

President Rockwell called the meeting to order at 9:50 a.m. on January 26, 2018 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson

David C. Anderson

Dennis M. Barnes, Vice-President

Aaron V. Burrell

Joseph J. Baumann

Robert J. Buchanan, Secretary

Hon. Clinton Canady III

B.D. "Chris" Christenson

Richard L. Cunningham

Shauna L. Dunnings

Andrew F. Fink III

Robert C. Gardella

Jennifer M. Grieco, President Elect

Edward L. Haroutunian

Krista L. Haroutunian

Michael S. Hohaus

Kara R. Hart-Negrich

E. Thomas McCarthy Jr.

Joseph P. McGill

Hon. Maureen M. McGinnis

Shenique A. Moss

Jules B. Olsman

Hon. David A. Perkins

Daniel D. Quick

Victoria A. Radke

Hon. Michael J. Riordan

Donald G. Rockwell, President

Brian D. Shekell

Gregory L. Ulrich

Dana M. Warnez, Treasurer

Erane C. Washington

Commissioners absent and excused:

Syeda F. Davidson

James W. Heath

State Bar Staff present:

Janet Welch, Executive Director

Margaret Bossenbery, Executive Coordinator

Nancy Brown, Director, Member and Communication Services Division

Gregory Conyers, Director, Diversity

Candace Crowley, Senior Consultant

Peter Cunningham, Assistant Executive Director and Director, Governmental Relations

Darin Day, Director, Outreach and Constituent Development

Cliff Flood, General Counsel

Danon Goodrum-Garland, Director, Professional Services Division

Kathryn Hennessey, Public Policy Counsel

Nkrumah Johnson-Wynn, Assistant General Counsel

James Horsch, Director, Finance and Administration Division

Robert Mathis, Pro Bono Service Counsel

Samantha Meinke, Communications Manager

Alecia Ruswinckel, Assistant Counsel, CPF/Ethics

Jeanette Socia, Human Resources Manager

Kari Thrush, Assistant Division Director, Member Services

Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, Institute for Continuing Legal Education

### Consent Agenda

Mr. Rockwell asked the Board if there were any items that needed to be removed from the consent agenda. There were none.

The Board received the minutes from November 17, 2017 Board of Commissioners meetings.  
The Board received the minutes from the November 8 and January 12, 2017 Executive Committee meetings.

The Board received the recent activities of the President.

The Board received the recent activities of the Executive Director.

The Board received the FY 2017 Audited Financial Report.

The Board received the FY 2018 Financial Reports through December 2017.

The Board received a Bylaw Amendment from the Judicial Section.

A motion was offered and supported to approve the consent agenda. The motion was approved.

## COMMISSIONER COMMITTEES REPORTS

### Audit, Dana M. Warnez, Chairperson

Ms. Warnez reported that the Audit Committee met with the auditors on December 15, 2017 and reviewed the fiscal reports for FY 2017. She introduced Mr. Jeffrey Fineis, Audit Partner, from Andrews, Hooper, Pavlik, PLC who reviewed the auditor's letter, the annual financial report, and answered questions from the Board. The auditors provided an "unmodified" (clean) audit opinion and had no audit recommendations.

Mr. Fineis reported that there are new reporting standards included in the report due to GASB 74 reflecting new accounting standards including disclosure of retiree health care costs. He stated that additional reporting will be needed next year due to GASB 75, to reflect the other post-employment benefit net liability reporting requirement.

Ms. Warnez informed the Board that the SBM would be issuing an RFP to solicit bids and proposals for audit services. She indicated that the SBM is not dissatisfied with the current auditors, but that the committee is following SBM policy and best practices in seek bids at this time for audit services.

### Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial reports through December 2017.

Mr. Warnez indicated that a work group had been established to review the investment policy as is consistent with SBM policy.

### Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes reported that there was no new business to come before the Board.

**Professional Standards**, Robert J. Buchanan, Chairperson

Mr. Buchanan noted the background information about the Payee Notification System that was in the Board's materials. He reported that legislation had been enacted in other states in an effort to eliminate fraud in settlement proceedings and foster greater client trust in the legal profession. Mr. Buchanan asked Ms. Ruswinckel to provide the Board with an overview of the legislation contemplated for Michigan that has passed in other states. A discussion followed her remarks about whether this issue should be sent to the Representative Assembly for their consideration.

