

President Courtade called the meeting to order at 9:40 a.m. on Friday, July 26, 2013, at the State Bar building in Lansing

Commissioners present:

Kathleen M. Allen
Dennis M. Barnes
David R. Brake
Robert J. Buchanan
Lori A. Buiteweg, Secretary
Margaret A. Costello
Bruce A. Courtade, President
Richard L. Cunningham
Brian D. Einhorn, President-Elect
Hon. James N. Erhart
D. Randall Gilmer
Stephen J. Gobbo
Jennifer M. Grieco
Edward L. Haroutunian
Charles S. Hegarty

Felicia O. Johnson
C. Thomas Ludden
Maureen M. McGinnis
Lawrence P. Nolan, Treasurer
Jules B. Olsman
Hon. Michael J. Riordan
Brandy Y. Robinson
Donald G. Rockwell
Thomas C. Rombach, Vice President
Hope V. Shovein Grazini
Richard J. Siriani
Julie A. Sullivan
Gregory L. Ulrich
Dana M. Warnez
Vanessa Peterson Williams

Commissioners Absent and Excused

Commissioner Colleen A. Pero was absent and excused.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Membership Services
Gregory Conyers, Director, Diversity
Candace Crowley, Director, External Development
Peter Cunningham, Director, Governmental Relations
Dawn Evans, Director, Professional Standards
Cliff Flood, General Counsel
Brian Hildreth, Director, Information Technology Services
James Horsch, Director, Finance and Administration
Robert Mathis, Pro Bono Service Counsel
Anne Smith, Administrative Assistant
Kari Thrush, Member Services and Events Manager
Anne Vrooman, Director, Research and Development

Guests

Hon. Brian Zahra, Justice, Michigan Supreme Court
Joseph Bauman, General Counsel, Michigan Supreme Court

INTRODUCTION

Mr. Courtade introduced Justice Brian Zahra who attended the meeting in his role as the liaison of the Supreme Court to the State Bar of Michigan. He introduced Mr. Joseph Baumann, Legal Counsel of the Michigan Supreme Court, to the Board.

Justice Zahra informed the commissioners that the Board of Law Examiners (BLE) has met with the deans of Michigan's law schools, and has hired a testing expert to review Michigan's bar exam process. Communication with the deans is ongoing. Justice Zahra entertained questions and comments from the Board about the bar exam process.

Consent Agenda

The Board received the minutes from the June 14, 2013 Board of Commissioners meeting and the May 14, 2013 and the June 4, 2013 Executive Committee meetings.

The Board received a list of the SBM President's recent activities.

The Board received a list of the SBM Executive Director's recent activities.

The Board received the FY 2013 Financial Reports through May 2013.

The Board received the Client Protection Fund Claims.

The Board received the Unauthorized Practice of Law ("UPL") Complaints Proposed for Litigation.

The Board received the Annual Reports from the SBM Committees and Sections.

The Board received a Section Bylaw Amendment from the Workers' Compensation Law Section.

A motion was offered and seconded to remove the minutes from the June 14, 2013 Board meeting and the Client Protection Fund Claims. The motion passed.

A motion was offered and seconded to approve the consent agenda as amended. The motion passed.

A motion was offered and seconded to approve the June 14, 2013 minutes as amended. The motion passed.

A motion was offered and seconded to approve the Client Protection Fund Claims. The motion passed. Mr. Ludden abstained.

OFFICER ELECTIONS

President Courtade announced that President-Elect Einhorn would succeed him as President of the State Bar of Michigan for 2013-14.

A motion was made by Ms. Warnez and seconded to elect Mr. Rombach as President-Elect of the State Bar of Michigan for 2013-14. The motion passed.

A motion was made by Mr. Rombach and seconded to elect Ms. Buiteweg to the Vice President position of the State Bar of Michigan for 2013-14. The motion passed.

A motion was offered by Ms. Buiteweg and seconded to elect Mr. Nolan to the Secretary position of the State Bar of Michigan for 2013-14. The motion passed.

Mr. Courtade indicated that an election for the position of State Bar Treasurer for 2013-2014 would take place.

Five commissioners submitted their name for consideration for the position of State Bar Treasurer. Ms. Grieco addressed the Board and informed them that she was withdrawing her name for consideration for the position.

