

**State Bar of Michigan
Representative Assembly
April 16, 2005**

SUMMARY OF PROCEEDINGS

The following is a summary of proceedings of the State Bar Representative Assembly session held Saturday, April 16, 2005, at Lansing Community College, West Campus in Lansing, Michigan.

1. Call to order by Chairperson Elizabeth A. Jamieson.
2. Clerk Edward Haroutunian declared a quorum (50) was present.
3. As provided in Rule 4.8, the Summary of Proceedings of the January 22, 2005, meeting was deemed approved.
4. Chairperson Jamieson addressed the Assembly to entertain a motion to insert a Proposal under Item #6 regarding a Confidentiality Rule Concerning the State Bar of Michigan and two Proposals under Item #7 regarding MRPC 1.15 and ADM File No. 2003-62. A motion was made and seconded that these items be added to the agenda.
5. Bob Gardella, Chair of the Nominating and Awards Committee, addressed the Assembly in regard to filling vacancies. Upon a motion made and seconded, Valerie White of Hillsdale (1st Judicial Circuit), Ron Foster of Jenison (20th Judicial Circuit), Duane Hadley of Standish (23rd Judicial Circuit), Julie Benson Valice of Cadillac (28th Judicial Circuit), Linda Pioch of Paw Paw (36th Judicial Circuit), Christian Horkey of Monroe (38th Judicial Circuit), Anna Marie Anzalone of Adrian (39th Judicial Circuit), Adrienne Iddings of Adrian (39th Circuit), Lineas Baze of Jackson (4th Judicial Circuit), Wendy Davis Kanar of Midland (42nd Judicial Circuit), Tina VanDam of Midland (42nd Judicial Circuit) David Barton of Cheboygan (53rd Judicial Circuit) and Hon. Wallace Kent, Jr. of Caro (54th Judicial Circuit) were appointed to fill immediate vacancies within their respective Circuits.
6. Jan Brandon, Wayne Miller and Si Orlowski of the Civil Procedures & Courts Committee, reported on proposed amendments to MCR 2.403 and MCR 3.602. Upon a motion made and seconded, the Assembly unanimously approved the proposed amendment to MCR 2.403. Upon a motion and seconded, the Assembly approved the proposed amendment to MCR 3.602.
7. Josh Ard and John Anding of the Unauthorized Practice of Law Committee, reported on the proposed Pro Hac Vice and Confidentiality Rules. Upon a motion made and seconded, the Assembly unanimously supported adding a new Rule Concerning the State Bar of Michigan governing *pro hac vice* practice and granting jurisdiction over out-of-state attorneys to the Attorney Grievance Commission and Attorney Discipline Board. The Assembly also voted in favor of the Rule incorporating provisions requiring out of state attorneys to affiliate with an active

- member of the State Bar who would appear of record in the proceeding, defining temporary practice as “no more than three separate representations within a 365 day period” and requiring a fee to be paid by out-of-state attorneys to cover State Bar administrative costs to monitor compliance. Upon a motion made and seconded the Assembly also voted in favor of adding a new Rule Concerning the State Bar of Michigan governing the confidentiality of State Bar programs, with the specific Rule to be submitted to the Assembly for approval.
8. Upon a motion made and seconded, the Assembly unanimously approved including a transition provision in the Michigan Rules of Professional Conduct within MRPC 1.0.2 (Applicability of Rules).
 9. Upon a motion made and seconded, the Assembly opposed including language in MRPC 1.4(c) (Communication) regarding the ownership and copying of lawyers’ files and records. A strong minority voted in favor of including language in the Rules.
 10. Upon a motion made and seconded, the Assembly opposed describing or incorporating a law enforcement exception within MRPC 4.2 (Communication with Party Represented by Counsel) or its comments. A minority voted in favor of a law enforcement exception.
 11. Upon a motion made and seconded, the Assembly approved including language in MRPC 1.5(f) (Fees) to specifically provide for enforceable nonrefundable retainers that are clearly identified and to which the client has consented in writing.
 12. Upon a motion made and seconded, the Assembly unanimously supported MRPC 1.15(c) (Safekeeping Property) such that nonrefundable fees comply with the factors set forth in the Assembly’s recommendation regarding MRPC 1.5(f).
 13. Upon a motion made and seconded, the Assembly unanimously approved that MSILS 1.3 should state the Standards are not intended to create independent grounds for determining culpability.
 14. Upon a motion made and seconded, the Assembly supported the Attorney Discipline Board’s definition of knowledge throughout the Standards, noting that “actual knowledge” should be used instead of “knowledge”.
 15. Upon a motion made and seconded, the Assembly supported specifically defining “injury” and “potential injury” within the MSILS Definitions, as proposed by the ADB. A strong majority supported the version of MSILS 2.3 as proposed by the Supreme Court and ADB. The Assembly unanimously supported considering injury in the first phase of the disciplinary system, when determining whether misconduct has occurred, rather than only in the second (sanction) phase, consistent with the ADB position.