A motion was offered and supported to authorize SBM to advocate for Payee Notification legislation with the elements listed in the memo of the work group recommendations provided in the Board materials, and to also refer this proposal to the Representative Assembly for their consideration. The motion was approved.

Roll Call Vote taken:

Ayes: Anderson, Danielle, Anderson, David, Barnes, Buchanan, Burrell, Christenson, Cunningham, Dunnings, Fink, Gardella, Grieco, Haroutunian, Edward, Haroutunian, Krista, Hart-Negrich, Hohaus, McCarthy, Moss, Olsman, Quick, Radke, Riordan, Warnez, Washington, and Rockwell

Nays: Baumann, McGill, Shekell, and Ulrich

Absent and Excused: Canady, Davidson, Heath, McGinnis, Perkins

**Public Policy**, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

**Court Rules**

**ADM File No. 2017-19: Proposed Amendment of Rules 2.410 and 2.411 and Proposed Addition of Rule 3.970 of the Michigan Court Rules**

The proposed amendments of MCR 2.410 and MCR 2.411 and adoption of the new MCR 3.970 would provide explicit authority for judges to order mediation in child protection proceedings.

A motion was offered and supported to adopt the position of the Access to Justice Policy Committee and authorize the Alternative Dispute Resolution Section to advocate its position of support, while also notifying the Section that it cannot oppose any of the amendments proposed by the State Bar position. The motion was approved.

**ADM File No. 2015-26: Proposed Addition of Rule 3.808 of the Michigan Court Rules**

The proposed addition of Rule 3.808 is consistent with § 56 of the Michigan Adoption Code, MCL 710.56. This new rule arises out of *In re JK*, 468 Mich 202 (2003), and *In re Jackson*, 498 Mich 943 (2015), which involved cases where a final order of adoption was entered despite pending appellate proceedings involving the adoptee children. Although the Michigan Court of Appeals has adopted a policy to suppress in its register of actions and online case search tool the names of children (and parents) who are the subject of appeals from proceedings involving the termination of parental rights, this information remains open to the public. Therefore, in order to make the determination required of this new rule, a trial court may contact the clerk of the Michigan Court of Appeals, the Michigan Supreme Court, or any other court where proceedings may be pending.

A motion was offered and supported to support the proposed addition and recommend an amendment to expedite these cases for the best interest of the children be included in the letter to the Court. The motion was approved.

**ADM File No. 2016-13: Proposed Addition of Rule 3.810 of the Michigan Court Rules**

The proposed new rule would require a court to provide an indigent putative father whose rights are terminated under the Adoption Code with transcripts for the purposes of appeal, similar to the requirement in MCR 3.977(J) for putative fathers whose rights are terminated under the Juvenile Code.

A motion was offered and supported to support the proposed addition with this amendment: **Rule 3.810 Transcripts for the Purposes of Appeal. In appeal following the involuntary termination of the parental rights of a putative father, if the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.** The motion also included that the letter to the Court should make it clear that the term “respondent” encompasses all persons with standing to appeal. The motion was approved.

**ADM File No. 2017-18: Proposed Amendment of Rule 3.903 of the Michigan Court Rules**

The proposed amendment of MCR 3.903 would make juvenile guardianship information public. This change would resolve the conflict between the child protective proceeding social file (which is considered nonpublic) and the juvenile guardianship file (which is public) and would make the rule consistent with current court practices.

A motion was offered and supported to support the proposed amendment. The motion was approved.

**ADM File No. 2017-08: Proposed Amendment of Rules 3.977 and 6.425 of the Michigan Court Rules**

The proposed amendments of MCR 3.977(J) and MCR 6.425(G) were submitted by the Court of Appeals. The proposed amendments would require the production of the complete transcript in criminal appeals and appeals from termination of parental rights proceedings when counsel is appointed by the court. The proposed amendments would codify existing practice in many courts, and the Court of Appeals believes they would promote proper consideration of appeal issues and eliminate unnecessary delays to the appellate process.

A motion was offered and supported to support the proposed amendment. The motion was approved.

