

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
FRIDAY, JULY 27, 2018
MICHAEL FRANCK BUILDING
LANSING, MI
9:30 A.M.
AGENDA

State Bar of Michigan Statement of Purpose

“...The State Bar of Michigan shall aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.”

Rule 1 of the Supreme Court Rules Concerning the State Bar of Michigan

Finance Committee Meeting.....	Room 1
Professional Standards Committee Meeting.....	Hudson Room
Communications and Member Services Meeting.....	Room 3
Public Policy Meeting.....	Room 2

I. Call to Order.....Donald G. Rockwell, President

CONSENT AGENDA

II. **Minutes**

- A. June 8, 2018 Board of Commissioners meeting*
- B. May 22, 2018 Executive Committee meeting*

III. **President’s Activities**.....Donald G. Rockwell, President
A. Recent Activities*

IV. **Executive Director’s Activities**.....Janet K. Welch, Executive Director
A. Recent Activities*

V. **Professional Standards** Robert J. Buchanan, Chairperson
A. Client Protection Fund Claims*
B. Unauthorized Practice of Law Complaints**

VI. **Finance**.....Dana M. Warnez, Chairperson
A. FY 2018 Financial reports through May 2018*

VII. **Executive Office**.....Darin Day, Director
Outreach and Constituent Development

- A. SBM Section Annual Reports***
- B. Section Bylaw amendments
 - Environmental Law Section Dues Change*
 - Insurance and Indemnity Law Section Dues Change*
 - Solo & Small Firm Section Dues Change*
- C. New SBM Section
 - Religious Liberty Law Section*

- VIII. **Board Officer Elections**..... Donald G. Rockwell
 - A. James W. Heath
 - B. Daniel M. Quick

COMMISSIONER COMMITTEES

- IX. **Finance**.....Dana M. Warnez, Chairperson
 - A. FY 2018 Financial Update

- X. **Audit Committee**.....Dana M. Warnez, Chairperson

- XI. **Professional Standards** Robert J. Buchanan, Chairperson
 - A. Nominations for Michigan Indian Legal Services Board of Trustees**
 - B. Nominations for Institute of Continuing Legal Education Executive Committee**
 - C. Regulatory Objectives Workgroup Report*
 - D. Proposed Formal Ethics Opinion R-25*
 - E. Withdrawal of Outdated Ethics Opinion C-211*
 - F. Proposed amendments of MRPC 1.1 and 1.6 to add comment on Tech competence*

- XII. **Communications and Member Services** Dennis M. Barnes, Chairperson
 - A. Event Summary
 - 1. Bar Leadership Forum*
 - 2. Upper Michigan Legal Institute*
 - B. SBM Endorsement Letter for MCCE Bid for National Mock Trial Finals

- XIII. **Public Policy**.....Jennifer M. Grieco, Chairperson
 - A. Court Rules**
 - B. Legislation**
 - C. Other**

SBM STRATEGIC PLAN - STEERING COMMITTEES

- XIV. **Strategic Plan Update**
 - A. Communications and Member Services Steering Committee.....Dennis M. Barnes, Chairperson
 - B. Implementation and Innovation Steering CommitteeDana M. Warnez, Chairperson
 - C. Professional Standards Steering Committee Robert J. Buchanan, Chairperson
 - D. Public Policy Steering CommitteeJennifer M. Grieco, Chairperson

LEADERSHIP REPORTS

- XV. **President’s Report**.....Donald G. Rockwell, President
 - A. *In Memoriam* policy for Bar Journal**
 - B. Michigan Indigent Defense Commission (MIDC) Re-Appointment*

- XVI. **Executive Director’s Report** Janet K. Welch, Executive Director
 - A. FY 2019 Proposed Budget**
 - B. SBM Standing and Special Committees 2018-2019 Resolution and Matrix*
 - C. Commissioner Committee and Liaison Appointment Process
 - D. Janus\Fleck**
 - E. LRS Update
 - F. Receivership Workgroup Update
 - G. ABA Appointment
 - H. Detroit Satellite office
 - I. Introduction of new SBM staff

LEADERSHIP REPORTS (CONTINUED)

- XVII. **Representative Assembly (RA) Report**.....Joseph P. McGill, Chairperson
A. September 27, 2018 meeting

OTHER REPORTS

- XVIII. **American Bar Association (ABA) Report**.....Delegates
- XIX. **Young Lawyers Section Report**Syeda F. Davidson, Chairperson

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- XX. **Comments or questions from Commissioners**
- XXI. **Comments or questions from the public**
- XXII. **Adjournment**

- * Materials included with agenda,
- **Materials delivered or to be delivered under separate cover or handed out
- ***Materials available on SBM website via link

President Rockwell called the meeting to order at 9:20 a.m. on June 8, 2018 in the Grand Pavilion Room of the Grand Hotel on Mackinac Island.

Commissioners present:

David C. Anderson	Kara R. Hart-Negrich
Dennis M. Barnes, Vice-President	James W. Heath
Aaron V. Burrell	Michael S. Hohaus
Joseph J. Baumann	Joseph P. McGill
Robert J. Buchanan, Secretary	Hon. Maureen M. McGinnis
Hon. Clinton Canady III	Shenique A. Moss
B.D. "Chris" Christenson	Jules B. Olsman
Richard L. Cunningham	Daniel D. Quick
Syeda F. Davidson	Victoria A. Radke
Shauna L. Dunning	Hon. Michael J. Riordan
Andrew F. Fink III	Donald G. Rockwell, President
Robert C. Gardella	Brian D. Shekell
Jennifer M. Grieco, President Elect	Gregory L. Ulrich
Edward L. Haroutunian	Dana M. Warnez, Treasurer
Krista L. Haroutunian	Erane C. Washington

Commissioners absent and excused:

Danielle Mason Anderson	Hon. David A. Perkins
E. Thomas McCarthy Jr.	

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
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
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Service Counsel
Alecia Ruswinckel, Assistant Director, Professional Standards Division
Carrie Sharlow, Administrative Assistant
Kari Thrush, Assistant Division Director, Member Services
Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program
Anne Vrooman, Director, Research and Development

Guests

Chief Justice Stephen J. Markman, Michigan Supreme Court
Justice Kurtis T. Wilder, Michigan Supreme Court
Justice Brian K. Zahra, Michigan Supreme Court
David Watson, Executive Director, ICLE
John McAllister, Intern for Justice Wilder
Nicholas Aukerman, Intern for Justice Wilder

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 April 20, 2018 Board of Commissioners 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 2018 Financial Reports through April 2018.

The Board received Model Criminal Jury Instructions.

The Board received a Bid Waiver and Independent Contractor Extension for K2dnn.net.

Ms. Radke identified a typo in the Finance Committee section of the April 20, 2018 meeting minutes. The minutes will be corrected. A motion was offered and supported to approve the consent agenda as amended. The motion was approved.

Mr. Rockwell introduced Chief Justice Markman, who addressed the Board.

Mr. Rockwell introduced Justice Wilder, who addressed the Board

Mr. Rockwell introduced Justice Zahra, who addressed the Board.

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez stated that there was no report.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial report.

Professional Standards, Robert J. Buchanan, Chairperson

Mr. Buchanan stated that proposed formal ethics opinion R-25 was published for comment from SBM members and that action on this item will take place at a future meeting.

Communications and Member Services, Dennis M. Barnes, Chairperson

A motion was offered and supported to award the Liberty Bell Award to the Grand Rapids Urban League. The motion was approved.

Public Policy, Jennifer Grieco, Chairperson

Court Rules

ADM File No. 2018-03: Proposed Amendments of Rules 3.201, 3.210, and 3.211 and Proposed Addition of Rule 3.222 and 3.223 of the Michigan Court Rules

The proposed amendments of MCR 3.201, 3.210, and 3.211 and proposed addition of MCR 3.222 and 3.223 would integrate the collaborate law process designed under the Uniform Collaborate Law Act (159 PA 2014; MCL 691.1331-691.1354) into the state's trial court system for practical use and would add a similar process for parties not represented by counsel who seek to submit a consent judgment.

A motion was offered and supported to adopt the proposed amendments to Rules 3.201, 3.210, 3.211 and the addition of Rule 3.222 and to adopt the Access to Justice Policy committee position on Rule 3.222. The motion was approved.

Rule 3.223 was tabled for further comment from the Family Law Section

ADM File No. 2017-26: Proposed Amendments of Canon 3 and Canon 7 of the Judicial Code of Conduct

The proposed amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct would incorporate the ABA Model Code of Judicial Conduct 2.10 language and clarify its application to public comments made by judges.

A motion was offered and supported to adopt the proposed amendments with the recommendations from the Judicial Ethics and Professional Ethics Committees. The motion was approved.

Legislation

Juvenile Mental Health Courts

HB 5806 (Calley) Courts; other; juvenile mental health courts; establish. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding ch. 10C.

HB 5807 (Calley) Courts; other; references to juveniles in mental health court in revised judicature act; remove to reflect creation of juvenile mental health court. Amends secs. 1088, 1091, 1093, 1094, 1095 & 1098 of 1961 PA 236 (MCL 600.1088 et seq.).

HB 5808 (Calley) Courts; other; reference to chapter of revised judicature act in the probate code; modify. Amends sec. 6, ch. XIIA of 1939 PA 288 (MCL 712A.6).

A motion was offered and supported that this legislation is Keller permissible because of its effect on the improvement of the functioning of the courts and the availability of legal services to society. The motion was approved.

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

HB 5820 (Kesto) Mental health; code; procedure for involuntary mental health treatment and judicial admissions; revise. Amends subheading of ch. 5 & secs. 500, 501, 502, 503, 504, 505, 508, 509, 510, 511, 512, 515, 516, 517, 518, 519, 520, 521, 525, 526, 527, 528, 531, 532, 536, 537, 540 & 541 of 1974 PA 258 (MCL 330.1500 et seq.).

A motion was offered and supported that this legislation is Keller permissible because of its effect on the improvement of the functioning of the courts and the availability of legal services to society. The motion was approved.

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

Young Lawyers Section

“A Way Forward: Transparency in 2018” by Law School Transparency (Iowa State Bar Association Young Lawyers Division)

The report recommends that the American Bar Association and law schools take steps to improve legal education: (a) young lawyer representation in accreditation; (b) increased data transparency; (c) user-friendly data presentation; (d) disclosures at time of admission; and (e) voluntary disclosures by law school.

This item was tabled to allow time to solicit input from Michigan law schools.

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson
Mr. Barnes reported that there was nothing new to report.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson
Ms. Warnez reported that there was nothing new to report.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson
Mr. Buchanan reported that there was nothing new to report.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson
Ms. Grieco called the Board's attention to that Public Policy Steering committee recommendations listed in a memo that each Board member received.

Ms. Grieco referred to the first focus area of the steering committee, Timely and Responsive Public Policy Positions. She stated that to improve the responsiveness of the Board to fast-moving legislation, the committee recommends that the Board set monthly placeholder meetings to consider public policy issues via teleconference. If there are no time-sensitive public policy items pending, the teleconference meetings will be canceled.

A motion was offered and supported to adopt this proposal. The motion was approved.

Ms. Grieco referenced the second focus area of the steering committee, Improving Communication of Public Policy Issues to Members. She reported that the committee recommends changes that will more effectively disseminate information to members through the enhanced use of technology and social media.

A motion was offered and supported to implement the proposed changes described in the memo. The motion was approved.

Mr. Ulrich voiced his concern with the way in which Mr. Rockwell calls for action on motions that come before the Board. Mr. Rockwell invited discussion and hearing no support for Mr. Ulrich's suggestion, offered to speak to Mr. Ulrich at a later time.

LEADERSHIP REPORTS

President's Report, Donald G. Rockwell, President

Mr. Rockwell stated that he is enjoying his presidency and speaking with members who are present at the meetings he attends.

Executive Director's Report, Janet K. Welch, Executive Director
FY 2019 Preliminary Budget – Key Budget Assumptions

Ms. Welch introduced the preliminary budget to the Board and asked Mr. Horsch to describe the key budget assumptions built into the FY 2019 preliminary budget. Mr. Horsch reviewed the assumptions with the Board. The Finance Committee will review the proposed budget on July 11.

SBM Election Update

Ms. Welch asked Ms. Bossenbery to provide the Board with an update on the 2018 elections. Ms. Bossenbery reported that the number of members who have voted is slightly higher than last year, the election ends on June 15, and the results will be certified by the Board of Tellers on June 26 and sent to the Clerk of the Supreme Court.

Committee Restructuring Work Product.

Ms. Welch reminded the Board that last year the officers reviewed the SBM Strategic Plan to see if it was as effective as it could be. As a result of that undertaking, the SBM committee structure was revised and four steering committees were created. Staff is currently digesting the lessons learned and are in the process of making recommendations about what might be changed. These proposed changes will be incorporated into the SBM Standing and Special Committees 2018-2019 Resolution and Matrix, which will come before the Board in July.

Ms. Welch echoed the remarks given by Justices of the Supreme Court today regarding the current relationship between the Court and the State Bar. As an example she mentioned the pending request from the State Bar to the Supreme Court for an increase in the Character and Fitness fee. Ms. Welch emphasized the term working relationship because both the Court and the State Bar have been responding to the request for more information and she recognized the effort put forth on both ends and the value of the Justices attendance at today's meeting to see how the Board conducts its business.

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

Mr. McGill reported that the April meeting went well. Judge Victoria Roberts was nominated for the Michael Franck Award and Ms. Michelle Fuller for the Unsung Hero Award. The Assembly voted to support the Payee Notification proposal, the Indigent Fee Waiver proposal, and the Civil Discovery Rules proposal.

Plans are underway for the September meeting, which will center on RA procedure and governance issues and the manner in which the RA does business. Questions are being developed for a survey that would be sent to RA members.

Mr. McGill informed the Board that the deadline for nominations for the RA clerk is July 25 and the deadline for proposals for the September meeting is August 16.

Other Reports

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA House of Delegates will look at number of motions to restructure the Legal Education Council which sets accreditation for the law schools and that the ABA is beginning an initiative to restructuring and streamline their committees.

Ms. Welch stated that because the SBM is a mandatory bar, it is limited in its collaboration efforts with external entities and that the ABA is one of those. She said that the ABA is a large and complicated entity; there are parts of it that take public policy positions that the SBM cannot be associated with, but noted that the ABA does have great value to the SBM in the terms of the data it collects and the services it to bar associations on non-ideological issues. One of the new services is the Center for Innovation, with which the SBM is exploring collaboration.

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

Ms. Davidson provided the Board with an update on recent activities of the YLS. She stated that the 11th Annual YLS Summit is taking place at Boyne Highlands on June 15 and 16 and that Justice Bridget McCormack is the keynote speaker.

Ms. Davidson reported that the SBM Board of Commissioners were the victors in the 2018 bowling contest with the Young Lawyers Section Executive Committee.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Mr. Rockwell reminded the Board that the Bar Leadership Forum begins at 1:00 p.m. with opening remarks from the Chief Justice and that all members are encouraged to attend.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at 10:45 a.m.

State Bar of Michigan
Executive Committee Conference Call
Tuesday, May 22, 2018
3:30 p.m.

Call to Order: President Rockwell called the meeting to order at 3:34 p.m.

Members Present: President Donald G. Rockwell, President-Elect Jennifer M. Grieco, Vice President Dennis M. Barnes, Secretary Robert J. Buchanan, Treasurer Dana M. Warnez, Representative Assembly Chair Joseph P. McGill, Representative Assembly Vice-Chair Richard L. Cunningham, and Commissioner James W. Heath.

Members Absent: Commissioners Shauna L. Dunnings and E. Thomas McCarthy Jr.

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Nancy Brown, Director of Member & Communication Services; Gregory Conyers, Director of Diversity; Candace Crowley, Senior Consultant; Peter Cunningham, Assistant Executive Director and Director of Governmental Relations; Danon Goodrum-Garland, Director of Professional Standards; James Horsch, Director of Finance & Administration; and Anne Vrooman, Director of Research & Development.

President's Report

President Rockwell and Janet Welch attended the funeral of former State Bar president Wallace Riley. President Rockwell continues to make visits to bar associations around the state and reports that the members in attendance are very appreciative of the SBM.

Representative Assembly Chair's Report

Representative Assembly Chair McGill reported on RA activities. The subcommittee chairs are working on the workflow documents and interaction with groups outside of the RA. There doesn't appear to be a lot of issues on the horizon for the September meeting, so the RA is focusing on RA workflow. Mr. McGill will have a status update at the June BOC meeting. He also noted survey questions that will be going to the RA. Mr. Rockwell suggested that the governance committee consisting of the BOC officers and RA officers review the questions before sending them to the RA.

Executive Director's Report

Ms. Welch reported that the election ballots are being sent on Friday, and if EC members see anything needing attention to contact Marge Bossenbery.

Ms. Welch and Mr. Rockwell reported on a proposal to add a forum for larger law firms to discuss issues and to serve as a vehicle for conversation, trends and ideas that will be helpful to the members who work in the large law firm environment, to members at large, and to the public. Ms. Welch invited the EC members to let her know if they have any input or suggestions on this proposal. President Rockwell is taking the idea of a Board workgroup to advance the proposal under consideration.

Ethics Opinion R-25

Ms. Welch reviewed the recommendation of the Ethics Committee and the background of their proposal. Given the scope of the opinion, she recommends letting the membership know by sending out a press release and e-blast to members. This proposal will not be deliberated at the June Board meeting.

HB 5985 – MIDC Act Amendment

Ms. Grieco asked Mr. Peter Cunningham to provide background on this proposed bill. He reported that the bill is moving very quickly. The bill was referred to three SBM committees for comment. Mr. Cunningham advised that a vote could be taken by the BOC as early as May 29, 2018, as there is not enough time for action to be taken by the Public Policy Committee. He also discussed the key issues that would be of interest to the SBM. Mr. Rockwell suggested that Mr. Cunningham prepare a written summary of the key issues to educate the BOC on the bill, and to request a BOC vote on the matter on May 29, 2018 via electronic or telephonic vote. Mr. Cunningham will also provide the committee's input on the bill. The EC agreed with that plan of action.

Strategic Plan Update

Ms. Grieco reported that the Public Policy Steering Committee is preparing a proposal to change the SBM bylaws to allow the EC to vote in situations requiring expedited action on legislation.

June 8, 2018 Board of Commissioners Agenda

A motion was made and seconded to approve the agenda. The motion passed.

Adjournment

There being no further business for the Executive Committee, President Rockwell adjourned the meeting at 4:15 p.m.

Submitted by James C. Horsch
July 6, 2018

**President Donald G. Rockwell
Calendar of Events
June 10 through July 27, 2018**

Date	Event	Location
June 14	Jackson County Bar Association meeting	Jackson
June 14	Negligence Law Section Past Presidents Dinner	Detroit
July 27	State Bar of Michigan Board of Commissioners meeting	Lansing

**Executive Director Janet K. Welch
Calendar of Events
June 10 through July 27, 2018**

Date	Event	Location
June 13	Conference call with SBM President Elect Jennifer Grieco, Peter Cunningham, and Candace Crowley	Leland
June 13	Cloud Law Conference Call	Leland
June 15	Call with ABA Center for Innovation	Leland
June 15 – 16	Young Lawyers Section Annual Summit	Harbor Springs
June 20	Call with Virginia State Bar	Lansing
June 20	Women Lawyers Association of Michigan Mid-Michigan Chapter Annual meeting	East Lansing
June 21	SBM Committee Appointment	Lansing
June 21	Memorial Service for former BOC member, Judge Michael Harrison	East Lansing
June 24 – 25	Michigan Probate Judges Association Annual Meeting	Midland
June 27	Integrated Technology Committee meeting	Lansing
June 27	Conference call with Prof. Dan Linna	Lansing
June 27	Conference call with Robert Craghead, Executive Director Illinois State Bar Association	Lansing
June 28	International Institute of Law Association Chief Executives (IILACE) 2018 program committee conference call	Lansing
July 10	Conference call with former SBM President, Ed Pappas, and Candace Crowley regarding Professionalism Summit	Lansing
July 11	Budget Review meeting with SBM Finance Committee	Lansing
July 12	SBM Receivership Workgroup meeting	Lansing
July 13	Conference call with President Don Rockwell, Commissioner Victoria Radke, and Ken Penokie, Director of Legal Services of Northern Michigan	Lansing

Date	Event	Location
July 17	Conference call with Mary Hiniker, ICLE	Lansing
July 17	Meeting with Meg Goebel	Lansing
July 18	Meeting with Judge Cynthia Stephens	Detroit
July 19	Conference call with Michigan Historical Society Executive Board	Lansing
July 19	State Planning Board meeting	Southfield
July 19	Conference call with Professionalism Summit workgroup	Lansing
July 19	Meeting with member Terrence Quinn	Ann Arbor
July 24 - 25	ABA Division of Bar Services	Chicago
July 27	SBM Board of Commissioners meeting	Lansing

TO: Board of Commissioners
FROM: Professional Standards Committee
DATE: July 27, 2018, BOC Meeting
RE: Client Protection Fund Claims for Consent Agenda

Rule 15 of the Client Protection Fund Rules provides that “claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant.” To protect CPF claim information and avoid negative publicity about a respondent regarding a claim that has been denied and appealed, the CPF Report to the Board of Commissioners is designated “confidential.”

**CONSENT AGENDA
CLIENT PROTECTION FUND**

Claims recommended for payment:

a. Consent Agenda

	Claim No.	Professional Standards Committee Amt.
1.	CPF 3243	\$150,000.00
2.	CPF 3317	\$150,000.00
3.	CPF 3399	\$700.00
4.	CPF 3427	\$7,500.00
5.	CPF 3429	\$4,000.00
6.	CPF 3432	\$225.00
7.	CPF 3441	\$3,500.00
	Table Total	\$315,925.00

b. Supporting documentation follows.

The Professional Standards Committee recommends payment of the following claims by the State Bar of Michigan's Client Protection Fund:

- 1. CPF 3243** **Amount recommended: \$150,000.00**
Claimant retained Respondent to defend against foreclosure. The loan was foreclosed and a judgment was entered against Claimant. Claimant entrusted Respondent with \$284,860.60 to acquire the mortgage and judgment, which respondent misappropriated. The Attorney Discipline Board (ADB) disbarred Respondent and ordered him to pay \$284,860.60 in restitution to Claimant. Respondent's failure to safeguard Claimant's funds constitutes dishonest conduct and is a reimbursable loss under CPF Rules 9(C)(1) and 11(B). Claimant's total loss is determined to be \$284,860.60; however, under the maximum reimbursable amount under CPF Rule 12(B), this claim is recommended for reimbursement for \$150,000 payable to Claimant.
- 2. CPF 3317** **Amount recommended: \$150,000.00**
Seller retained Respondent to handle a real estate transaction. Buyers remitted the earnest money of \$200,000 to Respondent. The real estate transaction was unsuccessful and both the Seller and Buyers asserted a claim to the earnest money. The Court found that Respondent removed or converted \$150,000 of the earnest money entrusted to him. Respondent's failure to safeguard the earnest money constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 11(B), and 12(B). This claim is recommended for reimbursement for \$150,000 to the Seller or Buyers based on the Court's determination or the parties written agreement of who is entitled to the earnest money misappropriated by Respondent. If reimbursement is approved, payment is to be withheld pending a determination by the Court or written confirmation by the parties of who is entitled to the \$150,000 to be reimbursed by the Fund. Alternatively, the amount to be reimbursed may be tendered to the Court for safekeeping pending resolution of the dispute between Seller and Buyers regarding entitlement to the earnest deposit money.
- 3. CPF 3399** **Amount recommended: \$700.00**
Claimant retained Respondent to represent him in an expungement matter paying a flat fee of \$700. Respondent provided no legal services. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement for \$700 payable to Claimant.
- 4. CPF 3427** **Amount recommended: \$7,500.00**
Claimant's mother retained Respondent to represent Claimant in a criminal appeal, paying \$9,500 for the representation. Respondent filed a three page motion and learned that no further appeals were available to Claimant. The ADB suspended Respondent's license to practice law and ordered her to pay \$7,500 in restitution to Claimant, determining that the \$9,500 fee was clearly excessive. Respondent's failure to refund the unearned portion of the fee advanced to her constitutes dishonest conduct and is a reimbursable loss as defined by CPF Rules 9(C)(1), 9(D)(6), and 11(B). This claim is recommended for reimbursement for \$7,500 payable to the payor.
- 5. CPF 3429** **Amount recommended: \$4,000.00**
Claimant retained Respondent to file a divorce and paid a flat fee of \$4,000. Respondent filed the complaint for divorce, but failed to serve the defendant or provide any further legal services. The ADB ordered \$4,000 in restitution. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(D)(6), and 11(B). This claim is recommended for reimbursement for \$4,000 payable to Claimant.

6. CPF 3432

Amount recommended: \$225.00

Claimant retained Respondent to prepare a writ of garnishment and paid the flat fee of \$225. Respondent wrote a letter to the garnishee and then abandoned the matter. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement for \$225 payable to Claimant.

7. CPF 3441

Amount recommended: \$3,500.00

Claimant and his wife retained Respondent to file a civil appeal. Claimant paid Respondent \$6,000 towards the agreed upon flat fee of \$7,500. The Engagement Agreement stated that \$5,000 of the fee was nonrefundable. Nonrefundable retainers are ethically permissible if the fee agreement is unambiguous and satisfies the requirement of MRPC 1.5(a), *Grievance Adm'r v Cooper*, 757 NW2d 867 (Mich 2008). The Engagement Agreement does not address the premature termination of the representation prior to completion of the legal representation. Since Respondent failed to complete the agreed upon services, the nonrefundable flat fee may be deemed unreasonable or excessive contrary to MRPC 1.5(a).

Respondent filed a Claim of Appeal and an appellate brief before Claimant retained new counsel. Based on the work completed and negotiations related to the consent order of discipline, the ADB determined that Respondent earned \$2,500. Respondent's failure to refund the remaining unearned portion of the fee constitutes dishonest conduct and is a reimbursable loss under CPF Rules 9(C)(1), 9(D)(6), and 11(B). This claim is recommended for reimbursement for \$3,500 payable to Claimant, which follows the ADB's order of restitution.