Of the four remaining candidates, Hon. Riordan nominated Mr. Barnes, Mr. Brake nominated Mr. Rockwell, Ms. McGinnis nominated Mr. Siriani, and Ms. Sullivan nominated Mr. Ulrich. Mr. Courtade asked for nominations from the floor and after hearing none, the nominations were closed.

Each of the candidates had the opportunity to select a commissioner to act as a teller for the election and Commissioners Brake, McGinnis, Riordan and Sullivan served as tellers.

A motion was offered and seconded to vote for the position of 2013 – 2104 SBM Treasurer by secret ballot and to destroy the ballots after each round. The motion passed.

Motion was offered and seconded to announce the candidates who will move forward to the next round and not the number of votes each candidate received. The motion passed.

Mr. Courtade reported that it was the decision of the Board that the candidate receiving the least number of votes in each round will not be on the ballot for the next round. This procedure will apply for each round until a majority vote is received as required by SBM bylaws.

In an election for the position of SBM Treasurer Mr. Rockwell was elected as Treasurer of the State Bar of Michigan for 2013-14.

COMMISSIONER COMMITTEES

Finance, Lawrence P. Nolan, Chairperson FY2013 Financial and Investment Update

Mr. Nolan presented the Board with a FY 2013 financial and investment update.

Approval of Revised Investment Policy

Mr. Nolan presented the Board with a proposed revision to the Investment Policy. Motion offered and seconded to approve the revised Investment Policy. The motion passed.

Professional Standards, Lori A. Buiteweg, Chairperson Institute of Continuing Legal Education

A motion was offered and seconded to re-appoint Mr. Lawrence Shoffner to the Executive Committee of the Institute of Continuing Legal Education. The motion passed.

Michigan Indian Legal Services

A motion was offered and seconded to re-appoint Ms. Lynnmarie Johnson and Mr. John LeMire to the Board of Trustees of the Michigan Indian Legal Services. The motion passed.

Programs and Services, Thomas C. Rombach, Chairperson

The Board received the event summary for the 2013 Bar Leadership Forum and the 2013 Upper Michigan Legal Institute.

Mr. Rombach, Chair of the Attorney Protective Tail Insurance work group, asked that the report regarding this item that is listed on the agenda under the Executive Director's report be removed from the table. Mr. Courtade approved that request.

Motion offered and seconded to report to the Master Lawyers the summary of what the work group did and recommend that with the assistance of the State Bar staff reach out to the Insurance and Indemnity Section to seek recommendation on where to go from here. The motion passed.

Public Policy, Image and Identity, Brian D. Einhorn, Chairperson
The Board received a written report from Justice Initiatives.

Court Rules Proposals

ADM File No. 2012-06 - Proposed Amendment of Rule 9.221 of the Michigan Court Rules

The proposed amendment of MCR 9.221 would add a new subrule (I) that would require the Judicial Tenure Commission to notify a court's chief judge if a referee or magistrate is subject to a corrective action that does not rise to the level of a formal complaint, including a letter of caution, a conditional dismissal, an admonishment, or a recommendation for private censure. The new requirement would not apply to a dismissal with explanation.

A motion was offered and seconded to oppose this amendment. The motion passed.

ADM File No. 2012-30 - Proposed Amendments of Rule 2.621 and Rule 2.622 of the Michigan Court Rules

The proposed amendments of MCR 2.621 and MCR 2.622 were submitted to the Michigan Supreme Court on behalf of the "Receivership Committee" (a committee created because of a need identified by the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan) to expand and update the rules regarding receivership proceedings.

A motion was offered and seconded to support the amendments to Rules 2.621 and 2.622 with the modifications proposed by Judge Wendy Potts of the Oakland County Circuit Court. The motion passed. Ms. Costello abstained.

ADM File No. 2013-12 - Proposed Amendment of Rule 7.313 of the Michigan Court Rules

The proposed amendments would clarify that the decision whether to grant rehearing or reconsideration in the Michigan Supreme Court should be made consistent with the standard incorporated in MCR 2.119(F)(3), similar to the reference for consideration of such motions in the Court of Appeals contained in MCR 7.215(I)(I).

A motion was offered and seconded to support this amendment. The motion passed.

E-Filing Package

ADM File No. 2013-18 - Proposed New Rules 2E.001 *et seq.* of the Michigan Court Rules

This series of proposed new "2E" rules contains court rules regarding e-filing in Michigan courts. Please note that this proposed order is part of a group of documents in this file that has been published for comment, including a proposed administrative order regarding e-filing rules and the proposed e-filing standards.