**ADM File No. 2016-25: Proposed Amendment of Rule 7.212 of the Michigan Court Rules**

The proposed amendment of MCR 7.212 was submitted by the Court of Appeals. Proposed amendments of MCR 7.212 would require an appellant to file an appendix with specific documents within 14 days after filing the appellant’s principal brief. The proposal is intended to identify for practitioners the key portions of the record that the Court deems necessary for thorough and efficient review of the issues on appeal.

A motion was offered and supported to support the proposed amendment as drafted and to authorize the sections and committees to submit their comments to the Court. The motion was approved.

### **MIDC Standard 8**

Attorneys must have the time, fees, and resources to provide the effective assistance of counsel guaranteed to indigent criminal defendants by the United States and Michigan Constitutions. The MIDC Act calls for a minimum standard that provides: "Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided." MCL 780.991(2)(b). Fair compensation for assigned counsel may optimally be achieved through a public defender office, and the MIDC recommends an indigent criminal defender office be established where assignment levels demonstrate need, together with the active participation of a robust private bar. MCL 780.991(1)(b). In the absence of, or in combination with a public defender office, counsel should be assigned through a rotating list and be reasonably compensated. Contracted services for defense representation are allowed, so long as financial disincentives to effective representation are minimized. This standard attempts to balance the rights of the defendant, defense attorneys, and funding units, recognizing the problems inherent in a system of compensation lacking market controls.

A motion was offered and supported to support the standard as written. The motion was approved.

### Model Criminal Jury Instructions

#### **M Crim JI 10.9, 10.9a, 10.9b, 10.9c and 10.9d**

The Committee proposes new instructions, M Crim JI 10.9, 10.9a, 10.9b, 10.9c and 10.9d, for the organized retail crime statutes found at MCL 752.1083 and 752.1084.

A motion was offered and supported to support the jury instructions as written. The motion was approved.

#### **M Crim JI 11.39, 11.39a and 11.39b**

The Committee proposes new instructions, M Crim JI 11.39, 11.39a and 11.39b, for the "explosives" statutes found at MCL 750.204, 750.204a, 750.207 and 750.212.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

#### **M Crim JI 15.11a and 15.12a**

The Committee proposes amendments to M Crim JI 15.11a and 15.12a, the instructions for driving with Schedule 1 or 2 substances causing death or serious injury under MCL 257.625(4), (5) and (8). The amendments are intended to correct over-broad language in paragraph (4) that included all Schedule 2 substances, where only certain of those substances are included within the purview of the statute. Deletions are in strike-through; new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

#### **M Crim JI 17.20 and 17.20c**

The Committee proposes an amendment to M Crim JI 17.20 and a new instruction, M Crim JI 17.20c, instructions for violations of MCL 750.136b(3), second-degree child abuse. The amendment to M Crim JI 17.20 is intended to conform the instruction to statutory language that was omitted in the original instruction and to make technical corrections; deletions are in strike-through; new language is underlined. The new instruction, M Crim JI 17.20c, is for second-degree child abuse charges that were committed by a child care organization where there has been a violation of MCL 722.111 et seq.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

### **M Crim JI 17.33**

The Committee proposes an amendment to M Crim JI 17.33, the instruction for violations of MCL 750.145n, which was amended to expand the scope of the statute, and to make technical corrections to the first and third paragraphs. Deletions are in strike-through; new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

### **M Crim JI 36.5**

The Committee proposes an amendment to M Crim JI 36.5, the instruction that provides the aggravating factors found in MCL 750.462f that apply to the human trafficking instructions. The amendment accommodates an amendment to that statute. The new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

### Legislation

#### **Competency Evaluation**

**HB 5244** (Kesto) Mental health; other; time limitation on completion of examination to evaluate issue of incompetence to stand trial; implement. Amends sec. 1028 of 1974 PA 258 (MCL 330.2028).

**HB 5246** (Kesto) Mental health; facilities; examination to evaluate issue of incompetence to stand trial; modify process and expand certain resources. Amends sec. 1026 of 1974 PA 258 (MCL 330.2026).

A motion was offered and supported that this legislation is *Keller*-permissible because it affects the availability of legal services to society. The motion was approved.

A motion was offered and supported to support the concept of improving the speed and accuracy of competency evaluations, but to also note that these bills are not the vehicle in which to improve these due to lack of deadlines, funding, and standards. The motion was approved. Mr. Shekell abstained.