Total payments recommended: \$315,925.00

FY 2018 Financial Dashboard

Results as of the eight months ended May 31, 2018

	FY 2018 Year-to-Date	FY 2018 YTD Budget	FY 2018 Budget YTD Variance	Last Year YTD Actual	Actual vs last yr Variance	Comments
<u>Administrative Fund</u>						
Operating Revenue	\$6,360,373	\$6,478,016	(\$117,643)	\$6,347,781	\$12,592	Worse than budget; better than last year
Operating Expense	\$6,699,597	\$7,001,877	(\$302,280)	\$6,365,938	\$333,659	Better than budget; higher than last year
Investment Income	\$118,241	\$86,667	\$31,574	\$75,913	\$42,328	Better than budget; higher than last year
Change in Net Position	(\$220,983)	(\$437,194)	\$216,211	\$57,756	(\$278,739)	Better than budget; lower than last year
Net Position	\$12,056,892	\$11,840,681	\$216,211	\$12,654,530	(\$597,638)	Better than budget; lower than last year
Cash & Investments (Excluding Sections and CPF)	\$10,567,029	N/A	N/A	\$11,014,390	(\$447,361)	Decrease from last year
Investment Rate of Return	1.55%	N/A	N/A	0.95%	0.60%	Better than last year - higher rates and fund mgt
<u>Client Protection Fund</u>						
Change in Net Position	(\$241,063)	N/A	N/A	\$47,416	(\$288,479)	Lower than last year - higher claims
Net Position	\$1,998,519	N/A	N/A	\$2,472,701	(\$474,182)	Decrease from last year - higher claims
<u>SBM Retiree Health Care Trust</u>						
Change in Net Position	\$135,211	N/A	N/A	\$227,371	(\$92,160)	Decrease from last year
Net Position	\$2,906,389	N/A	N/A	\$2,671,866	\$234,523	Increase over last year - Investment performance
<u>Membership</u>						
Members in Good Standing						
- Active	42,192	N/A	N/A	41,943	249	0.6% Active Member growth
- Inactive	1,177	N/A	N/A	1,255	(78)	(6.2%) Inactive Member growth
- Emeritus	2,216	N/A	N/A	1,985	231	11.6% Emeritus Member growth
- Total	45,585	N/A	N/A	45,183	402	0.9% Total Member growth
Active members as a percent of total	92.56%	N/A	N/A	92.83%	-0.27%	Decrease from last year
New Members	791	N/A	N/A	721	70	Increase over last year

State Bar of Michigan Financial Results Summary

8 Months Ended May 31, 2018

Fiscal Year 2018

Administrative Fund

Summary of YTD May 31, 2018 Actual Results

For the eight months ended May 31, 2018, the State Bar had an Operating Loss of \$339,224 and Non-Operating Income of \$118,241, for a decrease in Net Position of \$220,983 so far in FY 2018. Net Position as of May 31, 2018 totaled \$12,056,892.

YTD Variance from Budget Summary:

YTD Operating Revenue - \$117,643 unfavorable to YTD budget, or 1.8%

YTD Operating Expense - \$302,280 favorable to YTD budget, or 4.3%

YTD Non-Operating Income - \$31,574 favorable to YTD budget, or 36.4%

YTD Change in Net Position - \$216,211 favorable to YTD budget

YTD Key Budget Variances:

YTD Operating Revenue variance - \$117,643 unfavorable to budget:

- Operating revenue was unfavorable to budget in Member & Communication Services by \$38,559, or 6.9%, due primarily to the Directory sales, and to a lesser extent, Bar Journal and endorsed revenue; in Professional Standards by \$40,318, or 10.7%, due primarily to C&F fees (no C&F fee increase) and to a lesser extent, LRS fees and LJAP fees; and in Dues & Related and Other Revenue totaling \$38,766, or 0.7%, due to lower late fees.

YTD Operating Expense variance - \$302,280 favorable to budget:

- Salaries and Employee Benefits/ Payroll Taxes - \$70,680 favorable - (1.6%)
 - Underage in salaries and benefits due to vacancies and positions changing from full-time to part-time. Additionally, health care expenses are under due to timing.
- Non-Labor Operating Expenses - \$231,600 favorable - (9.1%)
 - Exec Offices - \$54,627 favorable - (10.7%) - Primarily Executive Office, R&D,JI programs, Outreach, and General Counsel – some timing.
 - Finance & Admin - \$1,761 unfavorable - (0.2%) – Primarily Financial Services due to higher credit card fees with higher online dues payments; partially offset by Facilities Services and to a lesser extent Administration – some timing.

- Member & Communication Services - \$145,223 favorable - (13.7%) - Primarily IT, Bar Journal, and Member and Endorsed Services; and to a lesser extent, Internet, Bar Journal Directory, e-Journal and other departments – some timing.
- Professional Standards - \$33,511 favorable - (30.2%) - Primarily C&F; and to a lesser extent, other departments – some timing.

YTD Non-Operating Revenue Budget Variance - \$31,574 favorable to budget

- Investment income is 36.4% higher due to higher interest rates and more favorable cash management opportunities than planned.

Cash and Investment Balance – Admin Fund

As of May 31, 2018, the cash and investment balance in the State Bar Admin Fund (net of “*due to Sections and Client Protection Fund*”) was \$10,567,029.

Capital Budget – Admin Fund

Through May 31, 2018, YTD capital expenditures totaled \$174,115 which is 8.0% over the YTD capital budget. We are forecasting at fiscal year-end to be about \$13,396 over the Capital budget at this time due to IT project costs higher than planned.

Administrative Fund FY 2018 Year-End Financial Forecast

Based on our latest year-end financial forecast as part of the FY 2019 budget process, we are projecting to be favorable to the FY 2018 budget due by \$130k primarily due to labor and non-labor expense savings offsetting lower dues and non-dues revenue than planned.

Client Protection Fund

The Net Position of the Client Protection Fund as of May 31, 2018 totaled \$1,998,519, a decrease of \$241,063 since the beginning of the fiscal year. There are authorized but unpaid claims totaling \$30,456 awaiting signatures for subrogation agreements. If these claims were reflected, Net Position would be reduced to \$1,968,063.

Through May 31, 2018, claims payments of \$596,673 and administration expenses of \$133,560 were disbursed from the Client Protection Fund; offset by member dues assessments of \$430,248 (earned equally throughout the year) and other revenue of \$59,122.

SBM Retiree Health Care Trust

As of May 31, 2018, the SBM Retiree Health Care Trust had a fund balance of \$2,906,389 which is an increase of \$135,211 so far in FY 2018, due primarily to investment earnings.

SBM Membership

As of May 31, 2018, the total active, inactive and emeritus membership in good standing totaled 45,585 attorney members, for a net increase of 269 members so far in FY 2018. A total of 791 new members have joined the SBM so far during FY 2018.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
May 31, 2018**

FY 2018

Note: Dues revenue is recognized and budgeted as earned each month throughout the year.

State Bar of Michigan
Administrative Fund
Statement of Net Position
For the Months Ending May 31, 2018 and April 30, 2018

	April 30, 2018	May 31, 2018	Increase (Decrease)	%	Beginning of Fiscal Year October 1, 2017
ASSETS AND DEFERRED OUTFLOWS					
Assets					
Cash	3,879,466	3,181,132	(698,334)	(18.0%)	3,001,328
Investments (CDARS and CD's)	10,205,000	10,213,528	8,528	0.1%	8,821,684
Accounts Receivable	148,388	147,417	(971)	(0.7%)	241,174
Due from (to) CPF	(29,022)	(14,916)	14,106	48.6%	(216,426)
Due from (to) Sections	(2,884,960)	(2,812,715)	72,245	2.5%	(2,205,771)
Inventory	46,959	34,871	(12,089)	(25.7%)	27,238
Prepaid Expenses	167,666	188,985	21,319	12.7%	361,666
Retiree Health Care Trust Asset	170,221	170,221	0	0.0%	170,221
Capital Assets, net	4,108,793	4,086,377	(22,417)	(0.6%)	4,229,194
Total Assets	\$15,812,512	\$15,194,899	(\$617,613)	(3.9%)	\$14,430,308
Deferred Outflows of Resources	43,353	43,353	0	0.0%	43,353
TOTAL ASSETS AND DEFERRED OUTFLOWS	\$15,855,865	\$15,238,252	(\$617,613)	(3.9%)	\$14,473,661
LIABILITIES, DEFERRED INFLOWS AND NET POSITION					
Liabilities					
Accounts Payable	29,935	363	(29,572)	(98.8%)	372,435
Accrued Expenses	436,488	436,623	135	0.0%	473,998
Unearned Revenue	3,081,890	2,475,065	(606,825)	(19.7%)	1,080,045
Net Pension Liability	269,288	269,288	0	0.0%	269,288
Total Liabilities	\$3,817,602	\$3,181,340	(\$636,262)	(16.7%)	\$2,195,766
Deferred Inflows of Resources	20	20	0	N/A	20
Total Liabilities and Deferred Inflows	\$3,817,622	\$3,181,360	(\$636,262)	(16.7%)	\$2,195,786
Net Position					
Invested in capital assets, net of related debt	4,108,793	4,086,377	(22,417)	(0.6%)	4,229,194
Unrestricted	7,929,450	7,970,515	41,065	0.5%	8,048,681
Total Net Position	\$12,038,243	\$12,056,892	18,649	0.2%	\$12,277,875
TOTAL LIABILITIES, DEFERRED INFLOWS AND NET POSITION	\$15,855,865	\$15,238,252	(\$617,613)	(3.9%)	\$14,473,661

NOTE: Cash and investments actually available to the State Bar Administrative Fund, after deduction of the "Due to Sections" and "Due to CPF" is \$10,567,029 (See below):

	April 30, 2018	May 31, 2018	Increase (Decrease)	%	Beginning of Fiscal Year October 1, 2017
CASH AND INVESTMENT BALANCES					
Cash	3,879,466	3,181,132	(698,334)	(18.0%)	3,001,328
Investments	10,205,000	10,213,528	8,528	0.1%	8,821,684
Total Available Cash and Investments	\$14,084,466	\$13,394,659	(689,807)	(4.9%)	\$11,823,012
Less:					
Due to Sections	2,884,960	2,812,715	(72,245)	(2.5%)	2,205,771
Due to CPF	29,022	14,916	(14,106)	(48.6%)	216,426
Due to Sections and CPF	\$2,913,982	\$2,827,631	(86,351)	(3.0%)	\$2,422,197
Net Administrative Fund Cash and Investment Balance	\$11,170,484	\$10,567,029	(\$603,456)	(5.4%)	\$9,400,815

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
For the eight months ending May 31, 2018
YTD FY 2018 Revenue

	YTD Actual	YTD Budget	Variance	Percentage
Revenue				
Finance & Administration				
Dues & Related	5,246,550	5,284,915	(38,365)	(0.7%)
Investment Income	118,241	86,667	31,574	36.4%
Other Revenue	259,221	259,622	(401)	(0.2%)
Finance & Administration Total	<u>5,624,012</u>	<u>5,631,204</u>	<u>(7,192)</u>	<u>(0.1%)</u>
Member & Communication Services				
Bar Journal Directory	69,113	93,800	(24,687)	(26.3%)
Bar Journal 11 issues	127,376	134,467	(7,091)	(5.3%)
Print Center	48,425	49,673	(1,248)	(2.5%)
e-Journal and Internet	51,527	50,267	1,260	2.5%
BCBSM Insurance Program	58,333	58,333	0	0.0%
Credit Card Program	19,057	21,000	(1,943)	(9.3%)
Annual Meeting	26,387	26,100	287	1.1%
Labels	962	2,667	(1,705)	(63.9%)
Upper Michigan Legal Institute	11,314	8,100	3,214	39.7%
Bar Leadership Forum	10,346	9,400	946	10.1%
Practice Management Resource Center	115	2,067	(1,952)	(94.4%)
Other Member & Endorsed Revenue	94,099	99,739	(5,640)	(5.7%)
Member & Communication Services Total	<u>517,054</u>	<u>555,613</u>	<u>(38,559)</u>	<u>(6.9%)</u>
Professional Standards				
Ethics	8,430	7,500	930	12.4%
Character & Fitness	211,740	241,300	(29,560)	(12.3%)
Lawyer Referral Service (LRS)*	89,260	95,733	(6,473)	(6.8%)
Lawyers and Judges Assistance Program	28,118	33,333	(5,215)	(15.6%)
Professional Standards Total	<u>337,548</u>	<u>377,866</u>	<u>(40,318)</u>	<u>(10.7%)</u>
Total Revenue	6,478,614	6,564,683	(86,069)	(1.3%)
Less: Investment Income	<u>118,241</u>	<u>86,667</u>	<u>31,574</u>	<u>36.4%</u>
Total Operating Revenue	6,360,373	6,478,016	(117,643)	(1.8%)

*Note - LRS has been transferred to Member & Communications Services Division

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the eight months ending May 31, 2018
YTD FY 2018 Expenses

Expenses	YTD Actual	YTD Budget	Variance	Percentage
Executive Offices				
Executive Office	37,417	50,000	(12,583)	(25.2%)
Representative Assembly	19,253	21,717	(2,464)	(11.3%)
Board of Commissioners	47,889	48,967	(1,078)	(2.2%)
General Counsel	3,784	12,033	(8,249)	(68.6%)
Governmental Relations	46,064	47,214	(1,150)	(2.4%)
Human Resources (incl. empl benefits)	1,287,694	1,304,121	(16,427)	(1.3%)
Outreach, Local Bar & Section Support	106,863	118,250	(11,387)	(9.6%)
Research and Development	11,982	18,275	(6,293)	(34.4%)
Standing Committee on Justice Initiatives	51,338	56,467	(5,129)	(9.1%)
Resource Development Initiative	76,356	76,000	356	0.5%
Pro Bono Initiative	5,836	8,400	(2,564)	(30.5%)
Justice Policy Initiative	154	200	(46)	(23.0%)
Equal Access Initiative	12,148	13,867	(1,719)	(12.4%)
Criminal Issues Initiative	227	2,653	(2,426)	(91.4%)
Salaries	976,690	1,016,176	(39,486)	(3.9%)
Executive Offices Total	2,683,695	2,794,340	(110,645)	(4.0%)
Finance & Administration				
Administration	21,791	26,475	(4,684)	(17.7%)
Facilities Services	250,916	263,633	(12,717)	(4.8%)
Financial Services	595,296	576,134	19,162	3.3%
Salaries	294,964	301,774	(6,810)	(2.3%)
Finance & Administration Total	1,162,967	1,168,016	(5,049)	(0.4%)
Member & Communication Services				
Bar Journal Directory	75,005	85,500	(10,495)	(12.3%)
Bar Journal 11 Issues	310,967	340,915	(29,948)	(8.8%)
Print Center	40,096	44,269	(4,173)	(9.4%)
Internet Department	90,742	106,400	(15,658)	(14.7%)
e-Journal	20,795	29,267	(8,472)	(28.9%)
Media Relations	43,924	47,217	(3,293)	(7.0%)
Member & Endorsed Services	67,364	101,267	(33,903)	(33.5%)
Annual Meeting	3,602	2,500	1,102	44.1%
Bar Leadership Forum	6,062	6,300	(238)	(3.8%)
Practice Mgt Resource Center (PMRC)	4,397	4,733	(336)	(7.1%)
UMLI	3,743	4,500	(757)	(16.8%)
Information Technology Services	245,691	284,743	(39,052)	(13.7%)
Salaries	1,128,954	1,136,424	(7,470)	(0.7%)
Member & Communication Services Total	2,041,342	2,194,035	(152,693)	(7.0%)
Professional Standards				
Character & Fitness (C&F)	16,840	40,625	(23,785)	(58.5%)
Client Protection Fund Dept	8,575	10,183	(1,608)	(15.8%)
Ethics	7,899	10,350	(2,451)	(23.7%)
Unauthorized Practice of Law (UPL)	11,019	15,242	(4,223)	(27.7%)
Lawyer Referral Service (LRS)*	12,551	10,410	2,141	20.6%
Lawyer & Judges Assistance Program	20,648	24,233	(3,585)	(14.8%)
Salaries	734,061	734,443	(382)	(0.1%)
Professional Standards Total	811,593	845,486	(33,893)	(4.0%)
Total Expense	6,699,597	7,001,877	(302,280)	(4.3%)
*Note - LRS has been transferred to Member & Communications Services Division				
Human Resources Detail				
Payroll Taxes	228,836	242,386	(13,550)	(5.6%)
Benefits	1,020,938	1,023,920	(2,982)	(0.3%)
Other Expenses	37,920	37,815	105	0.3%
Total Human Resources	1,287,694	1,304,121	(16,427)	(1.3%)
Financial Services Detail				
Depreciation	316,933	316,933	0	0.0%
Other Expenses	278,362	259,200	19,162	7.4%
Total Financial Services	595,295	576,133	19,162	3.3%
Salaries				
Executive Offices	976,690	1,016,176	(39,486)	(3.9%)
Finance & Administration	294,964	301,774	(6,810)	(2.3%)
Member Services & Communications	1,128,954	1,136,424	(7,470)	(0.7%)
Professional Standards	734,061	734,443	(382)	(0.1%)
Total Salaries Expense	3,134,669	3,188,817	(54,148)	(1.7%)
NonLabor Summary				
Executive Offices	457,231	511,858	(54,627)	(10.7%)
Finance & Administration	868,003	866,242	1,761	0.2%
Member Services & Communications	912,388	1,057,611	(145,223)	(13.7%)
Professional Standards	77,532	111,043	(33,511)	(30.2%)
Total NonLabor Expense	2,315,154	2,546,754	(231,600)	(9.1%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the eight months ending May 31, 2018
YTD FY 2018 Increase (Decrease) in Net Position Summary

	Actual YTD	Budget YTD	Variance	Percentage	Last Year Actual YTD
Operating Revenue					
- Dues and Related	5,246,550	5,284,915	(38,365)	(0.7%)	5,267,576
- All Other Op Revenue	1,113,823	1,193,101	(79,278)	(6.6%)	1,080,205
Total Operating Revenue	6,360,373	6,478,016	(117,643)	(1.8%)	6,347,781
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	3,134,669	3,188,817	(54,148)	(1.7%)	3,002,110
Benefits and PR Taxes	1,249,774	1,266,306	(16,532)	(1.3%)	1,171,779
Total Labor-related Operating Expenses	4,384,443	4,455,123	(70,680)	(1.6%)	4,173,889
- Non-labor Operating Expenses					
Executive Offices	457,231	511,858	(54,627)	(10.7%)	382,115
Finance & Administration	868,003	866,242	1,761	0.2%	778,521
Member & Communication Services	912,388	1,057,611	(145,223)	(13.7%)	959,426
Professional Standards	77,532	111,043	(33,511)	(30.2%)	71,987
Total Non-labor Operating Expenses	2,315,154	2,546,754	(231,600)	(9.1%)	2,192,049
Total Operating Expenses	6,699,597	7,001,877	(302,280)	(4.3%)	6,365,938
Operating Income (Loss)	(339,224)	(523,861)	184,637	N/A	(18,157)
Nonoperating Revenue (Expenses)					
Investment Income	118,241	86,667	31,574	36.4%	75,913
Net Nonoperating revenue (expenses)	118,241	86,667	31,574	36.4%	75,913
Increase (Decrease) in Net Position	(220,983)	(437,194)	216,211	N/A	57,756
Net Position - Beginning the Year	12,277,875	12,277,875	0	0.0%	12,596,774
Net Position - Year-to-Date	\$12,056,892	\$11,840,681	\$216,211	1.8%	\$12,654,530

State Bar of Michigan Administrative Fund
Revenues, Expenses and Net Assets
FY 2018 - Year-End Forecast
Updated June 29, 2018

	FY 2018 Year-End Forecast	FY 2018 Budget	Variance	Percentage	FY 2017 Actual
Operating Revenue					
- Dues and Related	7,734,000	7,795,460	(61,460)	(0.8%)	7,754,415
- All Other Op Revenue	1,612,150	1,691,291	(79,141)	(4.7%)	1,635,365
Total Operating Revenue	<u>9,346,150</u>	<u>9,486,751</u>	<u>(140,601)</u>	<u>(1.5%)</u>	<u>9,389,780</u>
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	4,809,514	4,922,153	(112,639)	(2.3%)	4,625,399
Benefits, PR Taxes, and Ret HC Exp	1,825,880	1,808,038	17,842	1.0%	1,670,745
Total Labor-related Operating Expenses	<u>6,635,394</u>	<u>6,730,191</u>	<u>(94,797)</u>	<u>(1.4%)</u>	<u>6,296,144</u>
- Non-labor Operating Expenses					
Executive Offices	728,902	765,840	(36,938)	(3.0%)	629,999
Finance & Administration	1,262,475	1,237,775	24,700	3.2%	1,075,682
Member & Communication Services *	1,756,589	1,885,915	(129,326)	(6.9%)	1,676,544
Professional Standards *	143,519	153,386	(9,867)	(6.4%)	152,009
Total Non-labor Operating Expenses	<u>3,891,485</u>	<u>4,042,916</u>	<u>(151,431)</u>	<u>(3.7%)</u>	<u>3,534,234</u>
Total Operating Expenses	<u>10,526,879</u>	<u>10,773,107</u>	<u>(246,228)</u>	<u>(2.3%)</u>	<u>9,830,378</u>
Operating Income (Loss)	<u>(1,180,729)</u>	<u>(1,286,356)</u>	105,627	N/A	<u>(440,598)</u>
Nonoperating Revenue (Expenses)					
Capital Contributions	0	0	0	N/A	112,863
Investment Income	155,000	130,000	25,000	19.2%	8,836
Net Nonoperating revenue (expenses)	<u>155,000</u>	<u>130,000</u>	<u>25,000</u>	<u>19.2%</u>	<u>121,699</u>
Increase (Decrease) in Net Position	<u>(1,025,729)</u>	<u>(1,156,356)</u>	<u>130,627</u>	<u>N/A</u>	<u>(318,899)</u>
Net Position - Beginning the Year	<u>12,277,875</u>	<u>12,277,875</u>	<u>0</u>	<u>0.0%</u>	<u>12,596,774</u>
Net Position - End of the Year	<u>\$11,252,146</u>	<u>\$11,121,519</u>	<u>\$130,627</u>	<u>1.2%</u>	<u>\$12,277,875</u>

* Note - LRS budget moved from Prof Stds Division to Member & Comm Serv Division in FY18 Budget and Forecast

Operating Revenue forecast

- Under in member dues and late fees
- Under in primarily in C&F fees, Bar Journal Directory sales, Bar Journal Advertising, and endorsed services revenue

Labor forecast:

- Salaries - vacancies - LRS FT - part year, IT part time; Gen Counsel and Outreach (less vac payout) reduced salaries
- Higher net retiree health care net of lower payroll taxes and unemployment

Nonlabor forecast:

- Executive Offices - under primarily in Justice Initiatives areas (EAI, CII, PBI, and JI), and HR and General Counsel
- Finance & Administration - Over in Financial Services due to higher credit card fees and higher depreciation due to early retirement of phone system, net of lower costs in Facilities and other expenses
- Member Services & Communications - Under primarily in promotion of the bar, Bar Journal, Bar Leadership Forum, Internet, Media Relations, and e-Journal
- Professional Standards - Under in UPL and LJAP

Non-Operating Income forecast:

- Investment Income - will be better than budget due to higher interest rates than planned

Other forecast issues not reflected in the forecast:

- Potential additional savings in other operating expenses not reflected
- Potential legal expenses exceeding budgeted amount

State Bar of Michigan
Administrative Fund
Capital Expenditures vs Budget
For the eight months ending May 31, 2018

	YTD Actual	YTD Budget	YTD Variance	Variance Explanations	Total Approved FY 2018 Budget	FY 2018 Year-End Forecast	Projected Year-end Variance
Building security enhancements	0	0	0	Accomplished in FY 2017	10,000	0	(10,000)
Security audit appliance (PCI)	0	0	0	Was expensed and not capitalized	20,000	0	(20,000)
Update /redesign of pro hac vice site	16,045	16,100	(55)		20,000	20,000	0
E-commerce upgrades	19,386	20,000	(614)		20,000	20,000	0
Web services tool for courts	4,000	4,000	0		10,000	10,000	0
Investigations/C&F software	4,833	0	4,833	Forecast - Scope more than planned	0	10,000	10,000
Bar applicant online form to replace NCBE server transition	35,287	35,000	287	Forecast - Scope more than planned	25,000	35,287	10,287
e-service application for court e-filing (e-mail addresses)	0	0	0	Project work will continue next FY	20,000	10,000	(10,000)
Dues billing enhancements for firms	1,822	2,000	(178)		10,000	10,000	0
Lawyer referral portal	30,496	20,000	10,496	Forecast - Higher expense than planned	20,000	40,000	20,000
Database application for soliciting volunteers for committees and work groups	10,042	10,000	42		10,000	10,000	0
SBM website functionality enhancements	30,209	31,000	(791)		40,000	40,000	0
Meeting Room Technology Upgrades	21,995	23,000	(1,005)	Forecast - Higher due to reevaluation of items to be capitalized; will result in lower operating expense	23,000	36,109	13,109
Total	<u>\$174,115</u>	<u>\$161,100</u>	<u>13,015</u>		<u>\$228,000</u>	<u>\$241,396</u>	<u>\$13,396</u>

**STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
May 31, 2018**

FY 2018

Note: Dues revenue is recognized and budgeted as earned each month throughout the year.