ADM File No. 2013-18 - Proposed Administrative Order No. 2013-__

This proposed administrative order would require the State Court Administrator to promulgate e-filing standards, and would require courts that offer e-filing to comply with those standards. Please note that this proposed order is part of a group of documents in this file that has been published for comment, including proposed e-filing rules and proposed e-filing standards.

ADM File No. 2013-18 - Draft Standards for E-filing

These proposed standards provide additional guidance for courts planning for implementation of e-filing in their jurisdiction. The proposed standards are published to provide a context for the proposed e-filing rules and proposed administrative order that have also been published for comment in this file.

A motion was offered and seconded to support the proposals for e-filing in Michigan courts, and include the committee and section comments in the State Bar's letter to the Court. The motion passed. Ms. Johnson abstained.

Videoconferencing

ADM File No. 2013-18 - Proposed Amendments of Rules 3.210, 3.215, and 6.104 of the Michigan Court Rules and Proposed New Rule 8.124 of the Michigan Court Rules

The new court rule would allow courts to use videoconferencing in court proceedings upon request of a participant or *sua sponte* by the court, subject to specified criteria and standards published by the State Court Administrative Office (SCAO). Amendments of MCR 3.210, MCR 3.215, and MCR 6.104 would be necessary to include references to the new court rule. If the new rule is ultimately adopted, MCR 3.904, MCR 5.738a, and

MCR 6.006, and Administrative Order No. 2007-01 would be rescinded. To provide context for consideration of the proposed rule, the proposed standards for the use of videoconferencing are attached below. In addition, the proposal includes a draft administrative order that would require SCAO to adopt videoconferencing standards, and require courts to comply with those standards.

ADM File No. 2013-18 – Proposed Administrative Order No. 2013-___

This proposed administrative order would require the State Court Administrator to establish videoconferencing standards and would require that the appellate and trial courts conform to those standards. Please note that this proposed administrative order is part of a group of documents in this file that has been published for comment, including proposed videoconferencing rules that would amend MCR 3.210, 3.215, and 6.104, and would adopt MCR 8.124, a new rule, and draft videoconferencing standards, which are attached at the end of that order.

A motion was offered and seconded to support these amendments with an amendment to 8.124(b)(3) regarding criminal proceedings, and a further inclusion of a “good cause” objection. The motion passed. Ms. Costello and Mr. Hegarty abstained.

Legislation

HB 4694, 4695, 4695 and 4697

Mental Health Courts

HB 4694 (Cotter) Courts; circuit court; mental health court; create.

HB 4695 (Haines) Courts; circuit court; mental health court; create.

HB 4696 (Walsh) Courts; circuit court; mental health court; create.

HB 4697 (O'Brien) Courts; circuit court; mental health court; create.

A motion was offered and seconded to support the legislation, but express the concern as to the success of the program without providing funding. The motion passed. Ms. Johnson abstained

HB 4830 (Lyons) Civil procedure; evictions; legal representation; allow corporation, partnership, or limited liability company to appear without an attorney. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

A motion was offered and seconded to support this legislation. The motion was defeated.

A motion was offered and seconded to oppose this legislation. The motion to oppose was passed unanimously.

HB 4763 (Schmidt) Traffic control; traffic regulation; use of automated traffic enforcement safety devices at certain intersections; allow. Amends secs. 727c & 741 of 1949 PA 300 (MCL 257.727c & 257.741) & adds div. heading & adds secs. 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761 & 762.

A motion was offered and seconded to oppose this legislation. The motion passed. Ms. Johnson and Ms. Williams abstained.

Miscellaneous

Pro Bono Initiative on Proposed Revisions to the Private Attorney Involvement (PAI) Regulation, 45 CFR 1614

A motion was offered and seconded to support this initiative and request that the SBM President send a letter on behalf of the State Bar of Michigan. The motion passed.

Civil Procedure and Courts Committee on revision to the Michigan Court Rules Concerning Civil Discovery Process

A motion was offered and seconded to support this revision and send a letter from the State Bar requesting the Bar's involvement in the process. The motion passed. Ms. Buiteweg abstained.

