

President Einhorn called the meeting to order at 8:30 a.m. on June 6, 2014 in the Grand Pavilion Room at the Grand Hotel, Mackinac Island.

Commissioners present:

Kathleen M. Allen
Dennis M. Barnes
David R. Brake
Danielle M. Brown
Robert J. Buchanan
Timothy J. Burns
Lori A. Buiteweg, Vice President
Margaret A. Costello
Richard L. Cunningham
Brian D. Einhorn, President
D. Randall Gilmer
Stephen J. Gobbo
Jennifer M. Grieco
Edward L. Haroutunian

Andrea Irons
C. Thomas Ludden
Maureen M. McGinnis
Lawrence P. Nolan, Secretary
Jules B. Olsman
Colleen A. Pero
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Treasurer
Thomas C. Rombach, President-Elect
Hope V. Shovein
Richard J. Siriani
Gregory L. Ulrich
Vanessa Peterson Williams

Commissioners absent and excused:

Commissioners Danielle Mason Anderson, Felicia O. Johnson, E. Thomas McCarthy Jr., and Daniel Quick were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
Candace Crowley, Director, External Development
Peter Cunningham, Director, Governmental Relations
Cliff Flood, General Counsel
James Horsch, Director, Finance and Administration Division
Lyn Ingram, Legal Editor and Publications Development Manager
Robert Mathis, Pro Bono Attorney
Kari Thrush, Manager, Membership Services and Events
Tish Vincent, Program Administrator, LJAP
Anne Vrooman, Director, Research and Development

Guests

Lynn Chard, Executive Director, ICLE
Jim Harrington, Chair, Family Law Section
Nell Kuhnmuensch, Governmental Consultant Services
Linda Rexer, Executive Director, Michigan Bar Foundation
Sharon Brown

Consent Agenda

The Board received the minutes from the April 25 Board of Commissioners meeting and the April 15, 2014 minutes from the April 15 Executive Committee meeting.

The Board received the recent activities of the President.

The Board received the recent activities of the Executive Director.

The Board received the FY 2014 Financial Reports through April 2014.

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

COMMISSIONER COMMITTEES

Finance, Donald G. Rockwell, Chairperson
FY2014 Financial and Investment Update

Mr. Rockwell presented the Board with a FY 2014 Financial and Investment update.

Audit Committee, Donald G. Rockwell, Chairperson
There was no report.

Professional Standards, Lawrence P. Nolan, Chairperson
There was no report.

Programs and Services, Lori A. Buiteweg, Chairperson
There was a no report.

Public Policy, Image and Identity, Thomas C. Rombach, Chairperson
The Board members received the Justice Initiatives Report.

Court Proposals

Public Policy, Image and Identity, Thomas C. Rombach, Chairperson
The Board members received the Justice Initiatives Report.

Court Proposals

ADM File No. 2012-02 Proposed Amendment of Rule 2.302 of the Michigan Court Rules

The Board considered two versions of proposed amendments to MCR 2.302 regarding discovery-only depositions. Alternative A would clarify that discovery-only depositions may be taken only by stipulation or court order. Alternative A would also require that the stipulation or order explain how the costs of this type of deposition are to be allocated. This Alternative was submitted by the State Bar of Michigan Representative Assembly. The proposed amendments in Alternative B would allow any party to schedule a discovery-only deposition without the need to obtain stipulation of the other party or parties or approval of the court. A motion was offered and supported to reaffirm support for Alternative A. The motion carried.

ADM File No. 2014-08 Amendment of Rule 3.221 of the Michigan Court Rules

The amendment of MCR 3.221 strike the term “magistrate” from subsections (C) and (1) to clarify the rule because there is no statutory authority for district court magistrates to conduct bond review hearings on support and parenting time enforcement act bench warrants.

A motion was offered and supported to support this proposal. The motion carried.

Legislation

Expert Witness Testimony Concerning Chemical Testing

HB 5383 (Lauwers) Criminal procedure; evidence; expert witness testimony concerning chemical testing and custody of evidence by video communication; allow at preliminary examination and trial for certain prosecutions, and provide for release subject to conditions reasonably necessary for the protection of the public under certain circumstances. Amends sec. 1, ch. III, sec. 6b, ch. V & sec. 22, ch. VIII of 1927 PA 175 (MCL 763.1 et seq.).

SB 0863 (Pavlov) Criminal procedure; evidence; expert witness testimony concerning chemical testing and custody of evidence by video communication; allow at preliminary examination and trial for certain prosecutions, and provide for release subject to conditions reasonably necessary for the protection of the public under certain circumstances. Amends sec. 1, ch. III, sec. 6b, ch. V, & sec. 22, ch. VIII of 1927 PA 175 (MCL 763.1 et seq.).
A motion was offered and supported to oppose this legislation. The motion carried. Commissioner Cunningham abstained.

HB 5415 (Forlini) Housing; landlord and tenants; notification of evictions; allow by electronic mail. Amends sec. 5718 of 1961 PA 236 (MCL 600.5718).

A motion was offered and supported to oppose this legislation because it does not contain sufficient safeguards ensuring receipt of notice by the tenant. The motion carried.

