the functioning of the courts and the availability of legal service to society. The motion was approved.

A motion was offered and supported to oppose this bill because the subject matter should be addressed in court rule, not legislation. The motion was approved.

Model Criminal Jury Instructions

M Crim 12.2, 12.3, 12.5, 12.6, and 12.4a

The Committee proposes amending several controlled substances instructions, M Crim JI 12.2, 12.3, 12.5 and 12.6, and adding a new instruction, M Crim JI 12.4a, to accommodate a change in the law announced in *People v Robar*, ___ Mich App ___ (2017), holding that the burden of burden of persuasion was on a defendant to prove an exemption to the Controlled Substances Act. Deletions from the current instructions are struck-through; additional language is underlined. This matter was tabled.

M Crim JI 12.9

The Committee proposes a new jury instruction, M Crim JI 12.9, for a “§ 8 defense” to possession of marijuana charges in MCL 333.26428, pursuant to *People v Hartwick*, 498 Mich 192 (2015). The instruction is entirely new. This matter was tabled.

M Crim 13.1, 13.2, and 13.5

The Committee proposes amending the resisting arrest instructions, M Crim JI 13.1, 13.2, and 13.5, to accommodate changes in the law announced in *People v Moreno*, 491 Mich 38 (2012), *People v Quinn*, 305 Mich App 484 (2014), and *People v Vanderberg*, 307 Mich App 57 (2014), regarding resistance to unlawful police conduct, and to improve the instructions' readability. Deletions from the current instructions are struck-through; additional language is underlined. A motion was offered and supported to support this proposed criminal jury instruction. The motion was approved.

M Crim 15.23, 15.24, and 15.25

The Committee proposes new instructions, M Crim JI 15.23, 15.24, and 15.25, for violations of MCL 257.904(2) and (7), permitting another person to drive the defendant's car while the other person's license was suspended (and causing serious injury or death). A motion was offered and supported to support this criminal jury instructions. The motion was approved.

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson
Mr. Barnes reported that the next steering committee meeting will be on February 7. He provided an update on the activities of the committees and workgroups.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson
Ms. Warnez reported that the committee has met a few times since September and that efforts are moving along as expected. She reported on the activities of the committee and workgroups and informed the board that the next steering committee meeting will take place in January.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson
Mr. Buchanan reported that the committee met in October, will meet again in March, and reported on the activities of some of the committees and work groups. He reported that there was good discussion by the committee and helpful suggestions.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson
Ms. Grieco reported that the steering committee met in October and formed three sub groups to make recommendations on improvements in how the Bar handles public policy. She informed the board that the subgroups are: Timely & Responsive Public Policy Positions, Communicating Public Policy Issues to Members, and Proactive Public Policy. She reported that all three sub groups met in November and have follow-up meetings planned in December and January.

President's Report, Donald G. Rockwell, President
Upper Peninsula Meetings

Mr. Rockwell reported that the meetings that he attend with bar associations in the Upper Peninsula were well received. He stated that Ms. Radke attended the meetings with him and said that it is apparent that she is well respected among the attorneys in the UP.

Great Rivers Bar Leaders Conference

Mr. Rockwell reported that he, Ms. Grieco, and Ms. Welch attended the Great Rivers Bar Leaders Conference in Santa Fe and that the information provided by the other states is always useful and enlightening.

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

Ms. Welch reported on her participation in the International Institute of Law Association Chief Executives (IILACE) annual conference in London.

Lawyer Referral Service

Ms. Welch informed the Board that the Lawyer Referral Steering Committee will meet this afternoon after the Board meeting. The focus of the agenda will be the Modest Means Program that will be implemented early in the new year. Ms. Welch asked Ms. Vrooman to provide the Board with an update of the steering committee's work. Ms. Vrooman reported that the committee is continuing to progress with the build of the Lawyer Referral Services platform, developing the administrative tools for tracking, monitoring, automated notices, and reports. She and Ms. Laurin Thomas attended the ABA Lawyer Referral Services Conference in Portland, Oregon. She reported that it very worthwhile as they had the opportunity to learn how other bar associations are making changes to their programs as technology changes.

Access to Justice (ATJ) Update

Ms. Welch introduced Ms. Bentley who provided the Board with information regarding the decline in fundraising for the Access to Justice Campaign compared to other states. She reported that Michigan is well below the national average for fundraising for legal aid, and outlined strategies for improvement. She informed the Board that the new ATJ Coordinator, funded in part by SBM, would begin in January.

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

Mr. McGill reported that the RA is implementing a review of the civil discovery rule proposal developed by an SBM task force, in preparation for the proposal's consideration at the April meeting. Commissioners Dunnings and Warnez have been recruited and agreed to serve on RA committees. The RA's goal is to be more representative and more involved throughout the year in order for the RA to better achieve its mission.

American Bar Association (ABA) Report

Mr. Ulrich provided the report, including observations about changes being considered by the ABA in response to financial pressures, including the possible elimination of the midyear meeting.

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

Ms. Davidson updated the Board on the activities of the YLS.

Comments from Commissioners

There were none.

Adjournment

The meeting was adjourned at 12:45 p.m.