**HB 4433** (Neeley) Juveniles; criminal procedure; automatic record expungement of nonviolent juvenile offenses; provide for. Amends sec. 18e, ch. XIA of 1939 PA 288 (MCL 712A.18e).

A motion was offered and supported that this legislation is *Keller*-permissible because it improves the functioning of the courts. The motion was approved.

A motion was offered and supported to support the position of the Access to Justice Policy Committee. The motion was approved.

**HB 4728** (Geiss) Criminal procedure; defenses; legal aid for individuals in deportation proceedings; establish. Creates new act.

Action on this legislation was tabled.

## **SBM STRATEGIC PLAN – STEERING COMMITTEES**

**Communications and Member Services Steering Committee**, Dennis M. Barnes, Chairperson  
Mr. Barnes reported that the next steering committee meeting is scheduled on February 7 and as such there is not an update for the Board at this time.

**Implementation and Innovation Steering Committee**, Dana M. Warnez, Chairperson

Ms. Warnez reported that the I & I committee met via conference call on January 23 and received reports from all of the different initiatives out the delivery program as well as a Diversity and Inclusion update. She stated that the committee specifically talked about the Access to Justice proposal for a consistent fee waiver, the Modest Means pilot program, which continues moving forward, the Diversity and Inclusion work group that is looking into working with communities regarding a grant supported by the Kellogg Foundation, and the Lawyer Referral pilot program, which is also moving forward.

**Professional Standards Steering Committee**, Robert J. Buchanan, Chairperson

Mr. Buchanan reported that the Regulatory Objectives work group met and agreed on core values and is continuing its work on preparing regulatory objectives based on the core values. The work group hopes to develop proposals to bring before the Board for consideration soon. He stated that a work group on multi-disciplinary practices is being formed with the help of SBM Member Jeffrey Paulsen and SBM staff, and that SBM staff is in the process of collecting data and developing a work group plan as well as identifying names of attorneys who might be interested in serving on a receivership program work group.

**Public Policy Steering Committee**, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the Timely & Responsive Public Policy and the Communicating Public Policy Issues to Members sub groups met via conference calls in January and stated that some really good ideas came out of both conference calls. She informed the Board that there is a full steering committee meeting call in February and they expect to have some suggestions and proposals to bring before the Board at a future meeting including one which would allow the Board to react to legislation in a more timely fashion in between Board meetings.

**President's Report**, Donald G. Rockwell, President

Mr. Rockwell recognized Ms. Welch for receiving the Carolyn A. Stell Award from the mid-Michigan chapter of the Women Lawyers Association of Michigan and Ms. Grieco for being one of the Notable Women Lawyers in 2017 as awarded by Crain's Detroit Business.

**Structure and Governance Meeting**

Mr. Rockwell informed the Board that the officers of the Board and the RA, Mr. Herrmann, Mr. Quick Ms. Welch, Mr. Cunningham, Ms. Hennessey and Ms. Sharlow met yesterday for a brainstorming retreat about the governance of the State Bar, specifically how and what the Board and the RA do relative to public policy decisions. Mr. Rockwell stated that two sub-committees were formed and will meet in the upcoming months and report back to the Board with recommendations.

Mr. Rockwell informed the Board that he and Ms. Welch received an email from a colleague who mentioned that a SBM member, who was the defense attorney in a local case, received death threats because of a client he was representing. After listening to comments and suggestions from Board members, Mr. Rockwell stated that he and Ms. Welch will discuss the immediate request from their colleague and then in broader terms talk about how the SBM can aid in the process of educating the public about our system of justice.

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

**SBM Year in Review**

Ms. Welch provided the Board with a review of the key accomplishments of the SBM during 2017.

#### SBM Building closure update

Ms. Welch reported that during the SBM holiday closure there were minimal phone calls and that she responded to all of them.

#### Economics of Law Practice

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the Economics of Law Practice survey. Ms. Vrooman reported that over 5,000 members responded, which is an increase of 60% from the last survey, and described the collection process that was used. She reported that once the results are in they will be analyzed and compiled, posted on the website, and available in hard copy to any board member who would like one.

