

**State Bar of Michigan
Representative Assembly
April 26, 2014**

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Saturday, April 26, 2014, at the Lansing Community College West Campus in Lansing, Michigan.

1. Call to order by Chairperson Kathleen M. Allen.
2. Clerk Daniel D. Quick declared a quorum (50 members) was present.
3. Upon a motion made and seconded, the calendar was adopted as proposed.
4. As provided in Rule 4.8, the Summary of Proceedings of the September 19, 2013 meeting was deemed approved.
5. Hon. Jeffery Nellis, Chair, Nominating and Awards Committee, addressed the Assembly on filling vacancies for the current meeting. Upon a motion made and seconded, Audrey Monaghan (3rd Circuit); Patrick Crandell (6th Circuit); Mark Holsomback (9th Circuit); John Lozano (10th Circuit); Andrew Sarazin (12th Circuit); William Brott (13th Circuit); Lea Ann Sterling (13th Circuit); Ronald Foster (20th Circuit); Timothy Cook (31st Circuit); Gregory Stremers (31st Circuit); Theresa Cypher (36th Circuit); Jennifer Frost (39th Circuit); Steven Cross (57th Circuit); were appointed to fill immediate vacancies within their respective Circuits.
6. Carl Chioini, Chair, Assembly Review Committee and Special Committee, addressed the Assembly on the consideration of recommendations and/or comments to the Michigan Supreme Court on Administrative Order No. 2014-5. In January 2014, the Senate introduced Bill 743 to eliminate the mandatory bar status of the State Bar of Michigan. The Board of Commissioners took immediate action in February 2014 to oppose the bill, and requested the Supreme Court “initiate a review of how the State Bar operates within the framework of *Keller*.” The Supreme Court issued Administrative Order 2014-5, creating the Task Force on the Role of the State Bar of Michigan to determine whether or not the Bar’s dues and activities could be accomplished by means less intrusive on individual’s First Amendment rights in view of the *Falk* decisions. The order also provided that the Task Force would report on and include proposed revisions of the Court Rules governing the State Bar of Michigan. A motion was made that the Representative Assembly have a discussion on Administrative Order 2014-5 in order to make recommendations and/or provide comments to the Task Force. After no discussion, the motion passed.
7. Kathleen M. Allen, Representative Assembly Chair, recommended three concepts for discussion: the governance on the role and function of the Representative Assembly; the definition of the type of policies on which the Board of Commissioners and the Representative Assembly decide, respectively; and how the Representative Assembly can function more effectively.

Chairperson Allen formed a Special Committee comprised of the Assembly Review Committee, in addition to Krista Haroutunian, Eilisia Schwarz and Robert LaBre, to put together recommendations and/or comments to the Task Force based on the April 26, 2014 discussion. Chairperson Allen also asked the Special Issues Committee to review the Assembly rules and submit comments to the Special Committee.

8. Daniel D. Quick, Civil Procedures and Courts Committee, addressed the Assembly on a proposed amendment to 2.602(B): an addition to subsection 5 to provide an expressed mechanism for the entry of consent judgments. Upon a motion made and supported, after discussion and a friendly amendment, the proposal passed as follows:

(5) Upon presentation to the court of a proposed judgment, OTHERWISE LAWFUL, signed and approved by the parties bound by the judgment or their counsel of record, if an action is pending between those parties or was pending previously.

(a) If so provided in the proposed judgment, no notice to the opposing party of submission for entry is required, and submission of the judgment to the court for entry shall serve to re-open the prior case if closed.

(b) If the proposed judgment does not provide for entry without prior notice to the debtor, the submitting party must file a motion and give notice to the debtor under MCR 2.107(C) at least 14 days before the date of the motion hearing. The presenting party shall file and serve a notice of hearing for entry of the proposed judgment. If the debtor does not file and serve specific objections within that time, the court shall enter the judgment.

(c) The proposed judgment must be accompanied by an affidavit of the submitting party or its counsel averring as to the basis for entry of the judgment.

(d) Service of the entered judgment shall be as provided for in the judgment or else in accordance with MCR 2.602(D) and the manner prescribed in MCR 2.105. Within 21 days of service, the judgment debtor may file a motion to challenge the propriety of the entry of the judgment or the calculation of the judgment amount. The motion must be heard within 14 days of filing. The filing of such a motion does not extend the stay of MCR 2.614(A)(1) or prevent the court from enjoining the transfer of assets under MCR 2.621(C). The court may modify or set aside the judgment or enter such other relief as it deems appropriate.

9. Daniel D. Quick, Civil Procedures and Courts Committee, addressed the Assembly on a proposed amendment to MCR 2.305(A)(1) to clarify that a subpoena cannot be issued in a case until the guidelines of 2.306(A)(1) have been met. Upon a motion made and supported, after discussion and a friendly amendment, the proposed amendment passed as follows:

Rule 2.305 Subpoena for Taking Deposition

(A) General Provisions.

(1) Subpoenas SHALL not be issued except in compliance with MCR 2.306(A)(1). After serving the notice provided for in MCR 2.303(A)(2), 2.306(B), or 2.307(A)(2), a party may have a subpoena issued in the manner provided by MCR 2.506 for the person named or described in the notice. Service on a party or a

party's attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer, or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued.

10. Daniel D. Quick, Civil Procedures and Courts Committee, addressed the Assembly on a proposed amendment to MCR 2.003(D)(3)(a) to clarify a chief judge who has also been disqualified on a case. Upon a motion made and supported, the proposed amendment passed as follows:

Rule 2.003 Disqualification of Judge

(D) Procedure...

(3) Ruling.

(a) For courts other than the Supreme Court, the challenged judge shall decide the motion. If the challenged judge denies the motion, on the request of a party,

(i) in a court having two or more judges and if the chief judge is not disqualified on the case, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo;

(ii) in a single-judge court, or if the challenged judge is the chief judge, or if the chief judge is disqualified on the case, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo.

11. Daniel D. Quick, Civil Procedures and Courts Committee, addressed the Assembly on a proposed modification to MCR 2.403(G)(1). The recommendation called for the advance notice of the names of the case evaluators before showing up at a case evaluation. Upon a motion made and supported, after discussion, the proposed modification passed as follows:

Rule 2.403 Case Evaluation

(G) Scheduling Case Evaluation Hearing.

(1) The ADR clerk shall set a time and place for the hearing and send notice to the case evaluators and the attorneys at least 42 days before the date set. The notice shall also contain the names of the case evaluators. If, for any reason, the ADR Clerk appoints a replacement case evaluator after the date the notice is sent, then the ADR Clerk shall send an amended notice to the case evaluators and the attorneys, including the name of the replacement evaluator, within a reasonable time but in any event before the hearing.

12. Hon. Jeffrey Nellis, Chair, Nominating & Awards Committee, addressed the Assembly concerning the 2014 Award Nominations. Upon a motion made and seconded, the Assembly unanimously approved the 2014 Award Recipients. The Unsung Hero Award will be presented to Susan F. Reed of Detroit. The Michael Franck Award will be presented to Julie I. Fershtman of Farmington Hills.
13. Brian D. Einhorn, President, addressed the Assembly on mandatory versus voluntary bar. President Einhorn mentioned the resources and the programs the

State Bar has provided for its members. President Einhorn also addressed the Keller permissible proposals and the Assembly's role.

14. Janet K. Welch, Executive Director, addressed the Assembly to thank them for all their time and work on their recommendation and/or comments to the Michigan Supreme Court on Administrative Order No. 2014-5.
15. Adjournment