State Bar of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Months Ending May 31, 2018 and April 30, 2018
FY 2018

	April 30, 2018	May 31, 2018	Increase (Decrease)	%	Beginning of Fiscal Year October 1, 2017
Assets					
Cash	738,258	636,209	(102,049)	(13.8%)	895,592
Investments (CD's & CDARS)	1,556,307	1,556,307	0	0.0%	1,191,633
Accounts Receivable	0	0	0	N/A	0
Due from (to) Administrative Fund	29,022	14,915	(14,107)	(48.6%)	216,426
Accrued Interest Receivable	4,869	3,001	(1,868)	(38.4%)	3,761
Total Assets	\$ 2,328,456	\$ 2,210,432	\$ (118,024)	(5.1%)	\$ 2,307,412
Liabilities					
Accounts Payable	0	0	0	N/A	0
Unearned Revenue	264,097	211,913	(52,184)	(19.8%)	67,830
Total Liabilities	\$ 264,097	\$ 211,913	(\$52,184)	(19.8%)	\$ 67,830
Net Position					
Net Position at Beginning of Year	2,239,582	2,239,582	0	0.0%	2,424,701
Increase (Decrease) in Net Position	(175,223)	(241,063)	(65,840)	37.6%	(185,119)
Total Net Position	2,064,359	1,998,519	(65,840)	(3.2%)	2,239,582
Total Liabilities and Net Position	\$ 2,328,456	\$ 2,210,432	\$ (118,024)	(5.1%)	\$ 2,307,412

* Note: In addition, there are authorized but unpaid claims totaling \$30,456 awaiting signatures of subrogation agreements.

State Bar of Michigan
Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets
For the eight months ending May 31, 2018
FY 2018

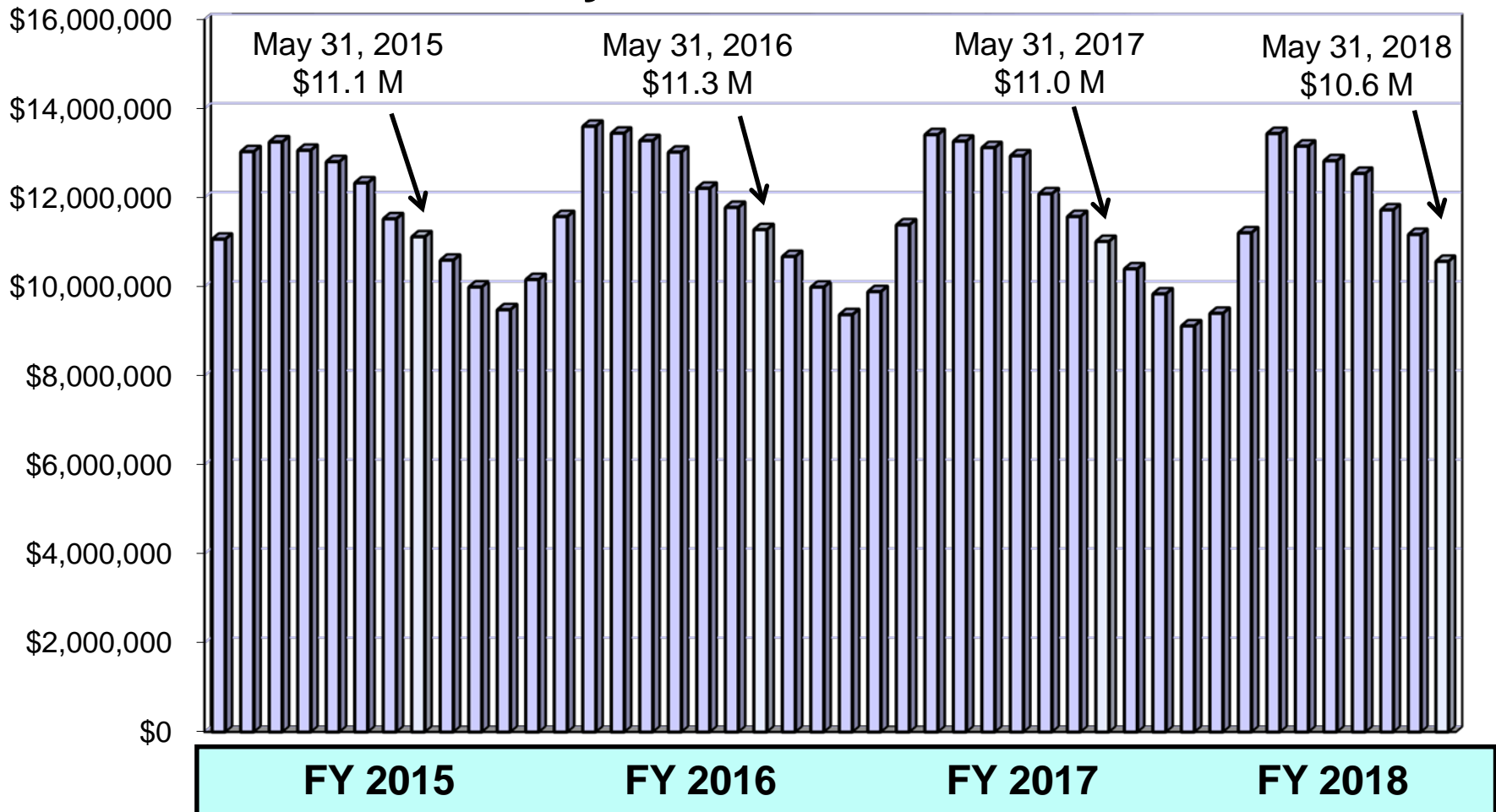
	YTD
Revenue	
Contributions Received	18,280
Membership Dues Assessment	430,248
Pro Hac Vice Fees	7,680
Claims Recovery	22,685
Miscellaneous Income	0
Total Revenue	478,893
Expense	
Claims Payments	596,873 * See Note Below
Administrative Fee	133,560
Litigation and Miscellaneous Expense	0
Total Expense	730,433
Operating Income (Loss)	(251,540)
Investment Income	10,477
Increase (Decrease) in Net Position	(241,063)
Net Position - Beginning of the Year	2,239,582
Net Position - End of the Period	1,998,519

* Note: In addition, there are authorized but unpaid claims totaling \$30,456 awaiting signatures of subrogation agreements.

SBM Cash & Investment Balances

Excluding Sections, Client Protection Fund & Fiduciary Funds

May 31, 2018 - \$10.6 M



Note: The State Bar has no bank debt outstanding

Summary of Cash and Investment Balances by Financial Institution
5/31/2018

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary
		SBM Chase Checking \$ 128,913.01		Client Protection Fund \$ 2,192,515.96
		SBM Chase Credit Card \$ 6,146.90		
		SBM Chase Payroll \$ (205.04)		State Bar Admin Fund \$ 13,394,659.47
		SBM Chase Savings \$ 576,397.39	0.18%	(including Sections)
		ADS Chase Checking \$ 4,285.67		Attorney Discipline System \$ 4,282,064.55
		CPF Chase Checking \$ 8,345.36		SBM Retiree Health Care Trust \$ 2,906,388.53
		CPF Chase Savings \$ 54,114.84	0.18%	ADB Retiree Health Care Trust \$ 834,390.94
\$2.15 Trillion	4 stars	Chase Totals \$ 777,998.13		AGC Retiree Health Care Trust \$ 2,935,068.65
		ADS Bank of America Petty Cash \$ 891.23	0.00%	Total \$ 26,545,088.10
	4 stars	Bank of America Totals \$ 891.23		
\$138.7 Billion	4 stars	SBM Fifth Third Commercial Now \$ 12,643.70	0.00% ***	
		Fifth Third Totals \$ 12,643.70		
\$209.8 Million	4 stars	Grand River Bank Money Market \$ 4,316.25	0.50%	
		Grand River Bank Totals \$ 4,316.25		
		Grand River Bank Total w/CD \$ 257,843.94		
\$192 Million	3 stars	Community Shores Bank Savings \$ 12,505.12	1.00%	State Bar Admin Fund Summary
		Community Shores Bank Savings Total \$ 12,505.12		Cash and Investments \$ 13,394,659.47
		Community Shores Bank Savings Total w/CD \$ 252,505.12		Less:
\$279 Million	5 stars	First Community Bank \$ 2,718.48	0.60%	Due (to)/from Sections (2,812,715.00)
		First Community Bank Total \$ 2,718.48		Due (to)/from CPF (14,915.91)
		First Community Bank Total w/CD \$ 247,718.48		
\$2.4 Billion	5 stars	Sterling Bank \$ 2,311.78	0.40%	Due to Sections and CPF \$ (2,827,630.91)
		Sterling Bank Total \$ 2,311.78		Net Administrative Fund \$ 10,567,028.56
		Sterling Bank Total w/CD \$ 977,311.78		
\$120 Billion	4 stars	Citizens Bank Checking \$ 100.00		
		Citizens Bank Money Market \$ 5,335.36	0.02%	
		CPF Citizens Bank CD \$ 500,000.00	2.50%	
		Citizens Bank Totals \$ 505,435.36		
\$3 Billion	5 stars	Mercantile Bank \$ 1,979,583.56	1.25%	
		Mercantile Bank Total \$ 1,979,583.56		
\$220 Million	4 stars	Main Street Bank \$ 1,395,158.39	1.25%	
		Main Street Bank \$ 1,395,158.39		
\$3.65 Billion	5 stars	MSU Credit Union \$ 6.29	0.10%	
		MSU Credit Union Total \$ 6.29		
		MSU Credit Union Total w/CD \$ 940,006.29		
		SBM Flagstar Savings Account \$ 1,244.73	1.10%	
		SBM Flagstar CDAR - 12 month \$ 1,000,000.00	0.70%	
		ADS Flagstar Checking Account \$ 843.51	0.25%	
		ADS Flagstar CDARS -12 Month \$ 1,520,000.00	0.80%	
		ADS Flagstar CDARS -12 Month \$ 810,000.00	0.70%	
		ADS Flagstar CDARS -12 Month \$ 1,000,000.00	0.70%	
		CPF Flagstar Savings \$ 573,749.13	1.10%	
		CPF Flagstar CDARS - 36 Month \$ 256,269.78	0.55%	
		CPF Flagstar CDARS - 24 Month \$ 450,036.85	0.75%	
		CPF Flagstar CDARS - 12 month \$ 350,000.00	0.70%	
\$15.8 Billion	4 stars	Flagstar Bank Totals \$ 5,962,144.00		
\$18 Billion	4 stars	SBM - CD Chemical Bank ** \$ 235,000.00	1.75%	
		SBM - CD Chemical Bank \$ 240,000.00	1.75%	
		SBM - CD Chemical Bank \$ 240,000.00	1.75%	
		SBM - CD Chemical Bank \$ 240,000.00	1.75%	
		SBM - CD Chemical Bank \$ 250,000.00	2.40%	
		SBM - CD Chemical Bank \$ 250,000.00	2.40%	
		SBM - CD Chemical Bank \$ 250,000.00	2.40%	
	4 stars	SBM- CD First Community Bank \$ 245,000.00	1.00%	
	4 stars	SBM - Grand River Bank \$ 253,527.69	2.50%	
\$3 Billion	4 stars	SBM-CD Horizon Bank \$ 240,000.00	1.00%	
		SBM-CD Horizon Bank \$ 245,000.00	1.30%	
		SBM-CD Horizon Bank \$ 245,000.00	1.30%	
		SBM-CD Horizon Bank \$ 250,000.00	2.66%	
		SBM-CD Horizon Bank \$ 250,000.00	2.66%	
		SBM-CD Horizon Bank \$ 250,000.00	2.48%	
		SBM-CD Horizon Bank \$ 250,000.00	2.48%	
\$1.2 Billion	4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.60%	
		SBM-CD First National Bank of America \$ 240,000.00	1.60%	
		SBM-CD First National Bank of America \$ 240,000.00	1.85%	
		SBM-CD First National Bank of America \$ 240,000.00	1.85%	
	3 stars	SBM-CD Community Shores Bank \$ 240,000.00	1.25%	
\$190 Million	5 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.10%	
		SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	
		SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	
		SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	
\$263 Million	3 stars	SBM-CD First National Bank of St. Ignace \$ 245,000.00	1.25%	
	5 stars	SBM-CD Sterling Bank \$ 245,000.00	1.55%	
		SBM-CD Sterling Bank \$ 245,000.00	1.55%	
		SBM-CD Sterling Bank \$ 245,000.00	1.55%	
		SBM-CD Sterling Bank \$ 240,000.00	1.55%	
\$383 Million	4 stars	SBM-CD The Dart Bank \$ 240,000.00	1.25%	
		SBM-CD The Dart Bank \$ 240,000.00	1.25%	
		SBM-CD The Dart Bank \$ 240,000.00	1.25%	
		SBM-CD The Dart Bank \$ 240,000.00	1.25%	
	5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		Bank CD Totals \$ 9,213,527.69		
Total Cash & Investments (excluding Schwab)		\$ 19,869,239.98		
		SBM - Charles Schwab (Ret HC Trust) \$ 2,906,388.53	Mutual Funds	
		ADB - Charles Schwab (Ret HC Trust) \$ 834,390.94	Mutual Funds	
		AGC - Charles Schwab (Ret HC Trust) \$ 2,935,068.65	Mutual Funds	
		Charles Schwab Totals \$ 6,675,848.12		
Grand Total (including Schwab)		\$ 26,545,088.10		
Total amount of cash and investments (excluding Schwab) not FDIC insured		\$ 10,476,679.94	52.73%	

Maturity

SBM Average Weighted Yield: 1.55%
 ADS Average Weighted Yield: 0.62%
 CPF Average Weighted Yield: 1.08%

Note: average weighted yields exclude retiree health care trusts

Notes:

- All amounts are based on reconciled book balance and interest rates as of 05/31/2018
- CDARS are invested in multiple banks up to the FDIC limit for each bank
- Funds held in bank accounts are FDIC insured up to \$250,000 per bank
- The SBM funds held with Charles Schwab in the Retiree Health Care Trusts are invested in 70% equity and 30% fixed income mutual funds
- As of 05/31/2018, the funds held by SBM attributable to ADS was \$946,044.14.
- * Flagstar Bank reserves the right to mature these CDARS at 12 months.
- ** Formerly Talmer West Bank
- ***Balance offsets lockbox fees by 0.35%.
- ****Actual unrecconciled Chase balance per statements was \$902,700.50
- ***** Variable interest rate-increases to 1.75% on 6/25/18.

Monthly SBM Member Report - May 31, 2018

FY 2018

	Current Fiscal Year						FY Increase (Decrease)
	September 30 2013	September 30 2014	September 30 2015	September 30 2016	September 30 2017	May 31 2018	
Attorney Members and Affiliates In Good Standing							
Active	40,475	41,093	41,608	41,921	42,100	42,192	92
Less than 50 yrs serv	39,335	40,036	40,490	40,725	40,833	40,818	(15)
50 yrs or greater	1,140	1,057	1,118	1,196	1,267	1,374	107
Voluntary Inactive	1,263	1,211	1,218	1,250	1,243	1,177	(66)
Less than 50 yrs serv	1,231	1,184	1,195	1,230	1,217	1,150	(67)
50 yrs or greater	32	27	23	20	26	27	1
Emeritus	1,391	1,552	1,678	1,841	1,973	2,216	243
Total Attorneys in Good Standing	43,129	43,856	44,504	45,012	45,316	45,585	269
Affiliates							
Legal Administrators	19	14	13	13	13	10	(3)
Legal Assistants	433	413	425	405	400	386	(14)
Total Affiliates in Good Standing	452	427	438	418	413	396	(17)
Total Attorney Members and Former Members in the Database							
	September 30 2013	September 30 2014	September 30 2015	September 30 2016	September 30 2017	May 31 2018	FY Increase (Decrease)
State Bar of Michigan Member Type							
Attorney Members in Good Standing:							
ATA (Active)	40,475	41,093	41,608	41,921	42,100	42,192	92
ATVI (Voluntary Inactive)	1,263	1,211	1,218	1,250	1,243	1,177	(66)
ATE (Emeritus)	1,391	1,552	1,678	1,841	1,973	2,216	243
Total Members in Good Standing	43,129	43,856	44,504	45,012	45,316	45,585	269
Attorney Members Not in Good Standing:							
ATN (Suspended for Non-Payment of Dues)	5,248	5,427	5,578	5,743	5,888	6,128	240
ATDS (Discipline Suspension - Active)	400	407	415	418	430	440	10
ATDI (Discipline Suspension - Inactive)	10	12	11	18	19	20	1
ATDC (Discipline Suspension - Non-Payment of Court Costs)	1	1	3	3	16	15	(1)
ATNS (Discipline Suspension - Non-Payment of Other Costs)	76	83	92	99	94	92	(2)
ATS (Attorney Suspension - Other)*	1	1	1	1	0	0	0
ATR (Revoked)	519	521	517	534	562	576	14
ATU (Status Unknown - Last known status was inactive)**	2,174	2,088	2,076	2,074	2,070	2,070	0
Total Members Not in Good Standing	8,429	8,540	8,693	8,890	9,079	9,341	262
Other:							
ATSC (Former special certificate)	134	136	140	145	152	155	3
ATW (Resigned)	1,354	1,429	1,483	1,539	1,612	1,688	76
ATX (Deceased)	7,797	8,127	8,445	8,720	9,042	9,223	181
Total Other	9,285	9,692	10,068	10,404	10,806	11,066	260
Total Attorney Members in Database	60,843	62,088	63,265	64,306	65,201	65,992	791

* ATS is a new status added effective August 2012 - suspended by a court, administrative agency, or similar authority

** ATU is a new status added in 2010 to account for approximately 2,600 members who were found not to be accounted for in the iMIS database
The last known status was inactive and many are likely deceased. We are researching these members to determine a final disposition.

N/R - not reported

Notes: Through May 31, 2018, a total of 791 new members joined the SBM so far in FY 2018

State Bar of Michigan Retiree Health Care Trust
Balance Sheet
For the Eight Months Ending May 31, 2018

Assets	
Investment	<u>\$2,906,389</u>
Total Assets	<u><u>\$2,906,389</u></u>
Fund Balance	
Fund Balance at Beginning of Year	2,771,178
Net Income (Expense) Year to Date	<u>135,211</u>
Total Fund Balance	<u>2,906,389</u>
Total Liabilities and Fund Balance	<u><u>\$2,906,389</u></u>

State Bar of Michigan Retiree Health Care Trust
Income Statement
For the Eight Months Ending May 31, 2018

	May 2018	CURRENT YTD
Income:		
5-7-00-000-0921 Change In Market Value	19,111	(99,052)
5-7-00-000-1005 Investment Contributions	4,778	38,221
5-7-00-000-1920 Interest and Dividends	2,685	196,042
Total Income	<u>26,574</u>	<u>135,211</u>
Net Fund Income (Expense)	<u><u>26,574</u></u>	<u><u>135,211</u></u>

Memorandum

To: SBM Board of Commissioners
From: Darin Day
SBM Director of Outreach
Date: July 5, 2018
Re: Environmental Law Section – Dues Increase from \$30 to \$35
Staff Recommendation for BOC Approval

Rule 5, Section 1(a)(5) of the Supreme Court Rules Concerning the State Bar of Michigan requires that the Board of Commissioners “...determine the amount and regulate the collection and disbursement of section dues...”

Upon review of the record, it is confirmed that the Environmental Law Section has taken all necessary steps to approve a change to its membership dues in compliance with the section’s bylaws. The Environmental Law Section has elected to increase section dues from \$30 to \$35. Reproduced below are the relevant excerpts from the section’s bylaws and record of the council vote on this question:

Excerpted from the Environmental Law Section Bylaws:

ARTICLE II. Membership. Section 1. Dues. Each member of the Section shall pay annual dues in the amount set by the Section Council.

Excerpted from an April 24, 2018 email from Section Chair Scott J. Steiner:

Dear Council Members ,
As you know, we have had several discussions over the last couple of years about raising the amount for section member annual dues. I am proposing a \$5 increase in annual dues for Section membership from \$30 to \$35 and to initiate a vote of the Council on that increase by email, to be concluded by 5 p.m. EDT on Tuesday May 1.

Please see the following page for a tally of the 10-0 vote approving the dues change.

The section’s proposed change does not conflict with the Supreme Court Rules or the State Bar of Michigan Bylaws. Therefore, it is recommended to the Board of Commissioners that the proposed change be APPROVED.



Memorandum

To: SBM Board of Commissioners
From: Darin Day
SBM Director of Outreach
Date: July 5, 2018
Re: Insurance and Indemnity Law Section – Dues Increase from \$25 to \$35
Staff Recommendation for BOC Approval

Rule 5, Section 1(a)(5) of the Supreme Court Rules Concerning the State Bar of Michigan requires that the Board of Commissioners "...determine the amount and regulate the collection and disbursement of section dues..."

Upon review of the record, it is confirmed that the Insurance and Indemnity Law Section has taken all necessary steps to approve a change to its membership dues in compliance with the section's bylaws. The section has elected to increase section dues from \$25 to \$35. Reproduced below are the relevant excerpts from the section's bylaws and council meeting minutes:

Excerpted from the Environmental Law Section Bylaws:

ARTICLE II. Membership. Section 1. Each applicant shall pay to the State Bar of Michigan the then current section dues as shall be determined by the Council ...

Excerpted from the minutes of the May 21, 2018 meeting of the Section Council:

Larry raised the issue of a Dues increase and a motion was made and approved to increase our section's annual dues to \$35.

The section's proposed change does not conflict with the Supreme Court Rules or the State Bar of Michigan Bylaws. Therefore, it is recommended to the Board of Commissioners that the proposed change be APPROVED.

Memorandum

To: SBM Board of Commissioners
From: Darin Day
SBM Director of Outreach
Date: July 17, 2018
Re: Solo & Small Firm Section – Bylaws Amendments
Staff Recommendation for BOC Approval

Rule 12, Section 2 of the Supreme Court Rules Concerning the State Bar of Michigan requires each section to maintain bylaws “not inconsistent with these Rules or the bylaws of the State Bar of Michigan” and further that “[s]ection bylaws or amendments thereof shall become effective when approved by the Board of Commissioners.”

Upon review of the record, it is confirmed that the Solo & Small Firm Section has taken all necessary steps to approve amendments to its bylaws in compliance with the section’s current bylaws.

Reproduced below are the relevant excerpts from the section’s bylaws setting forth bylaws amendment requirements:

ARTICLE IX. AMENDMENTS.

SECTION 1. These Bylaws may be amended at any annual meeting of the Section by a two-thirds (2/3) vote of the members present and voting, provided such proposed amendment shall first have been submitted to the Council for its recommendation; further, no amendment so adopted shall become effective until approved by the Board of Commissioners of the State Bar of Michigan.

SECTION 2. Any proposed amendment shall be submitted in writing to the Council in the form of a petition signed by at least ten (10) members of the Section at least one hundred and twenty (120) days before the annual meeting of the Section at which it is to be voted upon. The Council shall consider the proposed amendment and shall prepare the recommendations thereon, which recommendations, together with a complete and accurate text of said proposed amendments, shall be published in the Michigan State Bar Journal or by such written communication as the Council shall direct at least ninety (90) days prior to the annual meeting of the Section at which it is to be voted upon.

Reproduced below are the relevant excerpts from the minutes of the Solo & Small Firm Section's June 21, 2018 section annual meeting:

Chairperson's Report. There was a discussion regarding the proposed amended bylaws of the Section before the Council's vote on the Section's change of the bylaws to comply with State Bar requirements. The vote is necessary to increase our annual dues by \$10.00 per year to \$30.00 per year effective for the dues year beginning [October] 2018.

There was publication in the [April] issue of the General Practitioner of the fact that we moved the Section's Annual meeting to this date in order to amend the bylaws at the Section's annual meeting. The bylaws are proposed to be amended as follows:

Article II, Section 1 will be amended to remove text in the last sentence of the first paragraph "of Twenty (\$20.00)." A sentence after that paragraph will state "The Council may change the dues amount at a Council meeting from time to time."

Article IX, Section 2 will be amended to state: "After the Council makes a recommendation to Amend the bylaws, the proposed text will be distributed through an E-Blast or similar electronic method. Notice will also be provided in the General Practitioner. Members will have 30 days to comment before the membership votes on it at a council meeting."

After discussion, Michael Williams moved to amend the bylaws as stated above and Howard Lederman seconded the motion. The motion was approved unanimously.

The section's proposed changes do not conflict with the Supreme Court Rules or the State Bar of Michigan Bylaws. Therefore, it is recommended to the Board of Commissioners that the proposed change be APPROVED.



Memorandum

To: SBM Board of Commissioners
From: Darin Day
SBM Director of Outreach
Date: July 17, 2018
Re: Proposal to Establish a New State Bar Section: Religious Liberty Law
Staff Recommendation for BOC Approval

Under the Supreme Court Rules Concerning the State Bar of Michigan, Rule 12, Section 1, a new section “may be established ... by the Board of Commissioners in a manner provided by the bylaws.” Rule 12, Section 2 requires each section to maintain bylaws “not inconsistent with these Rules or the bylaws of the State Bar of Michigan” and further that “[s]ection bylaws or amendments thereof shall become effective when approved by the Board of Commissioners.” The State Bar of Michigan Bylaws require the following to establish a new section:

Article VII—Sections

Section 1—Establishment and Discontinuance. New Sections may be established ... by the Board of Commissioners A petition seeking to establish a Section shall show substantial compliance with the following requirements:

- (a) That the proponents of the proposed Section have filed with the Secretary a statement setting forth:
 - (i) The contemplated jurisdiction of the Section which shall be within the objects of the State Bar of Michigan and not in substantial conflict with the jurisdiction of any Section, Standing Committee or Special Committee the continuance of which is contemplated after the Section is established;
 - (ii) The proposed Bylaws of the Section, which shall contain a definition of its jurisdiction;

- (iii) The names of the proposed committees of the Section;
- (iv) The proposed budget for the Section for the first two years of its operation;
- (v) A list of active members of the State Bar of Michigan totaling at least fifty in number, who have signed statements that they will apply for membership in the Section;
- (vi) A statement of the need for the proposed Section.

Please see the attached documents demonstrating the satisfaction of each of these requirements.

Conclusion

The proposal to establish a Religious Liberty Law Section does not conflict with the Supreme Court Rules or the State Bar Bylaws. Further, as demonstrated by the attached documents, the State Bar members requesting the establishment of a Religious Liberty Law Section have satisfied all requirements for proposing a new section set forth in Article VII of the State Bar Bylaws. Therefore, the staff recommends to the Board of Commissioners that the proposal be APPROVED.