16. Upon a motion made and seconded, the Assembly supported Alternative A (the ADB version) regarding the use of reprimand within MSILS 4.6, 6.1 and 8.0, in favor of including reprimand as a disciplinary option for the forms of misconduct recognized by the Rules.
17. Upon a motion made and seconded, the Assembly unanimously supported striking consent judgments from being governed by the Standards, as proposed by Robert Agacinski (personally) to the Supreme Court.
18. Upon a motion made and seconded, a strong majority of the Assembly opposed the Standards providing for admonitions within MSILS 2.6, consistent with the ADB and AGC positions.
19. Upon a motion made and seconded, a strong majority of the Assembly supported incorporating a two-prong test within the Standards requiring (1) injury or potential injury or (2) interference or potential interference with a legal proceeding, as a prerequisite to the issuance of sanctions pursuant to MSILS 6.2 and 6.3, consistent with the ADB position.
20. Upon a motion made and seconded, a strong majority of the Assembly supported limiting disbarment under MSILS 4.1 to a knowing “conversion” of “client property” rather than a failure to hold anyone’s property in trust, consistent with the ADB position. A majority of the Assembly supported limiting suspension to improper handling of client property that is knowingly or negligently improper, consistent with the ADB position. A slim minority supported the broader Campbell/Supreme Court version which would provide for suspension for the failure to hold property in trust or commingling personal property with property that should have been held in trust.
21. Upon a motion made and seconded, the Assembly unanimously supported the ADB position regarding MSILS 4.3 (Failure to Avoid Conflicts of Interest); that a suspension sanction should require injury or potential injury to a client while reprimand should require the conflict to adversely affect another client and cause injury or potential injury to a client.
22. Upon a motion made and seconded, the Assembly unanimously opposed providing sanctions for illegal or clearly excessive fees within MSILS 4.5 (Lack of Competence), consistent with the ADB position and Alternative A” published by the Supreme Court.
23. Upon a motion made and seconded, the Assembly unanimously supported that, with regard to MSILS 5.1 (Failure to Maintain Personal Integrity), only a violation of a law that reflects adversely on a lawyer’s fitness to practice should be subject to discipline, consistent with the ADB position.

24. Upon a motion made and seconded, the Assembly supported MSILS 3.2 (Isolated Acts of Negligence), such that isolated acts of negligence, without more, should not be the subject of discipline.
25. Upon a motion made and seconded, the Assembly unanimously supported recommending that the Court publish a revised version of the Rules (AO-2003-62) for further analysis and comment to ensure a more thorough and comprehensive rewrite of Michigan's Rules of Professional Conduct.
26. James Hogan addressed the Assembly on behalf of the Standing Committee on Libraries, Legal Research & Legal Publications.
27. Lori A. Buiteweg, Vice Chair addressed the Assembly to thank Elizabeth Jamieson for her hard work on the MRPC and MSILS issues before the Assembly.
28. Adjournment.