

President Cahill called the meeting to order at 1: 30 pm. on Friday, November 17, 2006 at the State Bar of Michigan, Michael Franck Building, Lansing, MI.

Commissioners present:

|                               |                                  |
|-------------------------------|----------------------------------|
| Lori A. Buiteweg              | Craig H. Lubben                  |
| Beverly Hall Burns            | Ronald D. Keefe, President-Elect |
| Kimberly M. Cahill, President | Jeffrey E. Kirkey                |
| John J. Conway                | Donald E. McGinnis, Jr.          |
| Margaret A. Costello          | Hon. William B. Murphy           |
| Bruce A. Courtade             | Lambro Niforos                   |
| Francine Cullari              | Edward H. Pappas, Vice-President |
| Richard L. Cunningham         | Eric J. Pelton                   |
| Brian D. Einhorn              | Michael J. Riordan               |
| Elias J. Escobedo, Jr.        | Thomas C. Rombach                |
| Robert K. Fergan              | Kurt E. Schnelz                  |
| Julie I. Fershtman            | Charles R. Toy, Secretary        |
| Kiffi Y. Ford                 | Laurin' C. Roberts Thomas        |
| Robert C. Gardella            | Gregory L. Ulrich                |
| W. Anthony Jenkins, Treasurer |                                  |

Commissioners Edward L. Haroutunian, Katherine Kakish, and Scott C. Strattard were absent and excused.

State Bar Staff Present:

Marge Bossenbery, Executive Coordinator  
Kari Brandel, Events Manager  
Nancy Brown, Director of Communications and Interim Director of Program and Services  
Candace Crowley, Development & External Affairs Manager  
Cliff Flood, Deputy General Counsel  
James Horsch, Director of Finance and Administration  
Kristine Kowalski, Administrative Assistant  
Victoria Kremski, Deputy Director of Professional Standards  
Tracie Dinehart, Administrative Assistant  
Susan McMann, Sections and Committees Coordinator  
Catherine O'Connell, Assistant Professional Standard Counsel  
Jerome Reide, Director of Justice Initiatives  
Anne Smith, Administrative Assistant  
Naseem Stecker, Media and Public Relations Manager  
Anne Vrooman, Director of Research and Development  
Janet K. Welch, Interim Executive Director and General Counsel

Guests Present:

Lyn Chard, Executive Director, Institute for Continuing Legal Education  
Linda Rexer, Executive Director, Michigan State Bar Foundation

**Section/Committee Reports**

President Cahill recognized Fred Hermann, Chair, Anti-Trust, Franchising & Trade Regulation Section and Paul Novak, Chair-Elect, who provided the Board members with a section report.

**Special Presentation**  
**Resolutions Honoring Retiring Board Members**

Allyn Kantor  
Richard McLellan  
Written and Presented by Lori Buiteweg  
Written by Hon. Cynthia Diane Stephens and Presented by Charles Toy  
(Rodger Young was not present at the Board meeting and his resolution and plaque will be delivered to him.)

**Consent Agenda**

**Minutes**

The Board received the minutes of the September 13, 2006 and September 15, 2006 Board of Commissioners meetings.

The Board received the minutes of the September 5, 2006, October 3, 2006, and October 24, 2006 Executive Committee meetings.

***President's Report***, Kimberly M. Cahill, President  
The Board received the written President's recent activities report.

***Interim Executive Director's Report***, Janet K. Welch, Interim Executive Director  
The Board received the written Interim Executive Director's activities report and the litigation status report.

***Professional Standards*** Charles R. Toy, Chairperson  
The Board received the Client Protection Fund Claims and the District Character and Fitness Committee appointments.

***Proposed Section Bylaw Amendments*** Janet K. Welch, General Counsel  
The Board received proposed bylaw amendments from the Elder Law and Advocacy Section, the Environmental Law Section, the General Practice Section and the Taxation Section.

***Proposed Bylaw Amendments*** Janet K. Welch, General Counsel  
The Board received proposed bylaw amendments regarding Article III (Commissioner Committees) and Article VIII (Public Policy.)

A motion was offered, supported, and carried, to approve the consent agenda.

**LEADERSHIP REPORTS**

**President's Report** - Kimberly M. Cahill, President

**UP Tour**

President Cahill reported to the Board that the UP Tour was very successful and that she, Mr. Haroutunian and Mr. Keefe met with many associations and enjoyed their time. President Cahill expressed her appreciation to Ms. Crowley and Ms. Smith for their planning efforts.

**Great Rivers Conference**

President Cahill reported to the Board that she, Mr. Keefe, and Ms. Welch attended the Great Rivers Bar Leaders Conference, October 17 -20, 2006. The State Bar of Michigan (SBM) hosted the conference this year and representatives from Indiana, Ohio, Minnesota, Iowa, Nebraska, Wisconsin and the American Bar Association (ABA) attended.

