

The meeting was called to order by President Brinkmeyer at 10:00 a.m. on Friday, January 16, 2004, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

Scott S. Brinkmeyer, President	Daniel M. Levy, Assembly Chair
Lori A. Buiteweg	Craig H. Lubben
Kimberly M. Cahill, Secretary	Richard D. McLellan
Thomas W. Cranmer, Vice President	Hon. William B. Murphy
Kathryn M. Day	Randolph P. Piper
Nancy J. Diehl, President-elect	Kurt E. Schnelz
Kim Warren Eddie	Hon. Cynthia D. Stephens
James N. Erhart	Angelique Strong Marks
Julie I. Fershtman	Charles R. Toy
Elizabeth A. Jamieson	Gregory L. Ulrich
W. Anthony Jenkins	Debra A. Walling
Ronald D. Keefe, Treasurer	

Commissioners Elias J. Escobedo, Jr., Michael S. Hohausser, Allyn D. Kantor, Stephen J. Murphy, III, Lambro Niforos, Edward H. Pappas, D. Andrew Portinga, and Rodger D. Young were absent and excused.

State Bar Staff Present:

John T. Berry – Executive Director
Lisa Allen-Kost – Director, Programs & Services
Nancy Brown – Director, Communications
Thomas K. Byerley – Director, Professional Standards
Gregory Conyers – Program Administrator
Janie Cripe – Administrative Assistant, Executive Office
Candace A. Crowley – Access to Justice Manager
Kathleen Fox – Director, Human Resources
James C. Horsch – Director, Administration and Finance
Elizabeth K. Lyon – Legal Secretary
Caryl Markzon – Events Planner
Glenna D. Peters – Executive Coordinator
Chad E. Sluss – Member Services Manager
Lesa Smith – Program Administrator
Naseem Stecker – Media Specialist
Janet K. Welch – General Counsel

Present for such portions of the meeting as pertained to a specific agenda item were Lynn Chard, Executive Director, ICLE; and Max Hoffman, Annual Meeting Committee Chair.

CONSENT AGENDA

President Brinkmeyer removed the litigation report (item IV. B.) from the consent agenda. He reported that we are engaged in litigation at the present time with E. Stephen Dean and Frank J. Lawrence Jr. Tom Byerley, Director of Professional Standards provided a status update on the cases. He reported that the Sixth Circuit Court of Appeals remanded the case back to the District Court. Media inquiries should be directed to Janet Welch, General Counsel.

A motion was made and seconded to remove the November 21, 2003 board minutes from the consent agenda. Motion carried. Upon a motion made and seconded, the Board approved the minutes to include the words “motion carried” to Section 7 – Section Activity During the Annual Meeting of the State Bar.

A motion was made and seconded to approve the consent agenda as amended. Motion carried.

Minutes

The Board accepted the minutes of the following November 24th and December 8th Executive Committee meetings.

President’s Report – Scott S. Brinkmeyer, President

The Board received the President’s written report.

Executive Director’s Report – John T. Berry, Executive Director

The Board received the Executive Director’s written report.

Finance and Human Resources – Ronald D. Keefe, Chairperson

The Board received the following written information: 1) Financial results through November 30, 2003; 2) Financial forecast for FY 2004; and 3) Dues status update

Programs and Services – Thomas W. Cranmer, Chairperson

The Board received a written BLF/UMLI/BOC update.

Bylaw Article IV and VII Amendment – Janet Welch, General Counsel

The Board approved the adoption of these amendments.

Professional Standards Committee – Kimberly M. Cahill, Chairperson

The Board approved payment of the following client protection fund claims:

CPF 1803	\$	10,129.89
CPF 1804	\$	2,631.14
CPF 1805	\$	2,631.14
CPF 1806	\$	5,262.28
CPF 1809	\$	3,041.60
CPF 1825	\$	2,631.14
CPF 1835	\$	3,157.37
CPF 1837	\$	3,157.37
CPF 1843	\$	13,155.70
CPF 1845	\$	1,578.68
CPF 1857	\$	21,308.97
CPF 1873	\$	25,000.00
CPF 1974	\$	6,314.73
CPF 2057	\$	<u>1,500.00</u>
Total		<u>\$101,500.01</u>

The Board approved the Character and Fitness Committee appointments for Districts A, C and H.