**STATEMENT OF NEED AND PURPOSE FOR A
RELIGIOUS LIBERTY LAW SECTION
OF THE STATE BAR OF MICHIGAN**

July 2018

Religious liberty is guaranteed by the First Amendment to the U.S. Constitution, as well as the Michigan Constitution (Michigan Constitution of 1963, § 4 Freedom of Worship and Religious Belief; Appropriations). Religious liberty is often referred to as our “first liberty” (see, for example, *The First Liberty*, William Lee Miller, Georgetown University Press, 2003 and the 2015 *Annual Report of the United States Commission on International Religious Freedom*, page 2, stating “religious freedom is our nation’s first freedom”). Given the fact that over 76% of Americans identify themselves with a specific religion (www.pewforum.org/2015/05/12/americas-changing-religious-landscape/), it is not surprising that religion intersects with the law at a great many levels. Indeed, legal issues involving religious liberty are becoming more and more common, in both the public and private sectors.

The Supreme Court of the United States has recently addressed religious issues on numerous occasions. See, for example, *Town of Greece, N.Y. v. Galloway*, 134 S.Ct. 1811 (2014)(legislative prayer); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014)(religious liberty rights of closely held for-profit corporations); *Holt v. Hobbs*, 135 S.Ct. 853 (2015)(religious rights of prisoners); *EEOC v. Abercrombie & Fitch*, 135 S.Ct. 2028 (2015)(religious accommodation in employment); *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015)(free speech rights of a church); *Trinity Lutheran Church v. Comer*, 200 U.S. 321 (2017)(right of a church school to participate in a government playground grant program); *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S Ct 1719 (2018)(religious rights of cake baker).

Due to the fact that the law relating to religious liberty is both complicated and fluid, attorneys in many different fields of practice will be faced with religious liberty law-related issues and, without adequate education and resources, may not be armed with the professional knowledge necessary to competently address and handle these issues. Among the practice areas affected are:

(a) **Employment/Labor Law.** Religion-based EEOC complaints have more than doubled over the past 15 years (*Religious-Discrimination Claims on the Rise: Complaints Include Dress Codes, Working on the Sabbath, Handling Alcohol*,” Melanie Trotman, *The Wall Street Journal*, Oct. 27, 2013). And different rules apply to religious and non-religious employers (*Conlon v. Intervarsity Christian Fellowship*, 777 F.3d 829 (6th Cir. 2015)(right of faith-based groups to make employment decisions consistent with their beliefs).

(b) **Family Law.** Religious liberty issues arise often in the family law context, including such issues as a parent's right to determine the religious upbringing of his or her children (*Diana H. v. M. Rubin*, 171 P.3d 200 (Ariz.App. 2007)). Such issues are not uncommon, especially given the fact that interfaith marriages are on the rise and that marriages between spouses of different faiths dissolve at a much higher rate than marriages between spouses of the same faith. <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/04/AR2010060402011.html>

(c) **Business Law.** There are many recent and pending cases around the country addressing the controversial legal issue of whether a commercial establishment may decline business for religious reasons. See, for example, *Country Mill Farms v. City of East Lansing*, 2017WL5514818 (W. D. Mich. 2017); *Masterpiece Cake Shop v. Colorado Civil Rights Commission*, 138 S Ct 1719 (2018); *Elane Photography, LLC v. Willock*, 309 P.3d 53 (New Mex. 2013); *State of Washington v. Arlene's Flowers*, 389 P.3d 543 (Wash. 2017); *Hands On Originals v. Lexington-Fayette Urban County Human Rights Commission*, 2017 WL 2211381(Kentucky Ct. App. 2017); *Telescope Media Group v. Lindsey*, 2017 WL4179899 (D. Minn. 2017); *303 Creative, LLC v. Elenis*, 2017WL4331065 (D. Colo. 2017); *Amy Lynn Photography Studio v. City of Madison* (Wisc.); *Brush & Nib Studio v. City of Phoenix* (Ariz.) Attorneys in increasing numbers will undoubtedly be called upon to represent business owners in this and other religion-related contexts.

(d) **Real Estate and Land Use Law.** Local governments and religious organizations are often faced with land use and zoning issues related to religion, including actions brought pursuant to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), which was passed in order to protect religious liberty.

(e) **Government and Public Law.** Governmental bodies, public schools, and public employers are often confronted with both Establishment and Free Exercise of religion issues, including what sorts of religious activities and displays are allowed on public property; whether and what sorts of religious accommodations must be made for public employees; and what sorts of religious exercise rights public school students, faculty, and administrative employees have.

(f) **Tax Law.** Many provisions of federal, state, and local income and property tax laws relate specifically to religion, premised upon respect for religious liberty.

(g) **International Law.** The 193 member states of the United Nations – including the United States – have agreed to promote and encourage respect for human rights and fundamental freedoms. These rights and freedoms include the freedom of thought, conscience, and religion or belief, which is protected and affirmed in numerous international instruments, including the 1948 Universal Declaration of Human Rights, the

1966 International Covenant on Civil and Political Rights, and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. In 1988 the United States Congress unanimously enacted the International Religious Freedom Act, which seeks to make religious freedom a higher priority in U.S. foreign policy.

And this is just the tip of the iceberg. Indeed, the increasing importance of, and growing interest in, religious liberty law is evidenced by the activities of other bar associations around the country. For example, the State Bar of Arizona has established a Religious Liberty Law Section. The Kansas Bar Association has established a Religion Law Section. And the Civil Rights and Social Justice (f/k/a the Individual Rights and Responsibilities) Section of the American Bar Association has established a Religious Freedom Committee which “*addresses the liberty interest that was a founding purpose of our nation – the ‘First Freedom,’ freedom of religion.*” <http://apps.americanbar.org/dch/committee.cfm?com=IR504500>.

Many state and local bar associations have recently sponsored CLEs addressing religious liberty law topics. For example, the State Bar of Arizona’s Religious Liberty Law Section has sponsored two religious liberty law CLEs since June of 2017, including “*Who Prays: Unsettled Questions for Legislative Prayer*” (October 20, 2017) and “*In Search of a More Perfect Union: When Rights of Religious Liberty and Anti-Discrimination Collide*” (June 16, 2017). The Chicago Bar Association has sponsored several CLEs on religious liberty law, including “*When Church and State Collide: Defending Religious Freedom*” (June 22, 2012), “*Religious Expression in the Public Square*” (December 19, 2012), and “*End of Life: Ethical Concerns, Religious Perspectives and Civil Law*” (October 6, 2014). Similarly, the Colorado Bar Association sponsored a three-part series of CLEs entitled: “*Religious Liberty – Our First Freedom*”, covering the topics “*Religious Expression in Public Schools During the Holidays*” (December 3, 2012), “*Hercules Meets Obamacare: Does the Affordable Care Act Violate a Company’s Religious Liberty?*” (February 19, 2013), and “*School Vouchers: Student Choice or Establishment of Religion?*” (April 16, 2013). Earlier this year, the North Carolina Bar Association Foundation presented “*Hobby Lobby, Town of Greece and Hosanna Tabor: The U.S. Supreme Court’s Recent Religion Cases*” (January 29, 2015), and the Pennsylvania Bar Institute recently presented “*Legal Concerns For People And Entities of Faith*” (July 7, 9, and 10, 2015). In July of 2015, the ABA presented a CLE entitled “*Religious Freedom: Rising Threats to a Fundamental Human Right*”; on January 22, 2016, the ABA presented a CLE entitled: “*Start the Morning with a Prayer – Religion in Schools*”; and in February, 2016, the ABA presented a CLE entitled “*Accommodating Religious Attire: The Ethical Implications of EEOC v. Abercrombie’s Notice’ Requirements.*”

The Religious Liberty Law Section of the State Bar of Michigan is formed to educate, to discuss, and to disseminate information regarding, as well as to advance and to protect, the basic human and constitutional right of religious liberty through law. To this end, the mission of the Religious Liberty Law Section will be:

- To further the interest of the State Bar of Michigan and of the legal profession as a whole in all ways related to religious liberty law;
- To promote throughout the State of Michigan the education of members of the State Bar and the public about issues related to religious liberty law by organizing presentations on various topics relating to religious liberty law; sponsoring and presenting lectures, workshops, and publications, such as newsletters, on religious liberty topics; and presenting continuing legal education programs on topics related to religious liberty law;
- To promote religious liberty law among Michigan attorneys as a specialized field of practice;
- To provide a forum for developing relations and exchanges of viewpoints with persons and organizations having related interests in the field of religious liberty law;
- To encourage and facilitate debate within the legal profession on religious liberty issues;
- To cooperate with other Sections of the State Bar of Michigan in matters concerning religious liberty law;
- To encourage and to support mutual respect for, and understanding of, differing religious belief systems and practices and how they relate to religious liberty law; and
- To inform the Board of Commissioners on matters appropriate for Board action.

Representative topics of interest to the Section would include, but not be limited to: the legal and philosophical foundations of religious liberty; the history of religious liberty and religious liberty law; the Establishment Clause of the U.S. Constitution, including religion and public schools, religious expression on government property, and religious exercise by government officials and bodies in public venues; the Free Exercise Clause of the U.S. Constitution, including religious practice and conscience claims in the public and private sectors and the intersection of religious liberty claims and anti-discrimination laws; religious liberty protections in the Michigan Constitution; statutory religious liberty protections, including Religious Freedom Restoration acts, federal and state Equal Access acts, and the Religious Land Use and Institutionalized Persons Act; religious discrimination under Title VII, Title IX and other federal and state laws; international religious liberty protections; and current religious liberty violations at both the domestic and international levels.

Currently there is no Section or Committee of the State Bar of Michigan that comprehensively addresses the issues of religious liberty law. And the wide interest in religious liberty law among Michigan attorneys is evidenced by the fact that 107 Michigan licensed attorneys have stated that, if a State Bar of Michigan Religious Liberty Law Section is established, they would support it and pay the Section's dues.

**PETITION IN SUPPORT OF THE ESTABLISHMENT OF THE RELIGIOUS LIBERTY LAW
SECTION OF THE STATE BAR OF MICHIGAN**

**WE, THE 118 UNDERSIGNED MEMBERS IN GOOD STANDING OF THE STATE BAR OF
MICHIGAN, DO HEREBY CERTIFY OUR WILLINGNESS TO SUPPORT THE ESTABLISHMENT
OF A RELIGIOUS LIBERTY LAW SECTION OF THE STATE BAR OF MICHIGAN AND TO PAY
THE DUES – CURRENTLY PROPOSED IN THE AMOUNT OF \$35.00 PER YEAR – FOR
MEMBERSHIP IN THAT SECTION**

<u>Name</u>	<u>P-Number</u>
1. Patrick W. Baker	P55503
2. Jerrold Bartholomew	P69459
3. Gary Bartosiewicz	P28934
4. Keith J. Beauchemin	P38831
5. Michael D. Berry	P69206
6. Bruce Alan Block	P47071
7. William R. Bloomfield	P68515
8. William Boudreaux	P69560
9. Matthew S. Bowman	P66239
10. Robert Bungler	P25244
11. John J. Bursch	P57679
12. Andrew Buss	P78164
13. Robert P. Cahalan	P64905
14. David Campbell	P66287
15. Shane M. Childers	P77348
16. Jeremy Chisholm	P68915
17. Teresa A. Chisholm	P69222
18. Travis Comstock	P72025
19. Daniel P. Dalton	P44056
20. Frankie Dame	P81307
21. John DeJak	P67709
22. Timothy W. Denney	P39990

23. Michael L. DeYoung	P68635
24. Angela Marie Engelsen	P67816
25. Joseph Falvey	P51171
26. Stephanie R. Farman	P71899
27. Elizabeth Favaro	P69610
28. James E. Fifelski	P65148
29. Karl V. Fink	P13429
30. LeClair Flaherty	P46984
31. Thomas S. Flickinger	P61173
32. David French	P31944
33. Salvatore Gaglio	P66169
34. Gerald J. Garno	P62106
35. David C. Gibbs III	P72917
36. Michael Gildner	P49732
37. John P. Hale	P45780
38. Michael Haskell	P73617
39. Albert Holder	P75852
40. Kristina Jenkins	P73762
41. Steven M. Jentzen	P29391
42. Darryl T. Johnson	P45128
43. Jeffrey W. Johnson	P69041
44. Kelly Kaiser	P63998
45. David A. Kallman	P34200
46. Stephen P. Kallman	P75622
47. John S. Kane	P46132
48. Gordon Kangas	P80773
49. Melissa Khalil	P73955
50. Rebecca Kiessling	P51817

51. Joel J. Kirkpatrick	P62851
52. Roger Kiska	P67845
53. Kevin Klevorn	P35531
54. Robb S. Krueger	P66115
55. Brian Kurtz	P48179
56. Matthew A. Kuschel	P76679
57. Vilius Lapas	P66575
58. Zach Larsen	P72189
59. Jeshua Lauka	P71958
60. JJ Lee	P68674
61. Tracey Lee	P52444
62. Mark A. Leichliter	P72123
63. Randall L. MacArthur	P47917
64. Jonathan E. Maire	P16999
65. Rebecca J. Marchinda	P70203
66. Daniel Marsh	P45304
67. Sarah M. Meinhart	P71865
68. Erin Mersino	P70886
69. Paul Mersino	P72179
70. Jason C. Miller	P76236
71. Rhonda Y. Miller	P61815
72. Audrey Monaghan	P43437
73. Kerry Lee Morgan	P32645
74. LaRae Munk	P41154
75. (Fr.) Mike Murray	P25204
76. Jason Negri	P66397
77. Christopher C. Newton	P81813
78. Lawrence Opalewski, Jr.	P77864

79. Micaiah J. Owens	P82121
80. Paul Paternoster	P35642
81. Diane Margosian Paulsen	P37685
82. Jeff Paulsen	P36758
83. Randall A. Pentiuk	P32556
84. Juan C. Perez	P74936
85. Eric W. Phelps	P55375
86. Phil Pucillo	P66967
87. Mary Catherine Rentz	P33011
88. B. Eric Restuccia	P49550
89. Gerald J. Richter	P38822
90. Ronald W. Rickard	P25609
91. Michael B. Rizik	P33431
92. Brooke N. Rowland (Kashou)	P79197
93. Daniel Ryan	P42249
94. Stephen Safranek	P46808
95. Chris Salata	P40638
96. Tonya Schuitmaker	P48698
97. John Sier	P39336
98. Albert D. Spalding Jr.	P30513
99. Teressa Streng	P42076
100. Cevin Taylor	P66418
101. Douglas Toering	P34329
102. Christopher A. Troye	P81666
103. Erika Tuttle	P66070
104. John Tuttle	P80804
105. Michael A. Vacca	P74633
106. Alex Vernon	P68726

107. Joycelyn Ward	P63940
108. Michael Warren	P47372
109. Mary Catherine Waskiewicz	P73340
110. Brian Wassom	P60381
111. Francis O. Wey	P67718
112. Robert S. Whims	P55789
113. James R. Wierenga	P48946
114. Michael E. Williams	P60938
115. Mark Wisniewski	P43757
116. Nicholas J. Wittner	P30320
117. John A. Zick	P34305
118. Mary Taylor Zick	P34330

**BYLAWS OF THE RELIGIOUS LIBERTY LAW SECTION
OF THE STATE BAR OF MICHIGAN**

ARTICLE I. NAME

The name of this Section shall be the “Religious Liberty Law Section of the State Bar of Michigan”.

ARTICLE II. PURPOSES

The purposes of the Religious Liberty Law Section shall be to educate, to discuss, and to disseminate information regarding, as well as to advance and to protect, the basic human and constitutional right of religious liberty through law. To this end, the mission of the Religious Liberty Law Section is:

- To further the interest of the State Bar of Michigan and of the legal profession as a whole in all ways related to religious liberty law;
- To promote throughout the State of Michigan the education of members of the State Bar and the public about issues related to religious liberty law, by organizing presentations on various topics relating to religious liberty law, by sponsoring and by presenting lectures, workshops, and publications such as newsletters, on religious liberty topics, and by presenting continuing legal education programs on topics related to religious liberty law;
- To promote religious liberty law among Michigan attorneys as a specialized field of practice;
- To provide a forum for developing relations and exchanges of viewpoints with persons and organizations having related interests in the field of religious liberty law;
- To encourage and facilitate debate within the legal profession on religious liberty issues;
- To cooperate with other Sections of the State Bar of Michigan in matters concerning religious liberty law;
- To encourage and to support mutual respect for, and understanding of, differing religious belief systems and practices and how they relate to religious liberty law; and
- To inform the Board of Commissioner on matters appropriate for Board action.

Representative topics of interest to the Section include, but are not limited to: the legal and philosophical foundations of religious liberty; the history of religious liberty and religious liberty law; the Establishment Clause of the U.S. Constitution, including religion and public schools, religious expressions on government property, and religious exercises by government officials and bodies in public venues; the Free Exercise Clause of the U.S. Constitution, including religious practice and conscience claims in the public and private sectors and the intersection of religious liberty claims and anti-discrimination laws; religious liberty protections in the Michigan Constitution; statutory religious liberty protections, including Religious Freedom Restoration acts, federal and state Equal Access acts, and the Religious Land Use and Institutionalized Persons Act; religious discrimination under Title VII, Title IX and other federal and state laws; international religious liberty protections; and current religious liberty violations at both the domestic and international levels.

To accomplish its goals, the Religious Liberty Law Section of the State Bar of Michigan may sponsor meetings and conferences of educational value and support the publication of articles which relate to the purposes of this Section.

ARTICLE III. MEMBERSHIP AND DUES

1. **Dues.** Any active, inactive, emeritus or affiliate member of the State Bar of Michigan, upon request to the State Bar of Michigan and upon payment of dues for the current year, shall be enrolled as a member of the Section. Dues shall be payable in advance, in the amount of **\$35.00**, on or before October 1 of each year. The amount of dues may be changed upon a 2/3's vote of the membership of the Council. Any Section member whose annual dues is more than three (3) months past due shall automatically cease to be a member of the Section.

2. **Newly Admitted Members.** As provided in Article VII, Section 5 of the Bylaws of the State Bar of Michigan, any newly admitted member of the State Bar of Michigan shall become a member without payment of dues for the second year of his, her or their admission to the State Bar of Michigan, upon submission of a written request to the State Bar of Michigan.

3. **Law Student Affiliates.** As provided in Article VII, Section 6 of the Bylaws of the State Bar of Michigan, any law student affiliate member may become a member of the Section upon written request to the State Bar. Law student affiliates are not required to pay dues.

4. **Limitations.** No Member of the Section shall speak on behalf of or otherwise represent himself, herself or their self to have the authority to speak on behalf of the Section without complying in all respects with the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the State Bar of Michigan.

ARTICLE IV. ORGANIZATIONAL MEETING

1. **General.** The Organizational Meeting of the Section shall be held during the period of November 2018 or as soon thereafter as possible at a time and place to be determined by the Acting Chairperson hereafter appointed.

2. **Acting Chairperson.** The Board of Commissioners of the State Bar of Michigan hereby appoints Tracey Lee as Acting Chairperson of the proposed Section, to serve in this capacity until the Bylaws of the Section are approved and the Council and Officers of the Section are duly elected as hereinafter provided. The Acting Chairperson may appoint an acting Secretary/Treasurer to assist in preparation for the initial meeting and to perform other functions for the Section.

3. **Membership.** All members of the State Bar of Michigan who by October 1, 2018 have applied for membership in the Section and have paid dues or are otherwise qualified under Article III of these Bylaws shall receive personal written notice by e-mail, US Mail, fax or other means reasonably likely to provide personal written notice of the time and place of the Organizational Meeting and shall be eligible to vote at the meeting. Voting at the Organizational Meeting shall be in person and not by proxy.

4. **Council.** At the Organizational Meeting, the members shall elect nine (9) members to serve as the first Council. A majority of those present and voting at the Organizational Meeting shall be sufficient to elect the first Council and no member may cast more than one (1) vote for any one candidate. In order to preserve continuity, three (3) members will be elected to three-year terms, three (3) members to two-year terms, and three (3) members to one-year terms on the Council, and thereafter, each year three (3) members will be elected to three-year terms.

5. **Officers.** The Organizational Meeting of the Council shall commence immediately following the organizational meeting of the Section at which the Council shall elect a Chairperson, Chairperson-Elect and Secretary/Treasurer to serve for one-year terms.

ARTICLE V. SECTION MEETINGS

1. **Annual Meeting.** The Annual Meeting of the Section shall be held ordinarily during the annual meeting of the State Bar of Michigan in the same city or place as the annual meeting of the State Bar of Michigan, or at such other time and place as the Council may determine but subject to State Bar Bylaw Article VII, Section 7. The Annual Meeting shall be for the election of Council members and the transaction of such other business as may come before members of the Section.

2. **Special Meetings.** A Special Meeting of the Section may be called at any time by the Chairperson of the Section upon approval of the Council. A Special Meeting shall be called by the Chairperson upon the written request to the Chairperson or Secretary/Treasurer of the Section of at least ten (10) Active Members. Special Meetings shall be held at such time and place as the Chairperson may determine. Section members shall receive at least ten (10) days advance written notice of any Special Meeting. The notice shall state the time and place of the Special Meeting and the business to be transacted and shall be delivered by e-mail, US Mail, fax or other means reasonably likely to provide personal written notice of the time and place of the meeting.

3. **Waiver of Notice.** Notice of any Special Meeting of the Section may be waived in writing before or after the meeting. Attendance at any meeting constitutes waiver of notice of the meeting unless attendance is for the express purpose of objecting to the transaction of any business because the meeting was not properly called or convened.

4. **Quorum.** Ten (10) or more members of the Section present at a meeting of the Section shall constitute a quorum for the transaction of business properly before the Section.

5. **Section Action.** When a quorum is present at any Section meeting, the majority vote of Active Members present in person at the meeting shall decide any matter brought before Section members at the meeting, except as otherwise specifically provided in these Bylaws.

6. Programs of Section meetings during meetings of the State Bar of Michigan shall be subject to approval by the State Bar Board of Commissioners.

ARTICLE VI. COUNCIL

1. **Qualifications.** Each member of the Council must be an active member in good standing of the State Bar of Michigan and a member in good standing of the Section.
2. **Number and Term.** The Council shall have nine (9) elected members. Following the initial terms as provided in Article IV of these Bylaws, members of the Council shall serve for three (3) years with terms commencing at the close of the Annual Meeting at which they were elected and ending at the close of the Third succeeding Annual Meeting of the Section.
3. **General.** At each Annual Meeting, three (3) positions on the Council shall be filled. The Nominations Committee shall propose nominations for membership on the Council, pursuant to procedures noted below. Other nominations may be made by members present at the Annual Meeting. Election of the Council shall be by voice vote of the members of the Section present at the Annual Meeting, unless voting by written ballot is requested and approved by a majority vote of the members present at the Annual Meeting or the outcome of the election by voice vote is indeterminable, in which case voting by written ballot is required.
4. **Term Limits.** No person shall be eligible for election to the Council if at the time of being so nominated, he or she has served without interruption two (2) full consecutive 3-year terms immediately preceding the term for which the election is held, provided that if the Nominating Committee of the Section shall nominate a person who would otherwise be ineligible for election to the Council under this Section to the office of Chair-Elect or Secretary/Treasurer, then such person shall be eligible for nomination and election to the Council for an additional term of three (3) years.
5. **Past Chairperson.** The immediate past Chairperson who has completed his or her term as Chairperson but whose terms as a Council member has not expired may continue to serve on the Council until his or her term expires, with all voting rights thereto. Past Chairpersons of the Section no longer serving as a member of the Council shall automatically remain as ex-officio members of the Council so long as they maintain membership in the Section. Past Chairpersons whose Council terms have expired shall not be included in determining whether a quorum is present at any meeting, and they shall have no right to vote on matters brought before the Council.

6. **Attending Meetings/Vacancy.** If any member of the Council fails to attend three (3) successive meetings of the Council, the Council may declare the position vacant. If a position of the Council becomes vacant for any reason during the term of a member, including upon resignation or the inability to perform the duties of the position, the remaining members of the Council shall select a replacement, who shall fill the seat until the next election, at which point the seat shall be filled for the remaining portion of the term.

7. **Nominating Committee/Nominations From Floor.** Prior to the Annual Meeting, the Nominating Committee, consisting of all three Council officers and two (2) additional Council members the Chairperson has appointed, shall propose the nominations for the positions of members of the Council for election at the Annual Meeting. At least 72 hours in advance of the Annual Meeting, its nominations shall be provided to Section members by e-mail, US Mail, fax or other means reasonably likely to provide personal written notice to members of its recommendations. Other nominations may be made from the floor by Section members present at the Annual Meeting.

8. **Voting/Quorum.** Election of the Council shall be by voice vote of the members of the Section present at the Annual Meeting, unless voting by written ballot is requested and approved by a majority vote of the members present at the Annual Meeting or the outcome of the election by voice vote is indeterminable, in which case voting by written ballot shall be required. The members of the Section present at the Annual Meeting of the Section, constitutes a quorum for the transaction of business, and the action of the majority of the quorum constitutes action of the Section.

ARTICLE VII. ELECTION OF OFFICERS

1. **Officers.** The Council shall elect the following Officers at its Organizational Meeting:

- a) Chairperson,
- b) Chair-Elect, and
- c) Secretary/Treasurer.

2. **Term.** The Officers of the Section shall be elected to one (1) year terms by the Council at its Organizational Meeting held immediately following the Annual Meeting. The term of each office shall commence at the close of the

Organizational Meeting at which the officer was elected and close at the succeeding Annual Meeting of the Section.

3. **Voting.** Election of Officers shall be by voice vote of the members of the Council present at the annual Organizational Meeting, unless voting by written ballot is requested and approved by a majority vote of the members present at the annual Organizational Meeting or the outcome of the election by voice vote is indeterminable in which case voting by written ballot is required.

4. **Vacancy.** If any office becomes vacant during the period between Annual Meetings, the Council may select a replacement, who shall succeed to the full duties and responsibilities of the office. If the office of Chairperson becomes vacant and is filled by the Chair-Elect, the Chair-Elect will then also compete his or her own term of office.

5. **Succession of Chair-Elect.** Subject to the approval of the Council at its Organizational Meeting, it is anticipated that the Chairperson-Elect shall succeed to the office of Chairperson.

ARTICLE VIII. DUTIES OF OFFICERS

1. **Chairperson.** The Chairperson shall:
 - a) Preside at all meetings of the Council;
 - b) Prepare and present at each Annual Meeting of the Section a report of the activities of the Section for the preceding year;
 - c) Appoint the chairperson and members of any committees of the Section; and
 - d) Perform such other duties as are customarily associated with the office of Chairperson, or as assigned by the Council.