Luncheon with the Michigan Supreme Court

President Cahill reported to the Board that Chief Justice Clifford Taylor has extended an invitation to the Board of Commissioners (BOC) to a lunch meeting on January 24, 2007. The BOC has a scheduled meeting on January 19 and President Cahill asked the members if they would support canceling the meeting on the January 19 and meet instead on the morning, and if necessary, the afternoon on January 24. A motion was offered, supported, and carried to reschedule the January 19 meeting to January 24.

Michigan Lawyers Weekly Economics of Law Practice Survey

President Cahill informed the Board that Michigan Lawyers Weekly (MLW) has sent out an Economic of Law Practice Survey, similar to the one that the SBM sends out to its members. To avoid confusion among our members between the survey that the SBM is planning to send in January and the one being sent by MLW, an e-blast will be sent to all SBM members distinguishing between the MLW survey and the Economic of Law Practice Survey that the State Bar will send to its members in January.

**Executive Director's Report** - Janet K. Welch, Interim Executive Director  
Disaster Planning Update

Ms. Welch reported to the committee that the SBM staff had not received any Board comments concerning the draft disaster planning document that was distributed in September. Staff will implement the plan as drafted.

Sarbanes-Oxley Best Practices Implementation  
Audit Committee

Ms. Welch reported that Commissioners Jenkins, Buiteweg, Schnelz, and Escobedo along with Roshunda Price had been appointed to the Audit Committee.

Record Retention and Destruction Policy

Ms. Welch reported to the Board that staff had completed a review of critical areas in the General Counsel and Professional Standards Divisions regarding record retention and that policies continue to be developed for other areas of the Bar.

Human Resources Whistle Blower Policy

Ms. Welch indicated that a whistle blower policy distributed at the last BOC meeting meets the recommendations received from the policy committee and that SBM staff will be trained at the next all staff meeting.

Litigation

Ms. Welch reported that the SBM has not received any word that Plaintiff Laurence has appealed his case to the US Supreme Court, but that he has filed another lawsuit and the report regarding this is in the Board book.

Human Resources Matters

Ms. Welch reported to the Board that there has been a substantial increase in our premiums for Workers Compensation and that the Human Resources (HR) Department of the SBM is taking some measures to train employees in safety issues and begin to use a single provider of services in an effort to decrease those costs.

The HR Department is reviewing the possibility of outsourcing the flexible spending accounts that are in place because it will result in more cost-effective services and provide an increase in the quality of service to the staff. Ms. Welch indicated that the HR staff is currently updating the employee manual.

**6<sup>th</sup> Circuit Rules of Professional Conduct Rules 1.10 Amicus Brief**

Upon authorization from the Executive Committee, the State Bar submitted an amicus brief urging reconsideration by the 6<sup>th</sup> Circuit of an opinion that overturned the longstanding interpretation of MCR 1.10 that if a lawyer leaves a firm and becomes associated with another firm, MRPC 1.10(b) governs whether the new firm is imputedly disqualified because of the newly hired lawyer's prior services in or association with the lawyer's former law firm. The Michigan Supreme Court has subsequently adopted a rule change clarifying the rule consistent with the interpretation urged in the amicus brief.

Other

The SBM has received two invitations from the Supreme Court to speak to them at their Administrative Hearings about two recommended proposals from the Representative Assembly. Ms. Welch appeared before them on the issue of Emeritus lawyers working in legal aid clinics on the same basis as law students and Ms. Kremski appeared before them and answered questions about the SBM's pro hac vice proposal.

Ms. Vrooman introduced Ms. Tracie Dinehart as a new member of the Executive office.

Ms. Welch announced that Ms. Bobbie Tetreault is going to retire and that Ms. Nancy Brown is celebrating her 30<sup>th</sup> year of employment at the SBM.

**Representative Assembly Report** – Edward L. Haroutunian, Chairperson

In Commissioner Haroutunian's absence, Vice-Chair Robert Gardella presented the Chairperson's report.

Tentative Agenda for the April 21, 2007 Representative Assembly meeting

Mr. Gardella provided the Board with an overview of the tentative agenda for the April 21, 2007 Representative Assembly meeting.

UP Tour

Mr. Gardella reported to the Board that Ed Haroutunian indicated to him that the UP Tour was very productive and that it is a great avenue for recruiting future leaders.

Mr. Gardella said that Commissioner Haroutunian sends his appreciation to all who sent their condolences to him and his family on the passing of his mother.

**Executive Director Search Committee Report**, Ronald D. Keefe, Chairperson

Mr. Keefe reported to the Board that the subcommittee of the Executive Director Search Committee appointed to review the proposals received from applicants interested in conducting the search for the new SBM Executive Director has made a recommendation. Mr. Keefe deferred to Mr. Toy, chair of that subcommittee, for the report. Mr. Toy reported that six proposals were received and that the subcommittee conducted interviews with two of the firms. Mr. Toy indicated that the reasons that a search firm should be used are that the process should be transparent, and should ensure the candidates' confidentiality. He went on to say that using a separate firm would contribute to the professionalism and efficiency of the search and that the time commitment involved in the search process is enormous and that the SBM staff would be overburdened by conducting the search. The subcommittee recommends hiring Consensus Management Group (CMG) to conduct the search for the Executive Director. A motion was offered, supported, and carried to hire CMG to conduct the ED search.