#### Lawyer Referral Services Update

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the ongoing work of the Lawyer Referral Services Steering committee. Ms. Vrooman reported that the committee is continuing to make progress with the building of the Lawyer Referral Services platform, developing the administrative tools for tracking, monitoring, automated notices, and generating reports. Ms. Vrooman informed the Board that the next steps will focus on the administrative and attorney side of the platform and then the consumer's side.

Ms. Welch reported that ZeekBeek, which has changed its name to CloudLaw, is now a public benefit corporation. She informed the Board that in addition to the state bars of Ohio, Indiana, and Illinois, the state bars of Georgia and South Carolina have recently joined the CloudLaw Consortium. She also reported that the American Bar Association (ABA) has entered into an agreement with CloudLaw to help promote individual state bar directories which will be available for ABA members, and to develop a national lawyer to lawyer service.

Mr. Flood then summarized SBM's financial arrangement with CloudLaw. Mr. Flood reported that the agreement with CloudLaw provided the SBM with a twenty percent stock interest in CloudLaw as compensation for our "sweat equity" contribution to product development, subject to meeting certain vesting requirements, all of which have now been met. The stock is non-voting, and the SBM's percentage will likely be diluted as additional stock grants are issued, for example to investors or as more states participate. Ms. Welch emphasized that the focus of the bar in our participation with CloudLaw has always been on the product we are helping develop as a tool to aid SBM members and the public and not on the potential for revenue.

#### Florida Bar Association Request

Ms. Welch asked Mr. Flood to provide the Board with a review of the request from the Florida Bar Association for the emails or addresses of SBM members in Florida.

Mr. Flood stated that there is a new emeritus rule in Florida that allows lawyers who are not members of the Florida Bar to practice law in Florida pro bono with a recognized legal aid corporation or program. The Florida Bar association is interested contacting emeritus or retired SBM members who reside in Florida to advise them of the new rule.

A motion was offered and supported to allow the SBM to provide SBM members who are inactive, retired, or on emeritus status and have provided SBM with a Florida address with the information about this program that Florida provided. The motion was approved.



**Representative Assembly (RA) Report**, Joseph P. McGill, Chairperson

Mr. McGill reported that preparation is underway for the April 21 Representative Assembly meeting where he indicated the primary focus will be on the proposal dealing with amendments to the civil discovery rules. He updated the Board on the Assembly's review process of the civil discovery rule proposal aimed at providing feedback on the proposal in advance of the April meeting.

Mr. McGill reported that the RA Nominations committee has been busy filling vacancies and that all but thirteen seats have been filled and stated that there are contested races in two of the circuits which results in a need for a special election to take place.

Mr. McGill informed the Board that he, along with Mr. Peter Cunningham and Ms. Hennessey, were working on a work flow document that lists the tasks for each RA committee and provides the chairs with specific objectives and goals to meet during the upcoming year.

Mr. McGill reported on his perspective on the governance and board retreat and stated that he wanted the retreat in an effort to refocus and repurpose the RA to meet its mission. He reported that at the conclusion of the retreat, two sub committees were formed, one on governance composition and the other on process. Once those groups meet and have recommendations the entire group will meet again. Mr. McGill stated that there is conflict between the policy roles of the Board and the RA and what exactly the term, "final policy making body" means, which governance group gets what content and when, and who has veto power.

**American Bar Association (ABA) Report**

Mr. Ulrich reported to the Board that the mid-year meeting is taking place in Vancouver in February. He mentioned that he had been notified about the possibility that attorney's electronic devices may be subjected to scrutiny when crossing the border and that an attorney may be required to provide passwords if requested.

**Young Lawyers Section (YLS) Report**, Syeda F. Davidson, Chairperson

In Ms. Davidson absence, Ms. Hart-Negrich, Chair Elect, updated the Board on the activities of the YLS. She reported that the YLS Annual Summit is taking place at Bay Harbor Inn on June 15-17 and that they are holding an Expungement Fair on February 24 in Detroit.

Ms. Hart-Negrich reminded the Board that the annual YLS Executive Council v Board of Commissioners bowling challenge would take place after the April 20 Board meeting and that more details will follow.

**Comments from Commissioners**

There were none.

**Adjournment**

The meeting was adjourned at 12:50 p.m.