2. **Chairperson-Elect.** The Chair-Elect shall:
 - a. Preside at all meetings of the Council in the absence of the Chairperson;
 - b. Assume and perform the duties of the Chairperson during the disability of or after the death or resignation of the Chairperson;
 - c. Be responsible for the development and presentation of an educational program at the Annual Meeting; and
 - d. Perform such other duties as are customarily associated with the office of Chair-Elect, or as assigned by the Council.

3. **Secretary/Treasurer.** The Secretary/Treasurer shall:
 - a. Be the custodian of the books and records of the Section, including financial documents;
 - b. Keep a record of the Annual Meeting of the Section, and the meetings of the Council,
 - c. Preside at the Annual Meetings of the Council in the absence of the Chairperson and Chairperson-Elect;
 - d. Keep a record of the money received and disbursed, and present a report at each meeting of the Council;
 - e. Present a financial report to the members at the Annual Meeting;
 - f. Prepare and present a proposed budget for the consideration of the Council; and
 - g. Perform such other duties as are customarily associated with the office of Secretary/Treasurer, or as assigned by the Council.

ARTICLE IX. DUTIES AND POWERS OF THE COUNCIL

1. **General.** The Council shall have general supervision and control of the affairs of the Section subject to the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the State Bar of Michigan and the Bylaws of the Section. The Council shall authorize all commitments or contracts which entail the payment of money and shall authorize the expenditure of all monies appropriated by the Council for the use or benefit of the Section.
2. **Committees.** The Council may establish such standing committees (and subcommittees) and ad hoc committees (and subcommittees) as the Council may determine from time to time to further the interests and goals of the Section, and no committee, subcommittee or directorship shall be authorized to take any action on behalf of the Council or the Section without the express approval of the Council.
3. **Executive Committee.** There shall be an Executive Committee that will consist of the Chairperson, Chairperson-Elect, Secretary/Treasurer and two (2) Council members appointed by the Chairperson. The Chairperson shall serve as chairperson of the Executive Committee. The Executive Committee shall have the authority to conduct any business as delegated from time to time by resolution of the Council. Additionally, the Executive Committee shall have the authority to conduct any business that would normally come before the Council, provided that such action is of a nature that requires resolution prior to the next Council meeting. The Section Chairperson, on behalf of the Executive Committee, shall report any

and all action taken by the Executive Committee between meetings of the Council at the next succeeding meeting of the Council

4. **Committee Chairpersons.** The Council, upon recommendation of the Executive Committee, shall direct the Chairperson to appoint committee chairpersons and other agents from Members to perform such duties and exercise such powers as the Council may direct. The Chairperson on direction from the Council shall remove any committee chairperson or other agent from any such committee.

5. **Vacancies.** The Council, during the interim between annual meetings of the Section, may fill vacancies in the offices of the Secretary/Treasurer or Vice-Chairperson, or, in the event of a vacancy in both the office of Chairperson and Vice-Chairperson, then in the office of Chairperson. The Executive Committee may appoint acting officers to fill such vacancies during the interim between the occurrence of the vacancy and the next regularly scheduled or special Council meeting.

6. **Quorum.** Five (5) members of the Council present at a meeting shall constitute a quorum for the transaction of business.

7. **Voting.** Members of the Council when personally present at a meeting of the Council shall vote in person, but when absent may communicate their vote, in writing, upon any proposition, to the Secretary and have it counted, with the same effect as if cast personally at such meetings. Each Council member shall be entitled to one (1) vote on all matters brought to the Council for vote.

8. **Telephonic Participation.** A Council member may participate in a Council meeting by telephone conference or other means of communication by which all persons participating in the meeting may communicate with each other if all participants are advised of the communications equipment and the names of the participants in the conference are divulged to all participants. Participation in a meeting pursuant to this section constitute presence in person at the meeting.

9. **Proposals.** The Chairperson of the Section at any time may, and upon the request of any member of the Council shall, submit or cause to be submitted to the Council at the next occurring Council meeting, any proposal upon which the Council may be authorized to act, and the members of the Council may vote upon such proposal or proposals so submitted. A majority of the votes cast on any

proposal at a meeting of the Council at which a quorum is present shall constitute the binding action of the Council.

10. **Meetings.** The Section Chairperson shall designate the time and place of the regular Council meetings. Special meetings may be called by the Chairperson or upon written request to the Secretary of any five (5) members of the Council. Not less than five (5) days' notice of regular and special meetings shall be given. All such notices shall specify the date, time, and place (and in the case of a special meeting, the purpose of such special meeting). The required notice shall be delivered by e-mail, US Mail, fax or other means reasonably likely to provide personal written notice of the time and place of the meeting.

11. **Action By Unanimous Written Consent.** Any action that may be taken at any regular or special meeting may be taken by a vote of six (6) current Council members provided that this vote is in writing.

12. **Reports to the State Bar or Representative Assembly:** When so directed by the State Bar Board of Commissioners or the Representative Assembly, the Council shall timely submit an annual report (compliant with Article VIII, Section 1((2) of the State Bar Bylaws) containing a summary of the Section's activities during the association year, which shall be submitted to the Secretary of the State Bar of Michigan on or before May 31. Section reports requesting State Bar endorsement of a recommended position shall comply with Article VIII, Section 2 of the State Bar Bylaws.

ARTICLE X. PUBLIC POLICY POSITIONS

A. Adoption of Public Policy Positions:

The adoption of a public policy position by the Section shall require an affirmative vote of at least a majority of the Council.

B. Public Advocacy of Public Policy Positions:

Public advocacy on public policy issues adopted by the Section shall be subject to the requirements of Article VIII, Sections 7 and 9 of the State Bar Bylaws.

ARTICLE XI. MISCELLANEOUS

The fiscal year of the Section shall be the same as the State Bar of Michigan's fiscal year. All bills incurred by the Section, before being forwarded to the Treasurer or the Executive Secretary of the State Bar of Michigan for payment, shall be approved by the Chairperson or by the Secretary/Treasurer, or, if the Council shall direct, by both of them. No salary or compensation shall be paid for serving as a Section Officer, member of the Council, or member of any committee.

ARTICLE XII. AMENDMENTS.

1. These Bylaws may be amended at any Annual Meeting of the Section by a majority vote of the members of the Section present and voting, provided such proposed amendment shall first have been approved by a majority of the Council and provided, further, that no amendment so adopted shall become effective until approved by the Commissioners of the State Bar of Michigan.

2. Any proposed changes suggested by non-Council Section members shall be submitted in writing to the Council in the form of a petition signed by at least five (5) members of the Section in time for it to be considered by the Council at a regular meeting before the Annual Meeting of the Section at which it is to be voted upon. The Council shall prepare recommendations, together with a complete and accurate text of proposed amendments, which shall be provided to all Section members by e-mail, US Mail, fax or other means reasonably likely to provide personal written notice of the proposed amendment.

CERTIFICATION

Jason Negri, Secretary of the Religious Liberty Law Section, certifies that these Bylaws were adopted by a majority vote of the members, a quorum being present at the organizational meeting of the Religious Liberty Law Section, held on May 21, 2018.

**State Bar of Michigan
Religious Liberty Law Section
Proposed Budget**

		Year One	Year Two
Revenue:			
1-7-99-***-1050	Section Dues	\$3,500	\$5,250
1-7-99-***-1125	Seminar Revenue	\$1,250	\$1,750
1-7-99-***-1320	Newsletter Advertising	\$250	\$350
Total Revenue		\$5,000	\$7,350
Expenses:			
1-9-99-***-1145	ListServ	\$600	\$600
1-9-99-***-1202	Community Support / Donations	\$150	\$200
1-9-99-***-1276	Meetings	\$600	\$600
1-9-99-***-1283	Seminars	\$1,750	\$3,000
1-9-99-***-1297	Annual Meeting Expenses	\$100	\$150
1-9-99-***-1311	Awards		\$100
1-9-99-***-1493	Travel	\$150	\$250
1-9-99-***-1528	Telephone	\$100	\$100
1-9-99-***-1833	Newsletter	\$250	\$450
1-9-99-***-1987	Miscellaneous	\$50	\$100
Total Expenses		\$3,750	\$5,550
Net Income		\$1,250	\$1,800

Regulatory Objectives for the Provision of Legal Services in Michigan

Report of the Regulatory Objectives Special Committee

If you don't know where you're going, any road will get you there.
--George Harrison

The 21st Century Task Force of the State Bar of Michigan recognized that we are poised at the brink of tremendous change in the legal profession, and that new models for the provision of legal services will emerge, some within our control and some outside our control. In such a climate, it is suggested that a more robust statement of regulatory objectives will set forth the purposes of regulation and thus serve as a guide to the regulators and those regulated; permit the regulator to align any regulation with its function and aims; serve to inform public debate about the regulation; and assist the legal profession when it is called upon to negotiate with governmental and nongovernmental entities about regulations affecting the provision of legal services.¹

Regulatory objectives will assist in guiding future regulation of legal service providers and will help ensure that regulation is for the purpose of serving the legal needs of the public consistently with identified core values for delivery of legal services.

At this point in time, the American Bar Association and a number of domestic and international jurisdictions have articulated regulatory objectives, including England and Wales, Scotland, New Zealand, and New South Wales, several provinces of Canada, and the States of Illinois, Colorado and Washington. The Committee has had the benefit of these efforts as well as those of published scholars in the regulatory objective arena and proposes regulatory objectives unique to Michigan informed by these materials.

The process engaged by the Committee followed the model set forth by the ABA and required the Committee to identify the Core Values for Providers of Legal Services (Exhibit A). Core values differ from regulatory objectives. Regulatory objectives are designed to align the creation of new regulation, including regulation of new categories of legal service providers, and to a degree seek to ensure that these core values are observed by service providers who are not lawyers.

Respectfully submitted,

s/Regulatory Objectives Special Committee

Christopher G. Hastings, Co-Chair
Mark A. Armitage
William B. Dunn
Stephanie J. LaRose
Valerie R. Newman

Angela S. Tripp, Co-Chair
Teresa Lee Duddles
Alan M. Gershel
Milton L. Mack, Jr.
Mwanaisha Atieno Sims

¹ This list is adapted from Laurel Terry, Steve Mark and Tahlia Gordon, Adopting Regulatory Objectives for the Legal Profession, 80 *FORDHAM LAW REVIEW* 2685, 2686 (2012).

Staff Liaisons

Danon D. Goodrum-Garland

Nkrumah Johnson-Wynn

Robert G. Mathis, Jr.

Alecia M. Ruswinckel

CORE VALUES FOR PROVIDERS OF LEGAL SERVICES AND THEIR COMPASS

Promote justice, fairness, and diversity: responsibility to the legal system and rule of law

- Strive to obtain access to justice for all; promote accessibility of legal services and the efficient administration of justice
- Respect legal rights and the dignity of all persons
- Serve the means and the ends of justice, including equal opportunity
- Increase public understanding of the rule of law and of citizens' legal rights and duties
- Advocate for and influence development of law for the public good

Provide competent and diligent representation: a fiduciary duty to those served

- Exercise judgment independent of the provider's own interests for the benefit of the client
- Promote physical and mental health (wellness) of all providers to ensure capacity for competent delivery of legal services
- Provide honest and clear communication about services and obligations of the provider to persons served
- Respect the client's rights and interests in the matter of the representation
- Pursue self-development through continuing education in legal subject matter, means and methods of delivery of service

Observe and provide representation in accordance with professional qualities expected in the delivery of legal services

- Observe confidentiality of information in accordance with rules of professional conduct
- Ensure that professional qualities are applicable to and observed by all providers of legal and law related services

Improve and add value to the professional delivery of legal services

- Examine how, when in the best interest of the public, legal services may be provided by qualified non-lawyers
- Promote diversity and inclusion among legal service providers and freedom from discrimination for those receiving legal services and in the justice system

Regulatory Objectives for the Provision of Legal Services in Michigan

Preamble

In the exercise of its constitutional responsibility to supervise the practice of law in this state, the Supreme Court acts to protect the public, the courts, and the legal profession. MCR 9.105(A). A primary focus of the system of regulation designed to meet these ends involves the promulgation of standards for, and discipline of, members of the Michigan bar. See, e.g., the Michigan Rules of Professional Conduct, and subchapter 9.100 of the Michigan Court Rules. Another critical component of lawyer regulation in Michigan involves preventative, proactive, and remedial programs administered by the State Bar of Michigan. Rule 1, Rules Concerning the State Bar of Michigan. The practice of law has evolved to such an extent that a clearer and more detailed articulation of the Court's objectives in regulating the provision of legal services in the public interest is warranted. The regulation of the provision of legal services must extend to activities by nonlawyers, and the following Regulatory Objectives apply to all providers of legal services.

Regulatory Objectives

The objectives in regulating the provision of legal services in Michigan are:

1. Protecting and promoting the public interest;
2. Promoting the rule of law and independence in the administration of justice;
3. Promoting access to justice and the public's understanding of legal rights, duties, and the justice system;
4. Promoting the availability and affordability of competent legal services;
5. Promoting informed choice regarding the nature, scope, and cost of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections;
6. Establishing and ensuring compliance with essential eligibility requirements, rules of professional conduct, and other rules governing the provision of legal services;
7. Assisting providers of legal services to maintain competence and professionalism and promoting their ability to serve clients efficiently and in accordance with applicable professional standards;
8. Promoting equal rights and freedom from discrimination in the licensing and regulation of legal services providers, the delivery of legal services, the delivery of legal education, and the administration of justice;
9. Maintaining and promoting the role of the Michigan Supreme Court and the State

Bar of Michigan in the independent and coordinated regulation of legal services providers; and

10. Promoting diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

Comments

The marketplace for legal services is changing. At the time these Objectives were drafted, subject to specific statutory exceptions, only licensed attorneys are able to “practice law,” and the Michigan Supreme Court states that one “engages in the practice of law when he [she] counsels or assists another in matters that require the use of legal discretion and profound legal knowledge.” *Dressel v Ameribank*, 468 Mich 557, 566; 664 NW2d 151, 157 (2003). Non-lawyers are permitted under the law to prepare routine legal documents that do not require the exercise of legal discretion, and to provide general legal information. *Id.* The non-lawyers providing such services range from nonprofit legal assistance and information centers, to the Michigan Legal Help website, to for-profit enterprises such as document preparation services, title companies, realtors, and accountants. Ordinarily, the activities of unregulated services providers, including nonlawyers, have been scrutinized only by the State Bar of Michigan Standing Committee on the Unauthorized Practice of Law. On the horizon, new categories of providers performing a wide array of legal services are foreseen. Such legal services providers should be licensed and regulated in some fashion.

TO: Board of Commissioners
FROM: Professional Standards Committee
SUBJECT: Proposed Formal Ethics Opinion R-25
MEETING DATE: July 27, 2018 Board of Commissioners Meeting

Proposed Formal Ethics Opinion R-25 for Further Review and Approval

Attached is proposed Formal Ethics Opinion R-25 that addresses for-profit online matching services. **(Tab A.)** The proposed formal opinion has been unanimously recommended for approval by the Professional Standards Committee and the Professional Ethics Committee.

The opinion was drafted in response to the Board of Commissioners' request for an opinion on for-profit online businesses entering the legal marketplace and advertising their ability to provide legal services through a network of participating lawyers. These businesses are not law firms and do not label themselves "lawyer referral services." Michigan lawyers may not ethically participate in these business models as set forth in the proposed formal opinion.

Background

The Professional Standards Committee provided a copy of the proposed opinion for initial review and discussion during the April 20, 2018 Board of Commissioners' meeting. After the April 20 meeting, the proposed opinion was posted for comment from June 6, 2018 to July 16, 2018. **(Tab B.)** A compilation of the comments in the order received are attached. **(Tab C.)**

Also attached is a Michigan Lawyers Weekly article regarding the proposed opinion **(Tab D)** and articles regarding the status of AVVO Legal Services, a for profit matching service. **(Tab E.)**

A

TAB A

PROPOSED

R-25

Month __, 2018

SYLLABUS

Participation in a for-profit online matching service which for a fee matches prospective clients with lawyers constitutes an impermissible sharing of fees with a nonlawyer if the attorney's fee is paid to and controlled by the nonlawyer and the cost for the matching service is based on a percentage of the attorney's fee paid for the legal services provided by the lawyer. Therefore, a Michigan lawyer participating in this business model:

- 1. Violates MRPC 6.3(b), which prohibits a lawyer from participating in for-profit lawyer referral services.**
- 2. Violates MRPC 5.4, which prohibits a lawyer from sharing fees with a nonlawyer.**
- 3. Violates MRPC 7.2(c), which prohibits a lawyer from giving anything of value to recommend a lawyer's services unless it is a reasonable payment for advertising the lawyer's services, the usual charges for a not-for-profit lawyer referral service or payment for the sale of a law practice.**
- 4. Subverts compliance with MRPC 1.15, which requires a lawyer to safeguard legal fees and expenses paid in advance by depositing them into a client trust account until the fee is earned and the expense is incurred.**
- 5. Impedes compliance with MRPC 1.16(d) and its requirement that any unearned prepaid fees and unexpended advances on costs must be refunded.**
- 6. Assists in the unauthorized practice of law in violation of MRPC 5.5(a) to the extent the online service holds itself out as a provider of legal services and guarantees satisfaction.**
- 7. Violates MRPC 5.3 to the extent that the conduct of the matching service when performing administrative "back office" services traditionally done through the law firm does not comport with the professional obligations of the lawyer.**

References: MRPC 1.15(b)-(d), (g); 1.16(a), (d); 5.3; 5.4; 5.5(a); 6.3(b); 7.2(c); R-021; RI-366

TEXT

The Committee has been asked to consider whether Michigan lawyers may ethically participate in online services that match prospective clients with lawyers. The assessment requires a careful review of the business model to determine whether it constitutes a for-profit lawyer referral service and if compliance with the terms for participation requires a Michigan lawyer to violate the Michigan Rules of Professional Conduct (MRPC).

Legal matching services are not new, but innovation in technology has spearheaded private entrepreneurial online matching services beyond the usual bar association non-profit lawyer referral services. To evaluate this issue, this Opinion reviews two online lawyer matching services to consider whether Michigan lawyers can remain ethically compliant if becoming a participating lawyer.

Model 1. One such business model has a national website that includes in its business name “legal services” to market its online matching services to consumers needing legal services. All participating lawyers are branded with the business name to associate them with the non-law firm entity in advertisements to drive prospective clients to the website to purchase legal services at fixed prices.

Many legal services are offered on the website for a fixed fee. For example, a consumer selects the desired legal services, pays a set price for a 15 minute consultation, pays another set price for review of a business document with a 30 minute consultation, or pays a set price for “start-to-finish” work. After paying the fixed fee, the consumer reviews profiles of participating lawyers and selects a lawyer to provide the legal services. Another legal service offered on the website is a 15 or 30 minute consultation with a participating lawyer for a fixed fee provided by the next available participating lawyer who calls the consumer within 15 minutes of the consumer’s purchase of the consultation. Many legal services are offered for this fee arrangement from consultation after a document review to full service “start-to-finish” work regarding a particular matter.

Both offerings require the consumer to make payment for the legal services through the website’s payment portal for deposit into the matching service’s account before any contact by the consumer with a participating lawyer. The website advertises that all legal services are backed by a “satisfaction guarantee,” which may include switching lawyers, substituting the services, or a refund.

The website markets to lawyers that it can match them with clients who have already paid for limited-scope legal services and that it takes care of all administrative matters, including collecting the fee, holding the fee until the legal services are provided, distributing the prepaid fee to the lawyer, and automatically deducting a percentage of the legal fee as a “marketing fee” from the lawyer’s operating account.

Model 2. Another for-profit online matching service specifically targets businesses needing legal services to match with its network of participating lawyers. The website has “legal” in its name to connect it with the provision of legal services. A business owner/contact uses the online platform to submit a completed attorney request form to permit a website project manager to generate a list of participating network attorneys matching the selection criteria. The business owner/contact receives an alert when the attorney matching list is ready for review and must then create an account to view the network-generated list, the attorney profiles, and pricing. The business owner/contact may receive a free half hour consultation with the network lawyers listed. After the consultation, each lawyer sends a pricing proposal using many alternative fee arrangements. After selecting a network attorney, the business client pays the legal services fee through the matching

service's website account. The website provides administrative support through centralized billing and invoices.

The website uses an application and vetting process to establish its network of participating lawyers. Besides meeting minimum requirements (a minimum years of professional experience and a minimum level of malpractice insurance coverage), network lawyers must offer preferred pricing to website business customers reflecting at least a net 17.5% discount off their standard rates inclusive of the matching service fee and alternative fee arrangements, including fixed and capped fees. Lawyers admitted to the network must maintain a 95% approval rating to remain in the network.

The website collects and holds all fees paid in advance by the business client until earned by the selected network attorney. The website gets a percentage (about 7.5%) of each legal fee remitted to the website and touts that the discounted rates offered by the network attorneys are 60-75% less than the traditional law firm solution because the website handles the back-office administrative processes traditionally done by attorneys through their law firm. The website guarantees client satisfaction by promising to credit the business client website account up to \$10,000 to complete any work not done right or inconsistent with the website's standards through another network attorney.

Numerous ethical concerns are presented by both business models. Although these online matching services do not call themselves lawyer referral services, the functional characteristics of a referral service are embedded in both business models. Traditionally, a lawyer referral service operates to refer prospective clients to participating lawyers who have met the qualifications set by the service, including experience in a particular practice area, geographic location, and minimum malpractice insurance coverage. The introductory comments to the ABA Model Supreme Court Rules Governing Lawyer Referrals state that a lawyer referral program "is to provide the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's needs." Introduction, ABA Model Supreme Court Rules Governing Lawyer Referral And Information Services. These online matching services promise to match consumers in need of legal services with qualified lawyers. The prospective client's ability to choose a lawyer from the network of participating lawyers rather than the referral service identifying and making the selection does not negate the referral characteristics of the business model. Hence, the Committee concludes that both business models operate as for-profit lawyer referral services. A number of other jurisdictions agree.¹ Some jurisdictions have taken a contrary

¹ See South Carolina Ethics Opinion 17-06 (2017) (A website service that refers clients to a lawyer for a portion of the fee paid to the lawyer for legal services violates the prohibition of Rule 7.2(c) that precludes payments to a for-profit referral service); New Jersey Ethics Opinion 732 (2017) (Lawyers may not participate in the program because the program improperly requires a lawyer to pay an ethically impermissible referral fee.); Ohio Ethics Opinion 2016-3 (2016) (A lawyer's participation in an online for-profit service where the fee structure is tied specifically to individual client representations that a lawyer completes or to a percentage of the attorney's fee is not permissible. A lawyer may participate in a lawyer referral service only if it meets the requirements of Rule 7.2(b) and is registered with the Supreme Court of Ohio); Kentucky Ethics Opinion KBA E-429 (2008) (Some internet for-profit group marketing arrangements go beyond the mere pooling of finances of group advertisers because the participating lawyers pay a fee for a specific referral and thus function as an ethically impermissible for-profit lawyer referral service.); Arizona Ethics Opinion 05-08 (2005) (It is ethically impermissible for a lawyer to participate in a for-profit client/attorney internet matching service that substantially functions as a for-profit lawyer referral service because the

view based on differing ethical standards on what constitutes an ethically permissible lawyer referral service.²

For Michigan lawyers to participate in a lawyer referral service, it must meet the criteria in MRPC 6.3. The referral service must be a not-for-profit referral service, maintain registration with the State Bar, and operate in the public interest under the Rule. Both matching services considered in this Opinion are for-profit services and are not registered with the State Bar. Accordingly, a Michigan lawyer participating in either of these business models violates Rule 6.3(b).

Under both business models, the matching service participation requirements direct or regulate the client-lawyer relationship from its formation to termination. MRPC 5.4(c) prohibits a lawyer from allowing a third-party to “direct or regulate the lawyer’s professional judgment in rendering legal services.” In both business models, the prospective client must interact with and respond to the matching services requirements before having any access to the participating lawyers. The first business model requires payment in full for the desired legal service through the website payment portal before the client can connect with the lawyer. The other business model requires the prospective client to establish an account with the website before receiving the list of network lawyers meeting the client’s selection criteria. Both business models define the services offered, the fees charged, when and how they are paid, and the refund policy. In the first business model, the scope and length of the lawyer-client relationship is determined by the matching service. It even specifies the time the lawyer will spend on the matter for the predetermined set fee. Such matters should be made by or directed by the lawyer after consultation with the prospective client regarding the client’s specific legal matter. Both business models conflict with a lawyer’s ethical obligation to maintain independent professional judgment in rendering legal services as required by MRPC 5.4(c).³

Also, with both business models, the fee paid to the matching service is based on a percentage of the attorney’s fees generated for the legal services provided by the attorney for each client matter. MRPC 5.4(a) provides that unless an exception applies (none of which is applicable here), a

participating lawyer is paying the service for recommending the lawyer’s services contrary to ER 7.2(b)(2)); and Maryland Ethics Opinion 2001-03 (2001) (An internet service that brings clients and lawyers together and receives a portion of the fee paid for the legal services implicates the prohibition against for-profit referral services.).

2 See e.g., North Carolina Proposed 2017 Formal Ethics Opinion 6 (“Proposed opinion rules that a lawyer may participate in an online platform for finding and employing lawyers subject to certain conditions.” The Committee notes that the North Carolina Ethics Committee proposed amendments to certain rules of professional conduct and comments to enable lawyers to meet the conditions for participation.); and Nassau County Bar Association Ethics Opinion 2001-4 (New York, 2001) (“Subject to the operational structure and advertising content as described, an attorney may affiliate with an on-line legal services-related website.”).