Section Bylaw Amendments

The Board approved Bylaw Amendments to the Litigation, Legal Administrator and Prisons and Corrections Sections.

Commissioner Liaison Reports

Written reports were received by the following Commissioner Liaisons:

- A. Lori A. Buiteweg: General Practice Section; Social Security Law Section
- B. Kim Cahill: Probate and Estate Planning Section
- C. Kathryn Day: Young Lawyers Section
- D. Kim Warren Eddie: Standard Criminal Jury Instructions; Criminal Law Section; Prisons and Corrections
- E. Julie I. Fershtman: Publications and Website Advisory Committee; Law Practice Management Section; Animal Law Section
- F. Elizabeth A. Jamieson: Membership Services Committee; Business Law Section
- G. Allyn D. Kantor: Senior Law Section
- H. Ron Keefe: Unauthorized Practice of Law Committee; Workers' Compensation Law Section
- I. Daniel M. Levy: Criminal Jurisprudence Committee; American-Indian Law Section
- J. Richard D. McLellen: Administrative Law Section
- K. Stephen J. Murphy III: Law and the Media Committee; Litigation Section
- L. William B. Murphy: Appellate Practice Section
- M. D. Andrew Portinga: Intellectual Property Committee; Civil Procedure and Courts Committee
- N. Charles R. Toy: Environmental Law Section; Client Protection Fund Standing Committee
- O. Debra A. Walling: Domestic Violence Committee
- P. Rodger D. Young: Taxation Section; Legal Administrator Section; American Indian Law Committee

LEADERSHIP REPORTS

President's Report – Scott S. Brinkmeyer

Tier 2 Update

Janet Welch reported that a settlement has been reached on the retiree health care issue and further details were provided in the Executive Committee minutes included in the agenda booklet. Jim Horsch provided a summary of the financial aspects of the settlement, noting that the Bar would be responsible for a payment of \$300,000, which is significantly less than the anticipated liability. The payment is reflected in the current year's financial forecast. Mr. Berry recognized Kathleen Fox, Janet Welch and Jim Horsch for their efforts in resolving this issue.

Mr. Brinkmeyer thanked Charles Toy for serving as chair of the nominating committee for the past two years. Commissioner Cahill, Chair of the Professional Standards Committee, reported that the nominating committee will be led this year by Lori A. Buiteweg, Jim Erhart and Craig Lubben.

Representative Assembly Chairperson's Report – Daniel M. Levy

Mr. Levy reported that the January Assembly meeting was cancelled and the next meeting is scheduled for March 27, 2004. The deadline for submission of items for consideration is February 14, 2004.

Executive Director's Report – John T. Berry

Mr. Berry reported that he has begun the process of meeting with Commissioners one-on-one and that we will still plan to hold a board orientation in the near future.

Mr. Berry thanked Lynn Chard and State Bar staff for their efforts regarding Michigan Online.

Jim Horsch introduced the Bar's new receptionist, Keira VanDenBrink,.

Young Lawyers Section Report – Angelique Strong Marks

Ms. Strong Marks reported that Young Lawyers Section hosted two holiday dinners. Upcoming activities include a swearing-in ceremony with the U.S. Supreme Court in Washington D.C., launching of the Imprint Program developed by Kathryn Day, and participation in the Law Day Program and the Martin Luther King Oral Advocacy Drum Major for Justice Competition.

COMMITTEES, COMMISSIONS & TASK FORCES

Finance and Human Resources – Ronald D. Keefe, Chairperson

A motion was made and seconded to adopt the investment policy. Motion carried.