LEADERSHIP REPORTS

President's Report, Bruce A. Courtade, President

Mr. Courtade reported that the Officers of the Board of Commissioners will meet with the Justices of the Michigan Supreme Court on September 11, 2013.

Mr. Courtade asked the commissioner to respond to the survey from the Diversity and Inclusion Committee that was sent to them a few weeks ago. Of the 31 commissioners only 11 have responded to date.

Mr. Courtade reported to the Board on some of his recent activities.

The commissioners discussed the importance of developing and recruiting more diverse candidates for membership on the Board of Commissioners.

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

FY 2014 Budget

At Ms. Welch's request, Mr. Horsch presented the FY 2014 Budget to the Board.

A motion was offered and seconded to approve the FY2014 Budget. The motion passed.

Military and Veteran's Law Section

A motion was offered and seconded to approve the proposed Military and Veteran's Law Section as a new section of the State Bar of Michigan. The motion passed.

SBM Standing and Special Committees 2013 – 2014 Resolution and Matrix

A motion was offered and seconded to approve the 2013-14 Standing and Special Committee Resolution and Matrix. The motion passed.

Commissioner Committee & Liaison Appointment Process

The Board received a description of the role of acting as a section liaison. Ms. Crowley informed the Board that they will receive an e-mail describing the method to use to express their preference as to which section they would like to be a liaison to and on their appointment to a commissioner committee.

Indigent Criminal Defense Update

Ms. Welch stated that the Indigent Defense Legislation was signed by the Governor and he is moving forward with the appointment of the Commission. The State Bar is allowed one appointment to the Commission. Under the statute, we must provide the Governor with three names. Our normal nomination process will be followed. The names will be provided to the Governor's office by the end of August.

Strategic Plan Diversity Language

A motion was offered and seconded to approve the proposed diversity language for inclusion in the strategic plan. The motion passed.

Supreme Court Update

Ms. Welch informed the Board that she received a letter from the Court on July 11 regarding the proposal that was sent to them by the Representative Assembly asking them to adopt the proposed Definition of the Practice of Law. The Definition of the Practice of Law special committee and the UPL committee have been asked to draft a response, for the Board's future consideration and transmission to the Court.

Campaign Finance workgroup

Ms. Welch informed the Board that staff and the President have been working on a strategy to advance the State Bar's position on judicial campaign finance disclosure, including a request that the Secretary of State revisit a 2004 interpretive statement on disclosure of third party issue ad expenditures in light of *Caperton* and *Citizens United*.

Personnel Matters

Ms. Welch informed the Board that Mr. Hildreth has assumed the position of the Director of Information Technology Services Division, and that Ms. Frook, Human Resources director, has left the employment of the State Bar.

Representative Assembly (RA) Report, Dana M. Warnez, Chairperson
September 19 RA Meeting

Ms. Warnez reported that officers met to discuss the September 19 RA meeting and that they are reviewing the proposals and proposed court rule amendments that were submitted for the RA's consideration.

Ms. Warnez informed the Board that they were approached by the Alger County prosecutor requesting a judicial ethics opinion and she indicated that with the help and input of Ms. Evans they have drafted an appropriate response to that inquiry.

Ms. Warnez reported that Mr. Daniel Quick and Mr. Fred Hermann have submitted their names for consideration for the position of 2013 – 2104 Clerk of the RA. The election will take place at the September 19 meeting.

Ms. Warnez informed the Board that the composition of the 16th Circuit (Macomb County) of the Representative Assembly reflects the greater diversity that SBM is striving for.

American Bar Association (ABA) Report

The Board received a written report.

Young Lawyers Section Report (YLS), Felicia O. Johnson, Chairperson

Ms. Johnson provided the Board with an update on the upcoming activities of the Young Lawyers Section.

Ms. Johnson informed the Board that the YLS is planning a seminar on FEMA Preparedness. YLS plans to ask for the assistance of the State Bar and the Board on forming a committee whose membership is not exclusively young lawyers and which will work to develop a booklet about "After Disasters."

Comments from Commissioners

Mr. Buchanan asked about the possible impact that the bankruptcy filing of the City of Detroit might have on the profession. Ms. Welch indicated that in addition to possible repercussions on D36 operations and filings against the City in the 3rd circuit, the bankruptcy is generating a great deal of new legal work. She indicated that the State Bar will remain alert on the consequences of the filing and will keep the Board informed.

Adjournment

The meeting was adjourned at 2:00 p.m.