3 See Pennsylvania Formal Ethics Opinion 2016-200 (2016) (Delegation to a nonlawyer of critical decisions and functions, such as whether the legal services have been satisfactorily performed or the advanced fee has been earned violates the lawyer’s ethical duty to exercise independent professional judgment.); and Ohio Ethics Opinion 2016-3 (2016) (“A lawyer must be cautious when considering a referral service that makes decisions that are clearly within the scope of the lawyer’s exercise of professional judgment on behalf of a client. Decisions such as setting limits on the amount of time a lawyer must spend on each client’s case, specifying a number of cases that a lawyer must agree to handle, limiting the scope of a lawyer’s representation of a client, or generally directing a lawyer’s representation of a client are all decisions that a lawyer is duty-bound to make.”).

“lawyer or law firm shall not share legal fees with a nonlawyer.” To avoid the inference of fee-splitting with nonlawyers, the first matching service electronically remits the amount of the advanced fee paid by the client to the lawyer’s designated account after the participating lawyer has provided the legal services and then immediately electronically withdraws from an account pre-designated by the lawyer its percentage of the earned attorney’s fee. Whereas, in the second business model, the matching service’s fee is embedded within the percentage discount network attorneys must offer prospective clients. In Informal Ethics Opinion RI-366 (2014), the Committee considered the method by which the nonlawyer was paid when it opined that “[a] lawyer’s participation in a marketing arrangement in which consumers purchase coupons for legal services from a vendor that retains a portion of the purchase price would entail an impermissible sharing of fees with a nonlawyer and, on that basis, is unethical pursuant to MRPC 5.4.” Similarly, if the matching service fee is a percentage of the fee for legal services for each client matter then this is an ethical impermissible fee splitting arrangement. Therefore, a lawyer participating in either business model is engaged in impermissible fee splitting with a nonlawyer contrary to MRPC 5.4(a). Our reasoning is consistent with other jurisdictions.⁴

In the first business model, the fee paid to the matching service is labeled a marketing fee. The second business model affixes no label to its fee. MRPC 7.2(c) prohibits a lawyer from giving anything of value for recommending the lawyer’s services except for the reasonable cost of advertisement, a reasonable non-for-profit lawyer referral service participation fee, or to purchase a law practice. The comments to MRPC 7.2 provide that a lawyer “is not permitted to pay another person for channeling professional work.” The advertisement exception under Rule 7.2(c) is the only possible exception for both business models. However, in both business models, the matching service is marketed to consumers as having an association with lawyers qualified to handle their legal matters. Legal consumers are driven to the matching service website based on the marketing brand of the matching service rather than any individual participating lawyer. A true advertising fee has no connection to the formation of an attorney client relationship or the amount of the attorney’s fee paid for the legal services, but is based on the value of the advertisement. Here, the matching service pricing structure is directly linked to the formation of an attorney client relationship and attorney fees generated. Further, a genuine advertising medium offers no

⁴ See South Carolina Ethics Opinion 17-06 (2017) (“Allowing the service to indirectly take a portion of the attorney’s fee by disguising it in two separate transactions does not negate the fact that the service is claiming a certain portion of the fee earned by the lawyer as its ‘per service marketing fee’” and is prohibited fee splitting); New Jersey Ethics Opinion 732 (2017) (Lawyers may not participate in the program because the program requires the lawyer to share a legal fee with a nonlawyer.); Ohio Ethics Opinion 2016-3 (2016) (An arrangement that makes the fee to the online service contingent upon the fee for legal services implicated the prohibition on fee splitting with a nonlawyer); Pennsylvania Formal Ethics Opinion 2016-200 (2016) (“The manner in which the payments are structured is not dispositive of whether the lawyer’s payment to the Business constitutes fee sharing. Rather, the manner in which the amount of the ‘marketing fee’ is established, taken in conjunction with what the lawyer is supposedly paying for, leads to the conclusion that the lawyer’s payment of such ‘marketing fees’ constitutes impermissible fee sharing with a non-lawyer.”); Indiana Ethics Opinion No 1 (2012) (An online group marketing service that receives a percentage of the fee paid for legal service for channeling clients to a lawyer violates the prohibition against fee splitting with nonlawyers.); Alabama Ethics Opinion RO 2012-01 (2012) (The percentage taken by a site that is not tied to the reasonable cost of an advertisement violates the ethical prohibition of sharing fees with nonlawyers.); Kentucky Ethics Opinion KBA E-429 (2008) (Once the compensation system of an internet group marketing scheme becomes tied to the attorney’s fee earned for the referral it becomes a prohibited fee splitting with a nonlawyer.); and Maryland Ethics Opinion 2001-03 (2001) (The referral fee paid to the internet services constitutes a prohibited fee splitting with a nonlawyer.).

“satisfaction guarantee.” For all these reasons, the fee paid to the matching services is not ethically permissible under MRPC 7.2(c). Our perspective is analogous with many other jurisdictions.⁵

In both business models, the matching service collects and controls the attorney’s fees remitted by the legal consumer before legal services are provided by the participating lawyer. A lawyer must safeguard client funds by depositing them into a client trust account until earned and withdrawing/distributing the funds when earned. MRPC 1.15(b) and (g). In Formal Ethics Opinion R-21, the fiduciary obligations of lawyers was emphasized as follows:

MRPC 1.15(d) requires that “[a]ll client or third person funds” be deposited into an IOLTA or non-IOLTA account. “Client or third person funds” include unearned legal fees and advanced expenses that have been paid in advance, funds in which a third person has an interest, and funds in which two or more persons (one of whom may be the lawyer) claim an undivided interest. When the funds received are unearned fees and advanced costs or expenses, they must be held in trust until earned or expended.

The fiduciary obligations of lawyers under MRPC 1.15 are absolute, and not subject to partialling. Lawyers participating in either business model cannot adhere to the ethical obligations under MRPC 1.15.⁶

A lawyer has precise ethical duties when a dispute arises regarding entitlement of the attorney’s fees. When a dispute arises, MRPC 1.15(c) requires disputed funds be “kept separate by the lawyer until the dispute is resolved.” MRPC 1.15(c) further requires the lawyer to promptly distribute all portions of the property not in dispute. Yet again, since the matching service (not the lawyer) is

5 South Carolina Ethics Opinion 17-06 (2017) (“By basing the advertising charge to the lawyer on the fee collected for the work rather than having a fixed rate per referral or other reasonable cost for the advertisement, a lawyer utilizing this service cannot claim the exception to the prohibition of paying for referrals”); Ohio Ethics Opinion 2016-3 (2016) (The structure of the business model indicates that the fee paid by participating lawyers is not truly advertisement costs. “The Ohio Board previously set forth parameters to distinguish the reasonable amount of advertisement from referral fees as follows: 1) if the lawyer is required to pay an amount of money based on an actual number of people who contact or hire the lawyer, or an amount based on the percentage of the fee obtained from rendering the legal services; 2) if the third party will provide services that go beyond the ministerial function of placing the lawyer’s information into public view; or 3) if the third party will not clarify that the information is an advertisement, but rather, makes the information regarding the lawyer appear as if the third party is referring or recommending the lawyer, or that the lawyer is part of the third party’s services to its users.”); Indiana Ethics Opinion No 1 (2012) (The fee paid to the online service is not a true advertising cost because it is tied to the specific fee paid for legal services rather than the reasonable cost of the advertisements.); Alabama Ethics Opinion RO 2012-01 (2012) (The percentage taken by the website is not based on the reasonable cost of advertising, e.g. traffic to the website.); and Kentucky Ethics Opinion KBA E-429 (2008) (When the online service becomes actively involved in matching or referring clients its fee is no longer for advertising and a lawyer is not permitted to give anything of value for the service.).

6 Participating lawyers cannot adhere to their duties to safeguard client funds, assure reasonableness of the fee, and refund an unearned fee when the nonlawyer online service holds and controls the advanced fee based on terms that it sets. See Ohio Ethics Opinion 2016-3 (2016), Indiana Ethics Opinion No 1 (2012), and Alabama Ethics Opinion RO 2012-01 (2012). Pennsylvania concurs except for 1.5(a) concerns as its ethics rules allow lawyers to participate in for-profit matching services. Pennsylvania Formal Ethics Opinion 2016-200 (2016).

paid the unearned attorney's fee, the lawyer may be barred from discharging the lawyer's obligations under Rule 1.15.⁷

The matching service's control of the unearned attorney's fees raises yet another ethical concern. Under MRPC 1.16 (a)(3), clients may discharge a lawyer with or without cause. Similarly, circumstances require the lawyer to decline or withdraw from the representation in the event of, for example, a conflict of interest or a competence issue. In such cases, the lawyer may have to return the entire fee, including the percentage earmarked for the matching service. MRPC 1.16(d) requires the lawyer to refund any "advance payment of fee that has not been earned." When addressing the coupon-related marketing scheme in RI-366, the Committee opined that:

Under circumstances in which a lawyer must decline a prospective representation generated by the proposed marketing arrangement for any reason, including concerns about competence or conflicts, the lawyer has a duty to refund the entire fee, including the Company's share, to the consumer. Regardless of whether the Company is holding the entire advance fee, or the Company has already transmitted fees to the lawyer, less the Company's share, it is unclear how the lawyer could comply with the obligations of MRPC 1.16(d) if the lawyer must decline a potential representation generated by this type of marketing.

Here, since the matching service (not the lawyer) is paid the unearned attorney's fee, the lawyer may be barred from discharging the lawyer's obligations under Rule 1.16.⁸

Finally, both matching service hold themselves out as legal services organizations based on their naming convention and marketing schemes used to drive legal consumers to their websites. Both matching service provides a "100 percent" personal guarantee about the lawyers' services. MRPC 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of regulating the legal profession in that jurisdiction, or assist another in doing so. This Rule "applies to the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person." Comment to MRPC 5.5(a). MRPC 5.4 (b)-(d) prohibit a lawyer from practicing law in any form with nonlawyers for a profit. Because the matching services hold themselves out as a legal services organizations, participating lawyers are aiding the unauthorized practice of law in violation of MRPC 5.5(a).⁹

⁷ See the references in note 5.

⁸ See the references in note 5.

⁹ See Ohio Ethics Opinion 2016-3 (2016) ("[A] lawyer involved in this type of referral service should verify that the nonlawyers of the company are not engaging in the practice of law, as the lawyer could be responsible for assisting in the unauthorized practice of law."); Pennsylvania Formal Ethics Opinion 2016-200 (2016) ("Participation in such a program could also raise potential concerns regarding assisting in the unauthorized practice of law, in violation of RPC 5.5(a).").

The Committee notes that MRPC 5.3 may also be implicated due to the matching service performing administrative “back office” services traditionally done through the law firm, such as client billing that includes confidential client information.¹⁰

Conclusion

In summary, Michigan lawyers must carefully review the business model structure of these innovative online matching services to determine whether they constitute a for-profit lawyer referral service under the MRPC despite how the matching service depicts its services. Michigan lawyers must further examine whether compliance with any terms for participation prohibit them from ethically meeting their professional duties.

Based on the two business models considered in this Opinion, a Michigan lawyer’s participation in a for-profit online matching service which for a fee matches prospective clients with lawyers constitutes an impermissible sharing of fees with a nonlawyer if the attorney’s fee is paid to and controlled by the nonlawyer and the cost for the matching service is based on a percentage of the attorney’s fee paid for the legal services provided by the lawyer. Therefore, a Michigan lawyer participating in this business model engages in unethical conduct because the lawyer:

1. Violates MRPC 6.3, which prohibits a lawyer from participating in for-profit lawyer referral services.
2. Violates MRPC 5.4, which prohibits a lawyer from sharing fees with a non-lawyer.
3. Violates MRPC 7.2(c), which prohibits a lawyer from giving anything of value to recommend a lawyer’s services unless it is a reasonable payment for advertising the lawyer’s services, the usual charges for a not-for-profit lawyer referral service or payment for the sale of a law practice.
4. Subverts compliance with MRPC 1.15, which requires a lawyer to safeguard legal fees and expenses paid in advance by depositing them into a client trust account until the fee is earned and the expense is incurred.
5. Impedes compliance with MRPC 1.16(d) and its requirement that any unearned prepaid fees and unexpended advances on costs must be refunded.
6. Assists in the unauthorized practice of law in violation of MRPC 5.5(a) to the extent the online service holds itself out as a provider of legal services and guarantees satisfaction.
7. Violates MRPC 5.3, to the extent the conduct of the matching service when performing administrative “back office” services traditionally done through the law firm does not comport with the professional obligations of the lawyer.

¹⁰ See Ohio Ethics Opinion 2016-3 (2016) and Pennsylvania Formal Ethics Opinion 2016-200 (2016).

B

TAB B

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06/06/2018

SBM Solicits Member Comments on Proposed Ethics Advisory Opinion

The growth of online for-profit matching services raises questions about attorney ethics. A proposed advisory opinion by the State Bar of Michigan Professional Ethics Committee concludes that participation in a for-profit online matching service that matches prospective clients with lawyers for a fee is not ethically permissible if the attorney's fee is paid to and controlled by a non-lawyer and the cost for the online matching service is based on a percentage of the attorney's fee paid for the legal services provided by the lawyer.

The [proposed advisory opinion](#) says that a Michigan lawyer participating in this business model:

- Violates Rule 6.3(b), which prohibits a lawyer from participating in for-profit lawyer referral services;
- Violates Rule 5.4, which prohibits a lawyer from sharing fees with a non-lawyer;
- Violates Rule 7.2(c), which prohibits a lawyer from giving anything of value to recommend a lawyer's services unless it is a reasonable payment for advertising the lawyer's services, the usual charges for a not-for-profit lawyer referral service, or payment for the sale of a law practice;
- Subverts compliance with Rule 1.15, which requires a lawyer to safeguard legal fees and expenses paid in advance by depositing them into a client trust account until the fee is earned and the expense is incurred;
- Impedes compliance with Rule 1.16(d) and its requirement that any unearned prepaid fees and unexpended advances on costs must be refunded;
- Assists in the unauthorized practice of law in violation of Rule 5.5(a) to the extent the online service holds itself out as a provider of legal services and guarantees satisfaction; and
- Violates Rule 5.3 to the extent that the conduct of the matching service when performing administrative "back office" services traditionally done through the law firm does not comport with the professional obligations of the lawyer.

As the proposed opinion describes, a number of other states have addressed this issue.

Members of the State Bar of Michigan and the public are encouraged to submit comments on the proposed opinion and on whether the current rules should be modified by filling out an online form located at <https://www.michbar.org/opinions/membercomments>.

Comments should be submitted by July 16. After the period for comment has closed, the State Bar Board of Commissioners will consider whether to approve or modify the opinion.

Background

The [Michigan Rules of Professional Conduct](#) (MRPC) were adopted effective Oct. 1, 1988, by the Michigan Supreme Court. The MRPC comprise the Supreme Court's authoritative statement of a Michigan lawyer's ethical obligations.

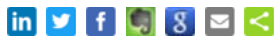
Consistent with its jurisdictional mandate and rules, the [SBM Professional Ethics Committee](#) drafts ethics opinions when requested to do so by the SBM president, the Board of Commissioners, the Representative Assembly, the Attorney Discipline Board, the Attorney Grievance Commission, the SBM executive director, or individual members of the State Bar inquiring about their own contemplated conduct. The committee may also draft opinions on ethical matters its research indicates need clarification or resolution.

Informal advisory ethics opinions, designated with an "RI" before the opinion number, are issued by the committee without review and approval by the Board of Commissioners and are intended to provide informal guidance on the MRPC. Informal advisory opinions must be approved by at least two-thirds of the committee membership.

The committee may also draft proposed formal advisory ethics opinions, designated with an "R" before the opinion number, for consideration by the Board of Commissioners. These proposed formal opinions must be approved by at least two-thirds of the committee membership before they are presented to the Board of Commissioners. Formal advisory ethics opinions are intended to deal with matters of general and substantial interest to the public, address situations which affect a significant number of members of the Bar, or modify or reverse prior formal opinions. The Board of Commissioners may approve or modify the proposed formal opinion and direct its release as an informal or formal advisory ethics opinion, or it may reject the opinion and direct that no opinion be issued on

the matter.

Neither informal opinions of the SBM Professional Ethics Committee nor formal advisory ethics opinions have the force and effect of law. They provide guidance only and may not be relied upon as an absolute defense to a charge of ethical misconduct.



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C

TAB C

Comments on R-25 Proposed Ethics Opinion

Robert L. Hood (P15103)

Agreed 100%

Lee A. Stevens (P29285)

I support the proposed ethics opinion concerning on line referrals by non-lawyer for profit entities. I agree it is unethical for a lawyer to “buy” client/cases via the method in question.

Henry S. Gornbein (P14210)

I agree with this. We are inundated with these adds and calls on a daily basis. It is out of control and anything that can be done to manage and limit this is critical.

David Brunckhurst (P62240)

I agree with the proposal; and would suggest such practice is more than reflected in the bullet addressing “Assists...” (re: Rule 5.5(a)) as it is more collaboration/collusion in my opinion.

Marcia E. Femrite (P33407)

Yes, adopt.

Kevin O’Neill (P36377)

You people have too much time on your hands. You don't practice law or understand the practice. Stay out of our lives. That is a bad proposal.

David Porada (P68853)

I agree with stopping unlicensed practice of law but these programs may help reduce the monopoly that some firms have on referrals through advertisements. This is a problem for small firms who have to make arrangements with the Feigers or Bernsteins just to have the cases necessary to practice law.

Currently those firms are operating in the same manner as these systems that compete to remove a big piece of the referenced firms' revenues. The current system leads to the revenue that could get a person elected to the Supreme Court of Michigan.

On the topic of unlicensed practice of law. Please focus more attention on CPA firms and Real Estate Agencies. They are often blatant violators, and it cannot be under the radar of the Bar.

Of course these are just my opinions but please do not use the ability to create Ethics Opinions as a sword to defend the existing problems with practicing law in our state. Said computer programs may actually give true access to justice so long as attorneys are performing the work.

Lawrence Charfoos (P11799)

Not only is this a necessary resolution of this impropriety, but please also examine the for profit lawyer rating services eg Best Lawyer, Super Lawyer etc.

Rick Halpert (P22772)

I wholeheartedly agree with the opinion.

Kevin Francart (P60431)

I agree with the proposed opinion.

Christopher Hurlburt (P60588)

I agree with the proposed advisory opinion.

Chris McKenney (P17473)

I support the proposed advisory opinion.

Thomas Zaremba (P26919)

I strongly agree with the advisory opinion. The for-profit online matching service is running a for-profit referral for a percentage fee and without any of the consumer protections that should be available. It is skimming the client's dollars, pure and simple, and without any assurance to the public that the attorney will be well-suited to the client's needs. These "referral" services want to become the Uberizers of the legal profession, wherein all of the risk would stay with the client or attorney and a large chunk of revenue would be "extracted" by the referral service for doing next to nothing and for providing no assurance of quality to the client.

Cass Singer (P33113)

The Proposed Opinion appears well reasoned. I fully support its issuance and firmly oppose any amendment of MRPC to permit attorney participation in the so-called "services" identified in the Proposed Opinion.

John Gustincic (P57965)

I fully support Proposed Ethics Advisory Opinion R-25. For-profit online matching services may be perceived by the public as possessing legal knowledge and/or expertise, which is both erodes the legal profession and infringes upon the attorney-client relationship (fee structures, etc.). The practice of law must remain independent of relationships which arguably place the profession subservient to for-profit marketing (matching) companies.

Patrick Cafferty (P35613)

I agree with the proposed advisory opinion.

Steve Parks (P35147)

I can only say that there is a real need to encourage such paid services. My two experiences in attempting to deal with personnel at the free service operated by the MSB was like dealing with the Nazi Gestapo. Merely suggest that you would like to interview the attorney they recommend, and the response literally and instantly was "Thank you then, good by." If you question a word they say, they refuse to help you. Arrogance in the extreme. We need competition among such services to be effective, and much easier rules governing the firing of civil servants.

Robert Golden (P14108)

Lawyer referral services are becoming more active in contacting attorneys. Some charge an up-front fee while others take a percentage of the recovery. Steps should be taken not to just issue an ethics opinion, but take the effort to require these firms to be registered and their fee structure stated.

Carolyn Madden (72539)

Violates Rule 6.3(b), which prohibits a lawyer from participating in for-profit lawyer referral services;
Violates Rule 5.4, which prohibits a lawyer from sharing fees with a non-lawyer

I have a sense that these rules favor those who already have clients and/or are part of the legal community. New lawyers with little or no connections would benefit from referral services. I also feel that second violation does not reflect the current need of lawyers and psychologists for example to work closely or lawyers and other professionals. I believe the Ethics Committee could come up with a set of guidelines to make all of this clear and to make all of this ethical. If one of the fears is that the lawyers would pass on the legal fee to their clients, I don't see how this is different from larger firms and those firms with beautiful offices, passing on the fee to their clients. I would like to see an open discussion of these ethics changes and I would like the Bar to be open to the current lifestyle of young and struggling lawyers.

Sherry A. Wells (P26699)

The part about percentages is definitely wrong. I analogize to handling probate estate matters based on a percentage, which went out of Michigan practice a long time ago. In contrast to injury cases, where there is a risk of losing, and winning cases permit a lawyer to handle ones that are riskier, to the benefit of clients, this service takes no risk. I trust my colleagues to ring in on other aspects.

Andrea Olivos-Kah (P60322)

I completely agree with the advisory opinion of the State Bar of Michigan Professional Ethics Committee.

Sam Morgan (P36694)

I agree with the opinion. There is a problem in our profession of "finders" expecting to receive a kick-back of some portion of the fee earned by the attorney without disclosure and consent of the

client - and not just from contingent fee plaintiffs cases. It is unbelievable that so many lawyers who refer hourly matters to lawyers with expertise make their referral decisions based on the referral fee they can receive, and don't know or disagree that the referral fee must be disclosed and approved by the client.

Jacob Tighe (P78151)

I am really torn on this issue. On the one hand, I do not feel that it is appropriate for the Bar to be trying to regulate private businesses or controlling with whom a lawyer shares a fee. Ideally, the MRPCs involving those issues should be trimmed down or eliminated entirely.

On the other hand, there are a lot of scam-companies out there taking advantage of lawyers. Companies like Nolo and Avvo, which sell (often bogus) leads in exchange for money, should be shut down. Not only are they ripping off lawyers who don't know any better, but they are tricking consumers into becoming leads. A consumer who visits a Nolo website, for example, will get a pop-up asking them if they need any help. If the consumer types their question into the popup, it turns into a lead and gets forwarded to a lawyer. The consumer didn't know they were signing up to become a lead and get contact by a lawyer, and the lawyer doesn't know that the consumer wasn't looking for a lawyer. In the end, the lawyer wasted some time, the consumer got frustrated, and Nolo got \$30.

While the Bar should not be interfering in how a lawyer runs a business or handles an already-paid fee, the Bar probably should be interfering in order to protect consumers from companies like Nolo or Avvo.

Edward Mijak (P17706)

I favor the proposal.

Christopher Hastings (P40861)

I support Proposed Ethics Advisory Opinion R-25. We are in times where new business models will challenge our bedrock ethical principles, including independence and devotion to the interests of our client and justice. The proposed opinion offers much-needed guidance.

Robert Wetzel (P45361)

The for-profit online matching services obviously constitute impermissible fee-splitting with non-lawyers, improper payment for channeling/generating professional work, and fail to follow clear and direct ethics rules for safeguarding client funds. Lawyers should be ethically prohibited from participating in such enterprises.

Allison Reuter (P58743)

I believe that attorneys should be able to use online services for a fee. In looking to obtain extra income to help pay off student loans, other professionals are able to find contract work through these online services, leaving attorneys without the same chance. The state should come up with

ways that this can be done since this is the technological age we are in. We need to get with the times.

David Lawrence (P48630)

I strongly agree with the proposed Advisory Opinion

Richard Guilford (14463)

As explained in the State Bar post, the opinion seems very much in line with traditional ethical guidelines. However, the future will not be kind to practicing lawyers if we ignore the vast demand for legal information, perhaps as opposed to advice, which goes unanswered because of price. We are trained and licensed as surgeons, while much of the demand is for applying band-aids.

There is a need, and the solution will probably come from the legislature, not the State Bar, for re-thinking classifications of legal assistance to create places where lesser-trained people (and robots) can provide such information and assistance. Until the State Bar leads the effort in that direction, stop-gap efforts such as the path proposed by the ethics opinion will lead down a blind alley to the detriment of the profession.

It seems in our best interest to define our future ourselves rather than allow the legislature to do it.

Kay Randolph-Back (P26246)

I support the proposed advisory opinion about online matching services.

Jared Hautamaki (P82307)

I do not disagree with the language of the proposed advisory opinion. However, I would urge the Bar to look at the recent State Bar of Arizona Find-A-Lawyer model as model the State Bar of Michigan should seek to avoid itself. The State Bar of Arizona recently offered to list licensed attorneys for pro bono work, but if attorneys wished to be matched with paying clients, attorneys would need to pay \$300 a year to be included in those search results. I believe that the Arizona model violates the Arizona State bars own ethics rules, restricts competition for search services and unnecessarily increases costs on potential clients. I would urge the State Bar of Michigan to maintain vigilance but also be open minded to the technological changes and improvements that the private market can provide to legal search functions for members of the public.

Joseph Carrier (P45172)

The proposed opinion looks fine. The last thing Michigan lawyers need is a for-profit service lining up potential clients for the lawyers. The public is already bombarded with personal injury lawyer advertisements on TV, radio and billboards, and ramping up more advertisements with the new for-profit service will not improve anything.

Steve Garris (P56372)

I agree with the proposed opinion.

Thomas Stotz (P33290)

I fully support the advisory opinion.

Gerard Andree (P25497)

I agree with the proposed ethics rule, as submitted.

Philip Green (P14316)

It is high time. Frankly, it doesn't go far enough. I think the practice this rule

Jay R. Drick (P25989)

I agree with the opinion to make these violations of ethics, please protect the public.

Terry Klaasen (P16024)

There should be no change in the present posture of the State Bar.

Steven Dulan (P54914)

I support the conclusion of the proposed opinion. I would go further and include a prohibition on any matching services that have any direct influence on fees charged by an attorney. About 20 years ago, I was contacted by a referral service who said that I would promise to reduce my hourly rate by 20% (or thereabouts). The phone rep from the service said, "...and we don't ask what your actual rates are, if you get my drift" (or similar words). The clear implication of the call was that I should either raise my rate across the board, or lie to the members of the service who called me about what my normal rate was versus what they would be paying with their "discount." Needless to say, I did not enroll with the matching service. At this point, I cannot recall the name of the service. I doubt they are still in business.