Mr. Keefe stated that the Bank Refinancing/Pre-Payment Policy was approved at the last board meeting and the materials included in the agenda were informational.

Mr. Keefe reported that the committee is in the process of reviewing the current reimbursement policy and will present it to the board if there are any recommended changes.

A motion was made and seconded to amend the capital budget that would allow for the purchase of a color copier/printer. To offset the cost, the purchase of a folder/insertor and an e-commerce business solution project has been deferred. Motion carried.

Mr. Keefe reported that a draft proposal will be presented to the board regarding the pre-funding of the Tier I and Tier II convert health care liability. Mr. Horsch noted that a large portion of the savings would be used to pre-fund the liability. Commissioner Piper asked questions regarding the Tier II budget and how expenses have been handled that were answered by Mr. Horsch.

Professional Standards – Kimberly M. Cahill, Chairperson

Ms. Cahill reported that they are continuing to work on the revision of the disciplinary rules regarding multi jurisdictional practice. AGC, ADB and the Board of Law Examiners will have the opportunity to review and provide input.

Upon recommendation by Commissioner Fershtman, a motion was made and seconded to appoint Andrew M. Zack to District I for the Character and Fitness Committee. Motion carried.

Programs and Services – Thomas W. Cranmer, Chairperson

Mr. Cranmer deferred to Lynn Chard, Executive Director of ICLE, who provided an update on Michigan Law Online. She distributed information and reported that many positive comments had been received. The service should be available by March 1, 2004.

Mr. Cranmer recognized Max Hoffman, Annual Meeting Committee Chair, who provided an update on the Annual meeting to be held September 30-October 1, 2004. Mr. Hoffman reported that Governor's Task Force on Children's Justice will be meeting the exhibit hall will be re-opened, and the 50-year honorees will be moved to a stand-alone event. It is hoped that there will be a Governor's reception in conjunction with the 125th anniversary.

Justice Initiatives Committee – Kim Cahill and Thomas W. Cranmer, Co-Chairpersons

Ms. Cahill reported that the standing committee, chaired by Commissioners McLellan and Stephens met to discuss the committee structure and developed a plan for the rest of the year.

Ms. Cahill reported that the committee received a request from the Pro Bono Involvement Committee that the Board continue its efforts in supporting the Representative Assembly's proposed modification of the pro bono rules as part of the ethics package that was submitted to the Supreme Court. A motion was made and seconded. Motion carried.

A motion was made and seconded to authorize staff support for distribution of the video "Making A Difference". Motion carried.

A motion was made and seconded to spend up to \$3,000 of grant money (already received) to complete the disabilities report. Motion carried.

A motion was made and seconded to complete and distribute brochures in the amount of \$3,500 per brochure for a total of \$10,500.00 on behalf of the Juvenile Justice Subcommittee. Grant money has been received and the amount has been budgeted. Motion carried.

Ms. Cahill recognized Candace Crowley and Lisa Allen-Kost for their efforts. Mr. Brinkmeyer also thanked Commissioners McLellan and Stephens for co-chairing the committee.

Public Policy, Image and Identity – Nancy J. Diehl, Chairperson

Legislation

A motion was made and seconded to approve the following Board actions:

HB 4772 – Family law, friend of the court; administrative adjustment in the income withholding order to account for arrearages; allow and provide enforcement procedures for noncompliance by employers.

No position taken; authorize the Legal Aid Committee to advocate on their own behalf

HB 4773 – Children; support; circumstances requiring review of child support; revise.

Remove; Request for Support of Position Resolution Regarding the Following Principles:

- 1) Automatic reviews of child support, with discretion to the Friend of the Court to consider all relevant material
- 2) The Friend of the Court to maintain discretion to make recommendations outside of guidelines where appropriate

HB 4810 – Civil procedure; costs and fees; threshold for requiring attorney fee to be paid by party that rejected medication; revise.