SB 0845 (Hansen) Criminal procedure; warrants; district court magistrate to issue an arrest warrant; allow. Amends sec. 1, ch. IV of 1927 PA 175 (MCL 764.1).

A motion was offered and supported to support this legislation. The motion carried.

Recommendation of the Committee on Justice Initiatives Civil Rights to Counsel Work Group

Urge the Board of Commissioners to approve the work group proposed by the Committee on Justice Initiatives to examine the issue of a right to counsel and underserved populations without taking any position on the ABA resolution.

Motion offered and supported to approve the work group proposed by the committee without taking any position on the ABA resolution. The motion carried.

Mr. Rombach has been approached by a number of State Bar members about an ad that is currently showing on television for the Ford Fusion. The ad contains a reference to “ambulance chasers.” Because “ambulance chasers” is a derogatory stereotype for lawyers, it was suggested that a letter be sent to the Ford Motor Car Company registering an objection to the use of the term.

A motion was offered and supported to send a letter to Ford Company. The motion carried. Commissioners Costello, Brown, Gobbo, Pero, Riordan, Shovein and Williams abstained.

The Commissioners asked to review the letter before it is sent.

President’s Report, Brian D. Einhorn, President

2014 Board Officer Election Procedure, Matrix and Timeline

Mr. Einhorn informed the Board that the deadline to submit materials for the 2014 Board Officer’s election is Monday, June 9, 2014. The election will take place at the July 25, 2014 Board meeting.

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

2014 Awards Committee Recommendations

A motion was offered and supported to award the Roberts P. Hudson Award to Francine Cullari and Carl E. Ver Beek. The motion carried.

A motion was offered and supported to award the Frank J. Kelley Distinguished Public Service Award to Corbin R. Davis. The motion carried.

A motion was offered and supported to award the Champion of Justice Award to; Bridgette A. Carr, Brian L. Morrow, Michael L. Pitt, Dawn A. Van Hoek, and one legal team: DeBoer et al v Synder et al plaintiff legal team (comprised of Ken Mogill, Robert Selder, Carole Stanyar, and Dana Nessel).

Discussion ensued about tabling the award of the Champion of Justice Award to the legal team. A motion to table was offered and supported. A roll call vote was taken and the motion failed.

Nays; Allen, Brake, Buchanan. Barnes. Costello, Einhorn, Gobbo, Grieco, Irons, McGinnis, Nolan, Olsman, Radke, Rombach, Shovein, Siriani, Ulrich, and Williams
Ayes; Barnes, Brown, Buiteweg, Haroutunian, Ludden, and Rockwell
Abstaining; Cunningham, Pero, and Riordan

A vote was taken on the original motion and the motion carried. Commissioners Brown, Cunningham, Haroutunian, Pero and Riordan abstained.

A motion was offered and supported to award the Kim Cahill Bar Leadership Award to Thomas G. McNeill. The motion carried.

The committee did not recommend any names for the John W. Reed Michigan Lawyer Legacy Award. Some commissioners questioned why there were not any award recipients. A motion was offered and supported to reopen the nomination period for 30 days for the John W. Reed award. The motion failed.

A motion was offered and supported to award the Liberty Bell Award be Matilyn Sarosi and Gary B. Lasceski. The motion carried. Commissioners Brown and Ludden abstained.

A motion was offered and supported to award the 2014 John W. Cumiskey to Susan M. Kornfield. The motion carried.

Appeal from Denial of Request for Access for Information

Mr. Flood discussed Mr. Mark Donaldson's appeal from the denial of his request for documents from one of the sections of the State Bar. Mr. Flood told the Board that the State Bar has no documents responsive to the request and the section has no reviewable documents responsive to the request. A motion was offered and supported to deny the appeal. The motion carried

Representative Assembly (RA) Report, Kathleen M. Allen, Chairperson Meeting on April 26, 2014

Ms. Allen provided the Board with an update on the actions that were taken by the RA at its April 26, 2014 meeting.

2014 Representative Assembly Awards

Ms. Allen informed the Board that Julie I. Fershtman will receive the 2014 Michael Franck Award and Susan F. Reed will receive the 2014 Unsung Hero Award.

American Bar Association (ABA) Report

There was no report.

Young Lawyers Section Report (YLS), Hope V. Shovein, Chairperson

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

Report of the Task Force on the Role of the State Bar

Mr. Einhorn led the discussion with the Board members about their thoughts on the Report of the Task Force of the Role of the Bar. Mr. Einhorn appointed a work group to draft a response to the report. Don Rockwell, Kathleen Allen, Dennis Barnes, Rob Buchanan, Lori Buiteweg, Peggy Costello, Brian Einhorn, Steve Gobbo, Jennifer Grieco, Larry Nolan, Dan Quick and Greg Ulrich. Don Rockwell will chair.

Mr. Einhorn informed the Board that an additional Board meeting will be scheduled to continue the discussion regarding the Report of the Task Force on the Role of the State Bar.

Comments from Commissioners

There were none.

Adjournment

The meeting was adjourned at 1:00 p.m.