**COMMISSIONER COMMITTEES**

**Finance** - W. Anthony Jenkins, Chairperson

Mr. Jenkins reported that the Finance Committee has met since September to look at year end results from FY 2005-06.

Financial Results for FY 2005-06

Mr. Horsch provided the Board with a PowerPoint presentation regarding the financial results for FY 2005-06.

Review of Long Term Investment Portfolio

The Finance Committee received a recommendation from our investment consultants that we replace one of our funds, Masters Select Equity, a large cap fund, as it was not performing as expected. The Finance Committee approved liquidating that fund and replacing it with another fund. The Finance Committee also approved a proposed revision to the asset allocation based on consultants' recommendations that will require BOC approval at the January meeting. Finally, the Finance Committee approved moving \$1.2 million from our short term portfolio to our long term investment portfolio, as the funds are not required in the current operating cycle.

Annual Review of Financial Safety Margin

Mr. Jenkins reported that the minimum financial safety margin according to Board policy is 33%, and that as of September 30, 2006 the SBM is at a 78% safety margin, well above the minimum.

Audit Update

Mr. Jenkins reported that the auditors have drafted their report. They will meet with the Audit Committee in a few weeks and will attend the January meeting to respond to any questions from the BOC.

**Professional Standards** Charles Toy, Chairperson

Practice Management Resource Center (PMRC)

Ms. Evans provided the Board with an update on PMRC activities.

**Programs and Services** - Edward Pappas, Chairperson

2006 Annual Meeting Final Report and Survey Results

The Commissioners were provided with a copy of the 2006 Annual Meeting Final Report and Survey Results.

Mr. Pappas asked Ms. Brandel to give an overview of that document. Ms. Brandel reported that 1,114 members attended the 2006 Annual Meeting.

Economics of Law Practice Survey

In the absence of Vince Romano, Chair of the Law Practice Management Section, Ms. Vrooman reported to the Board regarding the 2007 Economics of Law Practice Survey. The survey will be sent in January 2007. SBM is using a new vendor, Synergy Solutions.

**Public Policy, Image and Identity – Ronald D. Keefe**, Chairperson

Court Rules

ADM File No 2002-09 Proposed Adoption of Rules 3.904 and 5.738a of the Michigan Court Rules  
Taken off of the agenda.

Legislation: The following legislation was discussed and action taken:

HB 5633 English as Official Language

The Board supported this bill in principle at the July 2006 BOC meeting, but now recommends an expanded position emphasizing the importance of full access to court services for all, including those not proficient in English, and the need for adequate translation services.

Motion offered, supported and carried.

SB 1203 Foreclosure

The Board supported this bill in principle at the July 2006 BOC meeting, with a provision that the amendments recommended by the Real Property Section be adopted. The Real Property section is asking for authorization to advocate for its position of opposition.

A motion to authorize the Real Property Section to advocate was offered, supported and carried.

State Office Compensation Committee (S.O.C.C.) Statute Amendments  
HB 4918 & HB 4919

Active support for these two amendments.  
Motion offered, supported and carried.

HB 6543 Gang Crimes

Active opposition.  
Motion offered, supported and carried.

HB 2679 Veterans' Memorials', Boy Scouts, Public Seals, and Other Expressions of Religious Protection Act of 2006

Taken off the agenda.

HB 6532 DNA Evidence

Support in principle and further communicate that the scope of the bill should be expanded to any conviction finally reversed.  
Motion offered, supported and carried.

Resolution honoring Rep. William Van Regenmorter

A motion was offered, supported and unanimously adopted to provide a resolution from the SBM (attached) commemorating the service of Rep. William Van Regenmorter.

**OTHER REPORTS**

**American Bar Association Report (ABA)** – W. Anthony Jenkins, State Delegate

Mr. Jenkins reported to the Board that the ABA Mid-Winter conference is being on February 6–13, 2007 in Miami . Mr. Jenkins will provide the Board with an update regarding the agenda for the meeting once it has been developed.

**Justice Initiatives Report** - Hon. Cynthia Diane Stephens, Chairperson

In Judge Stephens's absence, Mr. Reide provided the Board with the Justice Initiatives Report.

**Young Lawyers Section Report** - J. J. Conway, Chairperson

Mr. Conway provided the Board with an update on the Young Lawyers Section.

**FOR THE GOOD OF THE PUBLIC AND THE PROFESSION**

**Comments or questions from Commissioners**

Mr. Einhorn offered comments on the SBM Annual Meeting.

Mr. Courtade offered comments on the Michigan Civil Rights Initiative.

**Comments or questions from the public**

There were none.

**Adjournment**

The meeting was adjourned at 3.20 p.m.