Robert Farnette (P13304)

I believe the proposed opinion is spot on.

Becket J. Jones (P75050)

Thank you for typing this up. Have argued about this over the phone with solicitors for a few years.

Gregory Marler (P42958)

I agree with the overall approach/opinion of the Committee. There are plenty of other resources and avenues for potential clients to identify and locate appropriate attorneys for their legal needs so that eliminating these for-profit matchmaker firms should not harm the public. We should be sure to advertise and disseminate info about State Bar resources and tools to identify and locate

appropriate attorneys and to otherwise make sure that people in need of legal services have a good idea where to turn and how to proceed when hiring a lawyer.

Lori Buiteweg (P44120)

I am concerned that for-profit online matching services provided by non-lawyers would harm the public. Have you ever needed to find an attorney for a member of the public? Think about what you do to insure you help that person find the attorney(s) who *best* meet the person's particular needs. You might listen to the person's problem, ask legally relevant questions, including, for example: whether the person is more inclined to mediate than litigate; the county, judge and opposing counsel involved in the matter; facts that would help you as an attorney get an idea of how viable the person's potential case is and whether the person's problem can even be solved in a legal forum versus another avenue; and what kind of financial resources the person has to pay an attorney. Such questions help us select the best referrals for that person. Without a legal education and experience practicing law, it seems like there would be many cases where the non-lawyer entity would make the match and get paid for the referral, but the quality of the referral is poor, perhaps based solely on the attorney's self-identified practice areas and whether the attorney will pay the referral fee. If a for-profit matching service controlled by a non-lawyer were determined to be ethically permissible, it would seem appropriate to me to statutorily or via licensing regulations apply all lawyer ethics rules to that service and regulate that service as if it were lawyer-controlled.

James Geary (P13892)

Please adopt the proposed opinion.

Stephan M. Gaus (P28943)

I am in favor of the opinion.

John B. Lizza (P16741)

I agree whole-heartedly with the advisory opinion and it should be more than advisory.

Steven Balagna (P33230)

I agree with the proposed conclusion that it is not ethically permissible. I agree that the rules should be enforced to discontinue the practice of for-profit online matching.

Trevor Gasper (76134)

I agree with and support the proposed ethics advisory opinion. Without a modification of the Rules of Professional Conduct, matching services/shared fees is not ethically permissible. Moreover, this type of arrangement continues the trend of turning an attorney into a commodity that our profession should always strive to be above.

Julie Hiotaky (P54285)

If the service provided by the attorney is a one-time service (will, DBA, etc) for a flat fee and the referral service takes a fee for the referral, I think that is ok so long as all parties understand that the referral service takes a fee from the amount paid by the client and the attorney receives the rest for services provided.

I do not think it is ethical for a referral service to collect an hourly fee from a client, hold those funds and then take a percentage of the funds paid out of the client money to the attorney. I would be ok for a one-time fee to be paid to the referral service by the attorney for the referral, provided the client decides to enter into a contract with the attorney for services, but not for an ongoing percentage of fees or awards collected from or on behalf of the client.

Thomas Machowski (P28349)

I am in favor of limiting attorney's access to advertising. It is out of control and many of the ads, in my opinion, go beyond what is reasonable and in cases are misleading.

Richard Palmer (P25945)

I agree with the proposed advisory opinion and the reasons provided for it.

John Weslowski (P26754)

The matched lawyer's use of his/her own independent judgment is regulated by the rules of professional ethics, and should be subject, perhaps, only to supervision and influence by another lawyer him/herself also subject to those same rules of professional ethics. In fact, some states, such as New York (Wieder v. Skala, 80 NY2d 628), import into lawyer-to-lawyer employment contracts an implied duty that commands or restrictions by the hiring/supervising attorney on the supervised attorney may not contravene the rules of ethics, without also contravening the attorney-employment contract itself. Such arrangement ensures that the quality of service to the client served by the hired/supervised attorney is not thwarted by intrusion of interests of the supervising/hiring attorney incompatible with and immune from discipline. Follow the money, follow the "golden rule"- whoever pays the gold makes the rules. Matchmakers not legally subject to discipline and presumably not trained in or tested as to their ethical duties to courts and clients should not be allowed to insert themselves into the attorney-client relationship.

Jeff Paulsen (P35758)

While I fully support the opinion as written as it is compliance with the existing Michigan Rules of Professional Conduct, I believe that a complete review of the rules is appropriate in light of the current and likely future trend of non-lawyer organizations trying to profit by providing legal services. I believe the focus of all MRPC's should be the protection of the public and stopping the unauthorized practice of law. With proper oversight and pre-approval from the SBM, I can envision where a for-profit referral service which permits the sharing of fees with non-lawyers will provide benefits to the public which are not currently available. Irrespective of the type or structure of an organization, whether it be a law firm, corporation or another for-profit enterprise, a lawyer is and should always be responsible for his/her own professional judgment, which should include the recommended scope of the lawyer-client relationship. I am less concerned with who holds the client funds as the consumers of legal services already provide pre-payments and advance fees to others

through PayPal and other portal payment services. I am also less concerned as to how the fees are shared as this should be an economic decision of the involved parties and does not mean that the lawyer is not subject to his/her confidentiality, professional ethics and professional judgment responsibilities.

Edwin W. Jakeway (P15424)

Please permit this letter to support adoption of the proposed advisory opinion by the Ethics Committee. I fear that for-profit online matching service will be a direct solicitation of persons involved in auto and other accidents. I appreciate the quick responses by the Professional Ethics Committee.

Edward Henneke (P14873)

In reviewing the summary of the changes, I wholeheartedly endorse the proposed advisory opinion.

Chris Campbell (P25247)

I support the proposed opinion. The traditional distinction of a profession was its self-governing nature, a characteristic that our State Bar preserves. The practice of law is not just another business. We handle matters of personal and business importance for others in confidence, an activity that requires a high degree of probity and independence of judgment.

Turning legal advice & counsel into just another commercial commodity threatens our independence as a profession and our status as confidential and independent counselors. A number of years ago I decided to stop laughing politely at lawyer jokes. Most of them are mean-spirited and most are inconsistent with the behaviors that I see in competent practitioners all the time. So I use the occasion to do some gentle teaching about why it's not funny. Good humor must have some relationship to truth to be effective and most of these jokes are more closely related to stereotypes than to truth.

So yes, let's resist commercialization of our services and preserve some dignity and independence for our profession.

Randall Miller (P47679)

While it is clear that a non-attorney cannot collect attorney fees, I do not see why a lawyer, who by owning a matching service gathers clients and refers them to other lawyers, is in violation of anything. As attorneys, we are entitled to collect referral fees between ourselves, so why limit a for profit attorney owned entity?

Steve Gobbo (P56521)

First, I agree with the logic and analysis in the proposed advisory opinion that the business models presented for online matching service of prospective clients with lawyers for a fee is not ethically permissible.

I do not know if the Professional Ethics Committee considered MRPC 1.6 and 5.7, and it seems

these rules, along with others concerning communications with potential clients and confidentiality or use of an "agent," may have some bearing. This is particularly the case in the model where the fee is held by the service until the lawyer performing the service has concluded the engagement or where there is a need for the lawyer to communicate with the third-party service to convince release of funds if the client communicates with the service provider that work was not performed or was unacceptable.

As public policy concern, there is also a potential risk under either of the two models that the SBM may see claims filed against the Client Protection Fund if a refund or other resolution does not occur from the lawyer or the service to the satisfaction of the client. It is clear the service provider would not be subject to direct licensing and regulation by the SBM so actions of the service provider (as an agent of the lawyer) may be imputed to the involved lawyer(s). Hence, implicating the lawyers(s) and a possible claim to the Fund.

Dean Googasian (P53995)

I support the proposed advisory opinion.

Stan Smith (not an SBM member)

Perhaps read your State Bar website Zeekbeek does not recommend or provide an opinion as to whether a lawyer is a "good" lawyer or "suitable" for your needs – instead we provide accurate information about the lawyer's experience, credentials and background so that you can make an informed decision when you need a lawyer. Zeekbeek is owned and operated by CloudLaw, Inc. CloudLaw was founded in 2012 by a group of lawyers and web developers with over 150 years of cumulative legal and technical experience. Questions? Please visit our Help Center or contact us at support@zeekbeek.com.

Michael Meyer (P78101)

As a practicing attorney who has considered solo practice, I agree with Proposed Ethics Advisory Opinion R-25. Not only is it unethical for lawyers to share fees with these online matching services, the services themselves exploit attorneys through misleading promises and exploit clients by matching them with attorneys who are not experienced in their field of practice. We have a problem in the State of Michigan that reflects a problem nationwide. There are tens of thousands of Michiganders who are working class or middle class who need legal services, but cannot afford them. The State Bar and the established law firms in the state should be working together to alleviate this problem. Potential clients need to be able to reliably find affordable attorneys, and attorneys who wish to represent middle class and working class clients need logistical support to provide legal services and make a decent living. I firmly believe that technology can be a solution, but it needs to be led by the legal community. These for-profit online matching services charge exorbitant fees to new solo attorneys who are having a hard time finding clients, and they make a lot of promises of available clients that do not appear. They are putting the solo attorneys at a higher risk of business failure and bankruptcy and are collecting confidential information from potential clients. These for-profit online matching services also promise to clients that they will find an attorney who can handle their case. It is not clear to me that the services have any capability of or interest in vetting the ability or experience of attorneys in the offered subject matters. They do not provide any logistical support to inexperienced solo attorneys other than charging them huge fees to "match" them with clients.

Partnering with these companies rightly should put attorneys at risk of ethical violations, and the State Bar needs to do everything in its power to ensure that these companies are not allowed to operate in our state. They don't help attorneys. They don't help clients. They are engaged in unauthorized fee sharing. Their exploitative business model should also be prohibited by law, and I hope the State Bar would be interested in partnering with Michigan lawmakers to pass legislation prohibiting these companies from operating in our state.

John Evanchek (P66157)

This opinion flies directly in the face of the 2016 report from the ABA concerning the future of legal services. Instead of doing what we have always done which is attempt to resist change and stamp it out to continue the death spiral monopoly on law services, we should be embracing this kind of innovation. By essentially barring this kind of innovation we are harming the legal profession as a whole and the countless clients that both want and need legal services. According to the 2016 ABA report I referenced above almost 50% of legal needs go unmet (and that 50% is not indigent criminal clients it is increasing middle class people that have the money to afford an attorney for their needs). In any other industry there would be countless companies fighting over each other to fill that void, but not in our profession. It's the opposite. We ignore that void and focus on a decreasing number of clients that can afford our services. Until we are able to change the public's perception that attorneys are only for affluent people and beyond the reach of the ordinary individual, services like these are going to continue to exist and continue to innovate to reach that 50% market share. Instead of prohibiting this type of service, does it not make more sense to amend our rules of professional conduct to allow and/or regulate this kind of service? This kind of service can help small and mid-sized firms reach clients that they ordinarily would be unable to reach without a huge advertising budget and help them with matters that either would go unaddressed or the client would attempt to do themselves and cause a small problem to become a much bigger one. Is that not the goal of the state bar? To regulate and promote the practice of law? To help deliver a quality product to clients? To answer the reader's question I do not nor has my firm ever utilized this service in question, my opinions are my own and do not reflect those of my entire office.

Kenneth Mogill (P17865)

See attached letter for full comment

Tom Gordon, Executive Director

Responsive Law (not an SBM member)

See attached letter for full comment

July 16, 2018

Via email only to r25ethics@michbar.org

R-25 Ethics
State Bar of Michigan
306 Townsend
Lansing MI 48933

re: Proposed R-25

Dear Fellow Bar Members:

For the reasons detailed below, I respectfully submit that MRPC 6.3(b) does not prohibit Michigan lawyers from participating in for-profit legal referral services and that the remainder of proposed R-25 should be re-examined with this understanding in mind.

Proposed R-25 is premised on reading Rule 6.3(b) as barring Michigan lawyers' participation in for-profit legal referral services. However, a close look at the language of the rule leads to the conclusion that it does not prohibit such participation. Moreover, even if the current rule did prohibit such participation, it would be a highly suspect limitation on lawyers' commercial Free Speech rights. I further believe that the Bar can best protect the public and assist lawyers who seek ethically to promote their businesses by embracing and reasonably regulating their participation in legitimate for-profit legal referral services.

MRPC 6.3(b) provides in relevant part that a "lawyer may participate in and pay the usual charges of a not-for-profit lawyer referral service that recommends legal services to the public" provided that five enumerated conditions are met. The rule is silent as to a lawyer's participation in a for-profit legal referral service. Given this silence, I believe that the rule cannot reasonably be read to prohibit lawyers' participation in for-profit legal referral services.

In RI-340 (2007), the Committee on Professional Ethics at least suggested the same reading of the rule:

Standing alone, Rule 6.3(b) contains no prohibitions, only a limited permission. MRPC 7.2(c) begins with a prohibition against giving something of value for a recommendation for services, followed by exceptions. Merely because the exception states that a lawyer may participate in a not-for-profit referral service does not require us to conclude that participation in a for-profit referral arrangement, or a referral service that did not meet the standards of MRPC 6.3(b), in and of itself would violate

a prohibition against “giving something of value” for a recommendation.

With respect to the potential constitutional infirmity of a ban on participation in for-profit referral services, the following language from RI-223 (1995) is also noteworthy:

. . . The “for-profit/not-for-profit” distinction is not without its own constitutional dimensions. The distinction retained by MRPC 6.3(b) and 7.2(c)(ii) is a hold-over from the former Michigan Code of Professional Responsibility DR 2-103(D)(4)(a). Some commentators have observed that the distinction between for-profit and non-profit plans was probably objectionable on First Amendment, equal protection and right to counsel grounds.

If anything, the constitutionality of a ban on lawyers’ participation in a for-profit legal referral service has become more questionable in the intervening decades. Consider, *e.g.*, *Janus v AFSCME, Council 31*, 138 S Ct 2448 (2018). Consider also *North Carolina State Board of Dental Examiners v FTC*, 135 S Ct 1101 (2015).

To me, reading Rule 6.3(b) to prohibit a lawyer’s participation in a for-profit legal referral service is akin to the profession’s long since discredited prohibition of lawyer advertising, which the Supreme Court struck down in a series of decisions between *Bates v State Bar of Arizona*, 433 US 350 (1977), and *Shapero v Kentucky Bar Association*, 486 US 466 (1988). As Justice Blackmun noted for the Court in *Bates*, prohibitions against lawyer advertising grow more out of concerns for etiquette than ethics. 433 US at 71. This observation is equally applicable to aversion to lawyers’ participation in for-profit legal referral services.

Most importantly, regardless of whether a ban on lawyers’ participation in for-profit legal referral services would be unconstitutional, it would be bad policy in today’s world:

- The State Bar recently noted in a flyer available at the front desk of the Bar’s offices that “76% of consumers search online to locate and hire legal professionals”. That figure is only likely to increase in the coming years. To an individual in need of legal services who is unfamiliar with the relative qualifications and availability of different lawyers, what matters is the nature of the information available online, not whether it comes from a lawyer’s website, a not-for-profit legal referral service or a for-profit legal referral service. A lawyer’s payment of a reasonable fee to such a service is not an inherently unethical act.

- For-profit legal referral services advertising themselves as lawyer matching services have become well-established businesses that are here to stay and that, in many cases, provide a valuable service to the public at a reasonable price. To me, the interests of the Bar are best served by working with these services and reasonably regulating lawyers’ participation in

them. Attempting to prohibit lawyers from participating in these services is already futile and ultimately counter-productive.

- The proposed opinion appropriately identifies other concerns with the logistics of the two businesses whose specific models are addressed. It is important to examine these concerns carefully. I respectfully submit that if the overriding question of a lawyer's participation in a for-profit legal referral service is viewed as permissible rather than impermissible, these other concerns may well be viewed significantly differently, which may, in turn, lead to reconsideration of how that participation relates to the application of other rules. For example, we may well want to take a fresh look at what constitutes "advertising or communication", Rule 7.2(c)(i), and re-examine whether the phrase warrants a broader interpretation. We may also want to re-examine the relationship between Rule 5.4(a)'s ban on sharing legal fees with a non-lawyer except in enumerated circumstances and the language of Rule 7.2(c)(i) permitting a lawyer to pay "the reasonable cost of advertising or communication".

- Apart from legitimate businesses reasonably serving the needs of the public and the Bar, some businesses use inappropriate means to secure business for lawyers and unjustified fees for themselves. In the present environment in which both legitimate and unscrupulous businesses operate without clarity as to the applicable rules, the Attorney Grievance Commission is somewhat hamstrung in trying to distinguish between businesses as to which lawyers' participation presents no ethics problem and those as to which lawyers' participation warrants investigation and possible prosecution. Clarifying the regulatory environment will, for this reason, significantly assist the Commission in carrying out its mission to protect the public.

Thank you in advance for your consideration of these views.

Sincerely,



Kenneth M. Mogill

Testimony on: Responsive Law Comments on Proposed Ethics Advisory Opinion R-25

Tom Gordon
Executive Director,
Responsive Law

Testimony to the
**State Bar of Michigan
Professional Ethics
Committee**

July 16, 2018

Responsive Law thanks the Committee for the opportunity to present these comments on proposed Ethics Advisory Opinion R-25, concerning “online for-profit matching services.” Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers.

The Justice Gap in the United States Extends from the Poorest Americans Across the Middle Class, with a Fixed Demand for Legal Services and an Inaccessible Supply.

In the World Justice Project 2017-2018 report, the United States currently ranks 94th out of 113 countries (tied with Cameroon, Uganda, and Zambia) in its lack of affordability and accessibility in the civil justice system.¹ Americans cannot afford to pay lawyers for assistance with everyday legal needs even though about fifty to sixty percent of low- and moderate-income American households face an average of two significant legal problems in a year. More Americans do not address their legal problems due to lack of access to justice than their peers in countries such as England and the Netherlands, where there are fewer restriction on how legal services can be offered.² Small businesses also struggle with the gap in access to justice, with nearly sixty percent facing legal problems without legal

¹ World Justice Project, *WJP Rule of Law Index 2017-2018* (2018), available at https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf.

² Gillian K. Hadfield & Jamie Heine, *Life in the Law—Thick World: The Legal Resource Landscape for Ordinary Americans in Beyond Elite Law: Access to Civil Justice for Americans of Average Means* (Samuel Estreicher & Joy Radice eds., 2015).

assistance.³ Lawyer participation in innovative legal services can be key to bridging the justice gap by expanding accessibility.

One of the barriers to making this happen is overly broad interpretations of the Rules of Professional Conduct. While lawyer-regulators such as the State Bar of Michigan must interpret and enforce the Rules to protect the public, they also must ensure that its positions don't frustrate this purpose by keeping attorneys from offering innovative legal services to the public. The 2016 ABA Commission on the Future of Legal Services expanded on this point, noting that a limited regulatory environment is key for innovation:

"The unnecessary regulation of new kinds of LSP [legal service provider] entities could chill additional innovation, because potential entrants into the market may be less inclined to develop a new service if the regulatory regime is unduly restrictive or requires unnecessarily expensive forms of compliance."⁴

Unfortunately, proposed opinion R-25 does precisely this, creating a more complicated regulatory environment that is likely to chill Michigan attorneys' desire to offer innovative legal services to the public. It does not take into account the vast consumer need, nor does it consider input from consumers on what they are looking for in legal services. And what's more, it does not reflect an open, transparent process of seeking evidence of a need for this type of regulation prior to taking action. For these reasons, and as discussed in more detail below, **we urge the Committee to reconsider, and either withdraw R-25 or revise it to allow attorney participation in such services.**

Ethics Opinions Regarding the Rules of Professional Conduct Must Take Into Account Actual Concern for Consumer and Client Protection.

There is a laudable reason for the Michigan Bar to offer ethics opinions: these resources provide a means for conscientious

³ LegalShield, *Decision Analyst Survey: The Legal Needs of Small Business* (2013), available at https://www.legalshield.com/sites/default/files/Legal%20Needs%20of%20American%20Families_0.pdf.

⁴ American Bar Association Commission on the Future of Legal Services; Report on the Future of Legal Services in the United States. (2016)

attorneys to ensure they are meeting their obligations to clients, courts, and the public. Ethics opinions are, by design, conservative. They offer safe harbors, often far back from the edges of a rule, in which lawyers can feel comfort in compliance.

While this is a good thing when it comes to matters such as lawyer substance abuse problems and keeping client confidences, this approach to ethics opinions works poorly with those Rules dealing with attorney advertising and business development. Both antitrust law and the First Amendment dictate that rules regulating attorney advertising be far more circumscribed than most other rules. For while the public benefits from “over-compliance” on matters related to their money and confidences, the same cannot be said for attorney advertising and business development. There is an inevitable tension between the cautionary approach of most ethics opinions—which look at the language in the existing rules and apply that language conservatively—and the public interest in access to legal information and legal services.⁵

Antitrust Law Dictates That the Michigan Bar Ensure That the Pro-Consumer Benefits of Regulation Outweigh the Costs.

In years past, the State Bar of Michigan may have had the luxury of not needing to concern itself with the Sherman Act antitrust implications of its actions. But those days are no more. Thanks to the 2015 U.S. Supreme Court decision in *North Carolina Dental Board v. FTC*, the Bar can lose its state action antitrust immunity for anti-competitive determinations.⁶ What’s more, this potential liability carries through not only to the Bar as an entity, but also to each of the individual members of the Board and the Ethics Committee who make these determinations.

⁵ The Supreme Court recently addressed the chilling impact of advisory opinions: “When the FEC issues advisory opinions that prohibit speech, “[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas.” Consequently, “the censor’s determination may in practice be final.” [citations omitted]. [Citizens United v. Federal Election Commission](#), 588 U.S. 310 (2010).

⁶ [North Carolina State Board of Dental Examiners v. FTC](#), 135 S. Ct. 1101 (2015).

In this case, the Professional Ethics Committee—which is comprised of market participants—has issued an ethics opinion that limits competition. R-25 chills the propensity of other members of the Bar to offer legal services to the public through innovative new online service offerings. And by so doing it also limits the ability of those offering such services to compete in the Michigan legal marketplace against the Bar’s own lawyer referral service. It doesn’t matter that the Committee’s opinions are “advisory” in nature; as the U.S. Supreme Court has held, even ethics opinions from *voluntary* bar associations can suffice to make out antitrust claims.⁷ The State Bar of Michigan should also be aware that the Florida State Bar is currently facing a lawsuit for Sherman Act antitrust violations, based largely upon an advisory ethics opinion similar in many respects to R-25.⁸

This is not to say that the Bar is foreclosed from taking actions such as this. But it cannot do so reflexively. It must do so out of a documented need to protect the public. If the Bar wants to avoid liability, it must be able to make an evidence-based showing that the public protection, pro-competitive justifications for its restrictions outweigh the anticompetitive effects.⁹ As there does not appear to have been an open and transparent administrative rulemaking process leading up to R-25, and as the opinion itself contains no evidence of the need for such restrictive interpretation of the Rules, we don’t see how the Bar can do this.¹⁰

*The Rules of Professional Conduct Relating to Attorney Advertising
Must be Interpreted Consistently with the First Amendment.*

There are also critically important First Amendment principles that appear to have gone unheeded in the proposed opinion. Michigan’s

⁷ See [Goldfarb v. Virginia State Bar](#), 421 U.S. 773, 781-82 (1975).

⁸ [Tikd Services, LLC v. Florida State Bar](#), Case 1:17-cv-24103 (SD-Fla, filed Nov. 8, 2017).

⁹ [California Dental Assn v. FTC](#), 526 U.S. 756 (1999).

¹⁰ The Bar can also still enjoy its state action antitrust immunity if its action is “actively supervised” by the state. Such supervision would require, at a minimum, that the Michigan Supreme Court review, *de novo*, any opinion issued by the Bar to ensure that the opinion promotes state policy. Such review would also need to include the sort of transparency, openness, and seeking of evidence prior to taking action that is associated with administrative law rulemaking proceedings. [North Carolina State Board of Dental Examiners](#), 135 S. Ct. at 1116.

Rules of Professional Conduct with respect to attorney advertising are fundamentally rules of consumer and client protection. They are intended to lead to outcomes where consumers are not deceived and clients are not harmed. This purpose is both intuitive and required by law. Starting in 1977 and continuing through a string of subsequent decisions, the United States Supreme Court has found that the First Amendment protects the right of the public to be informed by attorneys about legal service offerings.¹¹

The Supreme Court focused closely on this important public interest, when first freeing up attorney advertising in *Bates v. Arizona*:

“[T]he consumer’s concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue. Moreover, significant societal interests are served by such speech. Advertising, though entirely commercial, may often carry information of import to significant issues of the day. And commercial speech serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system. In short, such speech serves individual and societal interests in assuring informed and reliable decision-making.”¹²

This doesn’t mean that attorneys have an unfettered right to advertise in any way they desire. But it does mean that the protection of these important Constitutional interests requires the state to carry the burden of showing any restrictions on lawyer advertising to be both necessary and no more extensive than required to prevent the harm in question.¹³

¹¹ See, e.g., [Bates v. State Bar of Arizona](#), 433 U.S. 350 (1977); [Shapero v. Kentucky Bar Association](#), 486 U.S. 466 (1988); [Florida Bar v. Went For It, Inc.](#), 515 U.S. 618 (1995).

¹² [Bates v. State Bar of Arizona](#), 433 U.S. 350, 364 (1977) (internal citations removed.)

¹³ [Central Hudson Gas & Electric Corp. v. Public Service Comm. of New York](#), 447 U.S. 557 (1980). This is what’s known as the “intermediate scrutiny” standard for regulation of misleading advertising. There is also a developing form of even-more-rigorous scrutiny for restrictions on non-misleading advertising. This test has been described as occupying a middle ground between “intermediate” and “strict” scrutiny. See [Sorrell v. IMS Health](#), 564

For Michigan’s attorney advertising rules, the “necessity” is the protection of the public from false and deceptive practices in the selling of legal services. But to meet the *Central Hudson* “intermediate scrutiny” requirements, such regulation must be enacted with this purpose in mind, must be supported by evidence that the harm is real and the application actually works, and must not be any more extensive than necessary to achieve the goal. As discussed below, any interpretation of the Rules by the Bar via an ethics opinion must be undertaken with these Constitutional constraints in mind—and, in several important respects, R-25 fails on this count.