Oppose in principle

HB 4931 – Insurance; no-fault; liability, uninsured, and underinsured coverages; provide explanation of.

Removed due to Keller restriction

HB 4983 – Occupations, service occupations; Consumer protections, other; State agencies (existing), consumer and industry services.

Support in principle

SB 148 – Children; services; court-appointed special advocates; provide for.

Removed

SB 245 – Civil procedure, costs and fees; transcript fee; increase.

Support in principle

SB 689 – Torts; malpractice; liability of emergency room physicians; limit in certain circumstances.
No position taken; authorize the Civil Procedure and Courts Committee to advocate its position

SB 690 – Torts; malpractice; statute of limitations extension for fraudulent concealment in medical malpractice action; require plaintiff's sworn statement of facts.
Active opposition

Roll call vote:

Commissioners present voting in favor: Buiteweg, Cahill, Cranmer, Day, Diehl, Erhart, Fershtman, Jamieson, Jenkins, Keefe, Levy, Lubben, McLellan, Piper, Schnelz, Judge Stephens, Strong Marks, Toy, Ulrich, Walling, Brinkmeyer.

Commissioner present voting against: Eddie

Commissioner present voting abstain: Judge Murphy

SB 692 - Torts; malpractice; extension of statute of limitations for fraudulent concealment; make inapplicable to medical malpractice claim.
Removed

SB 691 – Torts; malpractice; affidavit of meritorious defense in medical malpractice action; allow defendant to sign.
Removed

SB 788 – Courts; judges; number of judgeships in the seventeenth judicial circuit, increase.
Support in principle

Michigan Court Rules

2003-47 – In Re-Petition for Administrative Order or Court Rule Establishing Inactive Asbestos Docketing System

No position taken; authorize the Civil Procedure and Courts Committee to advocate its position

2003-60 – Proposed Amendment of Rule 5.125 – The proposed amendment would add such entities as insurance companies to the list of interested persons who must receive notice of a proceeding for an examination of an account of a fiduciary, if the insurer potentially might be liable for all or part of the relief sought.

Oppose

Ms. Diehl asked for comments from the public about the Bar's legislative program, but there were none.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Ms. Diehl reported that Commissioner Lambro Niforos had knee surgery on January 8th and was doing fine.

Mr. Eddie expressed a concern from committees about drop in membership due to the dues increase and was curious if anybody else has had any concerns with this matter. Mr. Horsch explained that at this time

we cannot determine that there has been a significant drop in section membership because there are still a large number of dues payments outstanding.

Judge Stephens reported that she met with the Judicial Conference and they expressed an interest in becoming more proactive and immediately responsive with regard to public policy. Mr. Brinkmeyer noted that the Michigan Judicial Conference Executive Board had been invited to join the Board for lunch following the meeting.

President Brinkmeyer reported that he, Nancy Diehl, John Berry and Janet Welch had lunch with Chief Justice Corrigan and Justice Taylor over the holidays. The senior dues issue was discussed, as well as the details of the Order that was issued by the Court. Following the discussion, we were invited to make a presentation in March regarding senior dues. While it isn't anticipated that the Order will be rescinded in its entirety, we are hopeful that there may be some revision to the Order that would be positive for the senior lawyers.

Mr. Brinkmeyer also reported that we will be returning to the Court to seek the remainder of the dues increase. The Executive Committee is discussing the process for doing that. He stated that the primary reasons are: 1) The amount of the dues increase we received won't last forever and the inflationary component was intended to eliminate having to return periodically for additional funds; and 2) We were able to attain getting in the black because our staff has been cut to the bone and positions that the Board have authorized have not been filled. In addition, the strategic plan cannot be fully implemented as our membership has told us to do unless and until we get the additional dues.

Comments or questions from the public

Mr. Brinkmeyer asked for comments or questions from the public, but there were none.

Old Business

There was none.

New Business

There was none.

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