The Proposed Ethics Opinion Goes Far Beyond the First Amendment and Competition Law Boundaries of the Bar’s Regulatory Authority in Finding That Online Legal Matching Services Violate the Michigan Rules of Professional Conduct.

The Services Described Are Not the Types of “Lawyer Referral Services” Prohibited Under Michigan’s Rules That May Cause Consumer Harm.

As attorneys have a constitutional right to advertise—and consumers have a constitutional right to access information about legal services—what purpose is served by an attorney advertising rule prohibiting participation in for-profit lawyer referral services (as MRPC 6.3(b) does)? It must be due to some special risk to consumers from such services. And, to have any chance of meeting the requirements of the First Amendment—and competition law—such a restriction must only be applied narrowly, in instances where evidence shows such a restriction is necessary to protect the public.

The ABA’s review of lawyer referral services comes closest to homing in on the narrow consumer protection interest at play when it comes to special regulation in this area:

“This debate reveals that the defining characteristic of a lawyer referral service is generally understood, if not explicitly described in court rules, as the use of an intermediary to connect a potential client to a lawyer

U.S. 552 (2011); [Retail Digital Network v. Appelsmith](#), 810 F.3d 638 (9th Cir., 2016).

based on an exercise of discretion within stated guidelines.”¹⁴

In other words, “lawyer referral services” are marketing programs that purport to match a potential client with the right lawyer for their specific legal problem, while actually referring that person to whichever lawyer has bought the right to that “lead” (often through geographic exclusivity).

Many states have concluded, and not without reason, that special regulation is required due to the lack of consumer choice and strong potential for consumer deception inherent in such programs. Michigan has gone further and completely prohibited for-profit referral services. Critically, such a prohibition cannot be applied broadly and still meet the requirements of the First Amendment and competition law. The exclusion of an entire class of speech and speakers must be applied only in such specific circumstances where evidence shows the need, and such exclusion is narrowly applied.¹⁵

Opinion R-25 makes no such showing or acknowledgement of the constitutional and competition law constraints at play here. In fact, it embraces an incredibly broad theory of the applicability of Rule 6.3(b):

“These online matching services promise to match consumers in need of legal services with qualified lawyers. The prospective client’s ability to choose a lawyer from the network of participating lawyers rather than the referral service identifying and making the selection does not negate the referral characteristics of the business model.”

This definition gathers in a wide range of for-profit attorney marketing. Yet the only basis for special regulation of lawyer referral services is, as the ABA report alludes, the risk of consumer deception when the referral service chooses the lawyer. And the State Bar must make an even more robust showing here, given that Michigan does not purport to merely add additional restrictions to lawyer referral services: it completely prohibits them.

¹⁴ ABA Standing Comm. on Lawyer Referral & Information Service (2011) (discussing the regulation of lawyer referral services: a preliminary state-by-state review.

¹⁵ See fn 10, *infra*.

Consumers benefit when they have more information about legal services, and more options for obtaining legal help. In her groundbreaking 2014 report for the American Bar Foundation, Rebecca Sandefur found that consumers are woefully under-informed not only about where to get legal help, but even about whether their problems have a legal component to them. The study showed that only twenty-two percent of Americans facing legal problems sought help outside of their family and friends. In the cases where people did not seek formal assistance, forty-six percent thought there was no need to do so; twenty-four percent thought it would make no difference in the resolution of their matter; and nine percent did not know where to go to find help.¹⁶

The typical American thus faces three obstacles in getting professional help for her legal problems: recognizing that the problem has a legal component, seeing the value of a lawyer in resolving that problem, and knowing how to find a lawyer who can help her. Advertising and lawyer referral services can help consumers surmount all of these obstacles, as acknowledged by both the current and proposed comments to the Model Rules.¹⁷ Online platforms in particular provide a convenient channel online for consumers to compare a broad range of options among lawyers with regard to location and subject matter expertise. Consumers are best served when they can access a range of services that spans the spectrum of their legal needs to determine which service is best suited for the legal need at hand. We strongly encourage the Committee to revisit its troubling, evidence-free conclusion that vast categories of legal marketing are off-limits to Michigan attorneys.

Analysis of Marketing Fees Should Focus on Consumer Harm, not Mechanics.

R-25 concludes that online intermediary payment mechanisms violate Rule 5.4. Yet this conclusion fails to account for the purpose of the Rule. The prohibition on fee-splitting in Rule 5.4 does not stand to prevent any transaction that “feels” like a fee split; rather, it is in place to protect clients by ensuring that a lawyer’s independent

¹⁶ Rebecca Sandefur, “Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study,” pp. 11-13 (American Bar Foundation, 2014).

¹⁷ ABA MRPC 7.2, Comment 1, retained in proposal as Rule 7.1, Comment 5.

professional judgment is not compromised by a non-lawyer third party having an ongoing interest in the lawyer's fee.

As ABA Opinion 465 (echoing ethics opinions from a number of other states¹⁸) noted in finding that deal-of-the-day websites don't violate Rule 5.4:

*"The fact that **the marketing organizations deduct payment upfront** rather than bill the lawyer at a later time for providing the advertising services does not convert the nature of the relationship between the lawyer and the marketing organization from an advertising arrangement into a fee sharing arrangement that violates the Model Rules." [emphasis added]*

Thus, Opinion 465 stands for the conclusion that fee splits are not *inherently* unethical. They only become a problem if the fee is split with a party that may pressure the attorney's decision-making in a given case.

Like the deal-of-the-day websites (or credit card processors, which also technically split fees with their attorney customers, and which state ethics opinions have similarly found do not violate the substance of Rule 5.4¹⁹), the services reviewed in R-25 do not appear to have any control, interference, or interest in how the lawyer exercises independent professional judgment in service of the client.

The interpretation of Rule 5.4 in R-25 implicates the availability of forms of attorney advertising, and thus must meet the requirements of the commercial speech doctrine. This it cannot do. The interpretation is technical, rigid, and unsupported by argument or evidence that it is necessary to protect the public. If the Bar is going to issue an opinion on this point, we urge it to follow the lead of the ABA, Nebraska, and North Carolina, and opine that Rule 5.4 permits lawyers to engage in such methods of payment as long as there is no interference with the lawyer's independent professional judgement.

¹⁸ See, e.g., ABA Formal Opinion 465 - Lawyers' Use of Deal-of-the-Day Marketing Programs (2013); Nebraska Ethics Advisory Opinion for Lawyers No. 12-03 (2012); North Carolina Formal Ethics Opinion 10: Lawyer Advertising on Deal of the Day or Group Coupon Website (2011); South Carolina Ethics Opinion 11-05 (2011).

¹⁹ See, e.g., Arizona Ethics Opinion 89-10 (1989); Colorado Formal Opinion 99 - Use of Credit Cards to Pay for Legal Services (1997).

The Variability of Advertising Costs for Services Does Not Disqualify Such Services as Legitimate Marketing Vehicles for Lawyers to Provide Legal Information to Consumers.

R-25 concludes that the online intermediaries at issue violate Rules 5.4 and 7.2 because the marketing fees charged are dependent on the acquisition of business and scale with the size of the matter. In reaching these conclusions, the Opinion contains two curious claims:

"A true advertising fee has no connection to the formation of an attorney client relationship or the amount of the attorney's fee paid for the legal services, but is based on the value of the advertisement."

"A genuine advertising medium offers no satisfaction guarantee."

These conclusions are offered with no support or evidence of their validity. And as shown below, they are highly inaccurate and anti-consumer.

Advertising Fees Routinely Vary Based on Type of Matter or Size of Legal Fees.

The costs for modern advertising—and particularly online advertising—can vary depending upon a wide variety of factors. For most legacy forms of advertising—like the Yellow Pages, TV, or radio—the cost of a given marketing “impression” is the same, regardless of the underlying value of the good or service. However, this is not the case online, where so much more data is available, and where targeted advertising allows advertisers to pay only for interested, or even committed, customers.

Some very simple examples: buying an advertisement for the results that appear when internet users search on Google for a “Los Angeles DUI lawyer” is much more expensive than the same search for “Grand Rapids DUI lawyer.” The same goes for a search for “brain injury” compared to “slip and fall,” or “Michigan LLC formation” vs. “how to form a business.” Search engine marketing allows advertisers to “bid” on what they will pay for their ads to appear on search results pages, and predictably, those bids scale up and down based on the value of the services that are associated with those search terms.

Online intermediary sites will use search engine marketing to inform consumers about the legal information they have available, and to connect them with the local lawyers who provide those services. These costs, as described above, can vary widely with the value of the underlying service. But the Committee has offered no evidence whatsoever that this variability is a problem for consumers of legal services. What's more, the variability and targeting involved is actually good for lawyer-advertisers, enabling them to spend their ad dollars more efficiently—which should make legal services more affordable for clients.

Costs of Delivering Marketing Often Correlate with the Size of the Legal Fee Involved.

The marketing fee charged by online intermediary sites will differ depending on a variety of factors, including the type of service purchased and the overall cost of the service. Despite the Committee's conclusion that this is somehow illegitimate and not a "true advertising fee" (a conclusion for which no evidence or even *theory* of consumer harm has been offered), there are numerous factors why marketing fees might vary in this way:

- Online legal intermediaries buy ads elsewhere online; the cost of those ads – as discussed above – varies widely depending on the value of the underlying service.
- Legal intermediaries pay the credit card processing fees for their consumer-focused services. These fees are a direct percentage of the legal fee spent by the client.
- By handling the transaction (which is simpler for the client and the lawyer alike), the intermediary site takes all of the payment processing risk, which also scales directly with the cost of the service purchased:
 - Unfulfilled services (voided transaction risk).
 - Client dissatisfaction, despite the attorney completing the work (refund risk).
 - Client demanding charges be reversed via their credit card provider (chargeback risk).
- Intermediaries also provide customer service to potential clients and purchasers. Purchasers of more expensive services will typically have more questions and concerns.

We go into this level of detail to disabuse the Committee of the notion that there is some single "right" way to do advertising, or that

advertising is unmoored from the value of the underlying transaction. It's not, particularly when it comes to digital marketing and intermediaries who help drive demand and make the provision of legal services smoother for consumers. What's more, the Committee has not identified any evidence of consumer harm stemming from variable marketing fees.

Attorneys Can Navigate Trust Accounting Rules, and the Bar Should Encourage – Rather than Discourage – Services That Allow Clients to Pay in Ways That Comply with Trust Accounting Rules.

Opinion R-25 states that online legal services “subvert compliance” with trust accounting rules. This overly cautionary approach risks stifling innovation and choking off greater consumer access to legal services. For while online services have the *potential* to “subvert compliance” with the trust accounting rules, the same could be said of any financial business relationship—bank account formation, for example—entered into by an attorney. What's important are the details: does the use of a specific online intermediary *actually* run afoul of the trust accounting rules?

For example, a service that billed a client's credit card after the legal service was provided (as we understand Avvo Legal Services does, for its brief consultation and document review products) would not be a problem from a trust accounting perspective, since the fee would be fully-earned prior to being charged. Likewise, the objections raised in R-25 about refunds and intermediary access to attorney trust fund accounts would be moot if the intermediary service does not have access to the attorney-participant's trust account.

Overall, if the opinion is going to focus on this area, it should remind attorneys of their non-delegable obligations when it comes to trust accounting compliance, but note that there may well be ways that online intermediaries handle client funds in ways that comply with the Rules. Bar members can then be motivated to seek out such providers, and encourage new entrants to build services in ways that meet the consumer-protective requirements of the trust accounting rules.

No Facts Indicate That the Online Intermediaries Described Are Engaged in the Unlicensed Practice of Law.

The Proposed Ethics Opinion breezily concludes that the intermediaries described are engaged in the unlicensed practice of law due to their “naming conventions,” “marketing schemes,” and use of money-back guarantees. However, the Committee raises no facts to indicate either intermediary described is holding itself out as a law firm or otherwise deceiving consumers into believing that legal services are being provided by non-lawyers (or that a satisfaction guarantee is somehow a basis for a UPL finding, rather than a tried-and-true method to build buyer trust). Indeed, in Responsive Law’s review of Avvo Legal Services and UpCounsel it appears plain that consumers are more than adequately informed that services are being provided by licensed lawyers.

Consumers are best served when they have the widest possible range of legitimate choices. This end is not met by overly broad readings of the monopoly lawyers enjoy in the provision of legal services. This is also one of the areas where competition law concerns are at their keenest. We strongly encourage the Committee to reassess the basis for its conclusion that these intermediaries are engaging in the unlicensed practice of law.

No Facts Indicate That the Online Intermediaries Described Are in Violation of Rules 5.5(a) or 5.3.

Finally, the Committee concludes—in a single sentence—that intermediaries may implicate MRPC 5.3 by performing “back offices” services, including handling confidential client communication. This is potentially a concern with ANY third-party service used a lawyer or law firm; indeed, it’s a concern with any employee hired by a lawyer or law firm. However, it does not serve the public to warn lawyers off from participating in potentially useful services by flagging phantom fears. Instead of raising this as somehow a special issue for marketing intermediaries, the Committee should, at most, remind lawyers of their diligence obligations when using such third-party services.

Conclusion

The State Bar of Michigan Professional Ethics Committee must be very careful—in discharging its Constitutional duty, avoiding anti-

competitive behavior, and best serving the public—when interpreting the Rules relating to ways that attorneys choose to generate business. There is no evidence that R-25 is necessary, desired, or advisable. In light of not only the law, but also the needs of the public in having access to competent, high-quality, and affordable legal assistance, we encourage the Ethics Committee to reconsider the conclusions it has tentatively reached here.

D

TAB D

E

TAB E

SBM ethics panel tackles online lawyer matching services

Comments on proposed opinion sought by July 16

By: Lee Dryden in News Stories July 6, 2018

Time is running out to comment on a State Bar of Michigan proposed ethics advisory opinion on online services pairing lawyers and clients.

Opinion R-25 by the SBM Professional Ethics Committee concludes that “participation in a for-profit online matching service that matches prospective clients with lawyers for a fee is not ethically permissible if the attorney’s fee is paid to and controlled by a non-lawyer and the cost for the online matching service is based on a percentage of the attorney’s fee paid for the legal services provided by the lawyer.”



The proposal has won support from the majority of commenters on the SBM website. Comments are due by July 16 [here](#), by email to r25ethics@michbar.org, or regular mail to R-25 Ethics, State Bar of Michigan, 306 Townsend St., Lansing, MI 48933.

The State Bar Board of Commissioners will decide after the comment period whether to approve or modify the opinion.

Proposed opinion details

The proposal states the online matching service violates several of the Michigan Rules of Professional Conduct such as Rule 6.3(b), which prohibits a lawyer from participating in for-profit lawyer referral services; Rule 5.4, which prohibits a lawyer from sharing fees with a non-lawyer; and Rule 7.2(c), which prohibits a lawyer from giving anything of value to recommend a lawyer’s services unless it is a reasonable payment for advertising the lawyer’s services, the usual charges for a not-for-profit lawyer referral service, or payment for the sale of a law practice.

The practice also subverts compliance with Rule 1.15, which requires a lawyer to safeguard legal fees and expenses paid in advance by depositing them into a client trust account until the fee is earned and the expense is incurred; impedes compliance with Rule 1.16(d) and its requirement that any unearned prepaid fees and unexpended advances on costs must be refunded; and assists in the unauthorized practice of law in violation of Rule 5.5(a) to the extent the online service holds itself out as a provider of legal services and guarantees satisfaction, according to the proposal.

Such services also violate Rule 5.3 to the extent that the conduct of the matching service when performing administrative “back office” services traditionally done through the law firm does not comport with the professional obligations of the lawyer, the proposal stated.

“For Michigan lawyers to participate in a lawyer referral service, it must meet the criteria in MRPC 6.3,” the proposed opinion stated. “The referral service must be a not-for-profit referral service, maintain registration with the State Bar, and operate in the public interest under the Rule.”

The proposed opinion concludes that “Michigan lawyers must carefully review the business model structure of these innovative online matching services to determine whether they constitute a for-profit lawyer referral service under the MRPC despite how the matching service depicts its services. Michigan lawyers must further examine whether compliance with any terms for participation prohibit them from ethically meeting their professional duties.”

Attorney comments

More than 20 comments on the proposal have already been posted on the SBM website.

Former State Bar President Lori Buiteweg expressed concern that “for-profit online matching services provided by non-lawyers would harm the public.”

“Without a legal education and experience practicing law, it seems like there would be many cases where the non-lawyer entity would make the match and get paid for the referral, but the quality of the referral is poor, perhaps based solely on the attorney’s self-identified practice areas and whether the attorney will pay the referral fee,” she wrote. “If a for-profit matching service controlled by a non-lawyer were determined to be ethically permissible, it would seem appropriate to me to statutorily or via licensing regulations apply all lawyer ethics rules to that service and regulate that service as if it were lawyer-controlled.”

In agreeing with the proposed opinion, Sam Morgan wrote that there is a “problem in our profession of ‘finders’ expecting to receive a kick-back of some portion of the fee earned by the attorney without disclosure and consent of the client — and not just from contingent fee plaintiff cases.”

Jacob Tighe wrote that he is “really torn on this issue.”

“On the one hand, I do not feel that it is appropriate for the Bar to be trying to regulate private businesses or controlling with whom a lawyer shares a fee. Ideally, the MRPCs involving those issues should be trimmed down or eliminated entirely,” he wrote. “On the other hand, there are a lot of scam-companies out there taking advantage of lawyers.”

Carolyn Madden mentioned the rules prohibiting lawyers from participating in for-profit lawyer referral services and sharing fees with a non-lawyer.

“I have a sense that these rules favor those who already have clients and/or are part of the legal community,” she wrote. “New lawyers with little or no connections would benefit from referral services.”

“If one of the fears is that the lawyers would pass on the legal fee to their clients, I don’t see how this is different from larger firms and those firms with beautiful offices, passing on the fee to their clients. I would like to see an open discussion of these ethics changes and I would like the Bar to be open to the current lifestyle of young and struggling lawyers.”

If you would like to comment on this story, email Lee Dryden at ldryden@mi.lawyersweekly.com.



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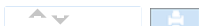
LEGAL TECHNOLOGY

Avvo's fixed-cost service to be discontinued by Internet Brands

BY JASON TASHEA ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/64729/](http://www.abajournal.com/authors/64729/))

POSTED JULY 6, 2018, 1:38 PM CDT

Tweet



Avvo Legal Services will be discontinued by the end of the month. In a letter

(https://www.responsivelaw.org/uploads/1/0/8/6/108638213/avvo_legal_services_discontinuation_letter.pdf) to the North Carolina State Bar, B. Lynn

Walsh, general counsel of Internet Brands, stated: "As a part of our acquisition of Avvo, we have evaluated the Avvo product offerings, and adjusted the Avvo product roadmap to align more comprehensively with our business and focus. Accordingly, we have decided to discontinue Avvo Legal Services."

Avvo, as a company, will continue to operate. It is unclear if changes will be made to their other offerings.

The letter, dated June 6, was posted at the Responsive Law (<https://www.responsivelaw.org/blog/after-repeated-attacks-by-bar-avvo-ends-popular-fixed-fee-legal-services-portal>) blog. Internet Brands bought Avvo (http://www.abajournal.com/news/article/avvo_acquired_by_internet_brands/) earlier this year.

The letter was in response to the North Carolina State Bar Authorized Practice Committee, which had asked Avvo to explain how their legal services offering, which allows consumers to buy specific legal services for a flat fee, "relates to the unauthorized practice of law."

The letter is a part of an ongoing effort (<http://www.ncbar.gov/for-lawyers/ethics/ethics-articles/fixed-fee-legal-services-online%E2%80%9494what-is-the-state-bar-doing-about-avvo/>) by the bar to understand the ethics of fixed-fee legal services. The Ethics Committee released Proposed 2017 Formal Ethics Opinion 6, which said under certain conditions lawyers may participate in Avvo Legal Services and that the offering did not infringe on rules against fee-sharing. After a public comment period characterized by opposition to the proposed opinion, the opinion was sent back to the subcommittee for further study.

In recent years, Avvo Legal Services has come under pressure from various state bars and ethics boards. Indiana (<https://www.in.gov/judiciary/discipline/files/dc-opn-1-18.pdf>), New Jersey (<https://www.judiciary.state.nj.us/notices/2017/n170621f.pdf>), New York (<http://www.nysba.org/EthicsOpinion1132/>), Ohio (https://www.ohioadvop.org/wp-content/uploads/2017/04/Op_16-003.pdf), Pennsylvania ([https://www.pabar.org/members/catalogs/Ethics Opinions/formal/F2016-200.pdf](https://www.pabar.org/members/catalogs/Ethics%20Opinions/formal/F2016-200.pdf)), South Carolina (<https://www.scbbar.org/lawyers/legal-resources-info/ethics-advisory-opinions/eao/ethics-advisory-opinion-16-06/>) and Utah (<http://www.utahbar.org/wp-content/uploads/2017/11/2017-05.pdf>) have all ruled that lawyers participating in for-profit referral services, like Avvo Legal Services, violate state professional rules.

See also: Is Avvo's fixed-cost service a fee-sharing violation?

(http://www.abajournal.com/magazine/article/is_avvos_fixed_cost_legal_service_a_fee_sharing_violation/)

In the letter, Walsh was clear to point out that the discontinuation of Legal Services "does not implicate rules regarding the unauthorized practice of law." Adding, the "services Avvo has offered are nonlegal services".

The letter is a part of an ongoing effort by the Bar to understand the ethics of fixed-fee legal services. The Ethics Committee released Proposed 2017 Formal Ethics Opinion 6, which said under certain conditions lawyers may participate in Avvo Legal Services and the offering did not infringe on rules against fee-sharing. After a public comment period characterized by opposition to the proposed opinion, the opinion was sent back to the subcommittee for further study.

A recent report (http://www.iardc.org/Matching_Services_Study_Release_for_Comments.pdf) from the Illinois Attorney Registration and Disciplinary Commission noted that only California, Florida, Georgia and Tennessee “seem to permit” for-profit referral services.

The Oregon State Bar and Chicago Bar Foundation have independently recommended (http://www.abajournal.com/news/article/illinois_disciplinary_agency_seeks_comment_on_letting_lawyers_use_for_profit/) that ABA Model Rule 5.4,

(https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer.html) Professional Independence of a Lawyer, be amended to provide a “safe harbor” for attorneys using for-profit referrals.

Representatives from Avvo and the North Carolina State Bar did not respond to requests for comment.



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AVVO, INC.
720 Olive Way
Suite 1400
Seattle, WA 98101

June 6, 2018

Joshua Walthall
Deputy Counsel
North Carolina State Bar, Authorized Practice Committee
217 E. Edenton Street
P.O. Box 25908
Raleigh, NC 27611

Re: Committee Inquiry re Avvo and the Unauthorized Practice of Law

Dear Mr. Walthall:

I am General Counsel of Internet Brands, a company that recently acquired Avvo as part of the growing Internet Brands family. We understand and appreciate that you have had ongoing conversations with Avvo regarding Avvo's "Legal Services" product, and the Authorized Practice Committee of the North Carolina State Bar's inquiry into that product. I have reviewed your letter of March 16, 2018 posing questions about Avvo's Legal Services as it relates to the unauthorized practice of law, and would like to update you on developments relevant to that inquiry.

At Internet Brands, we are focused on our users, and making sure we provide them with accurate, and consumer-friendly information to help them navigate the difficult tasks of identifying and hiring lawyers. As part of our acquisition of Avvo, we have evaluated the Avvo product offerings, and adjusted the Avvo product roadmap to align more comprehensively with our business and focus. Accordingly, we have decided to discontinue Avvo Legal Services. The discontinuation began this month, with completion expected by the end of July.

I would like to note that although we are discontinuing the Legal Services product, we share Avvo's view that providing consumers a marketplace for the provision of legal services in the manner that Avvo has done does not implicate rules regarding the unauthorized practice of law. The services Avvo has offered are non-legal services, and were developed with the purpose of connecting clients with lawyers, and facilitating the transaction in a way that was simple and

comfortable for both. The legal services provided were done so by a licensed local attorney, working independently with the client. It is clear that Avvo has not been involved in any way in the provision of actual legal services, and the Avvo site disclosures plainly inform consumers that the attorneys they worked with were independent, licensed attorneys.

We appreciate the opportunity for Avvo to comment in advance of the Committee issuing an advisory ethics opinion. However, we believe that no such opinion is necessary here, as Avvo clearly has not engaged in the unauthorized practice of law. Even if the committee disagrees with our position on the Avvo Legal Services marketplace, Legal Services will no longer be offered through Avvo by the end of July.

Thank you again for the opportunity, and don't hesitate to reach out if there are questions or if we can be helpful in any way.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lynn Walsh". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

B. Lynn Walsh
Exec. VP and General Counsel

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After Repeated Attacks by Bar, Avvo Ends Popular Fixed-Fee Legal Services Portal (<http://www.responsivelaw.org/blog/after-repeated-attacks-by-bar-avvo-ends-popular-fixed-fee-legal-services-portal>)

7/5/2018

1 Comment (<http://www.responsivelaw.org/blog/after-repeated-attacks-by-bar-avvo-ends-popular-fixed-fee-legal-services-portal#comments>)by *Tom Gordon*

Consumers of legal services seeking a quick way to find lawyers while guarding against the prospect of runaway hourly billing will now have to look a little harder. Avvo has stopped offering its popular Avvo Legal Services. The service is no longer offered on its website, and the general counsel for Internet Brands, which recently acquired Avvo, has indicated that the service will be discontinued by the end of this month (http://uploads/1/0/8/6/108638213/avvo_legal_services_discontinuation_letter.pdf).



The decision shouldn't come as a complete surprise to those who have followed Avvo's recent battles with state bars attempting to prohibit their members from participating in services of this type. Responsive Law has [warned these state bars](https://www.responsivelaw.org/lawyer-advertising.html) (<https://www.responsivelaw.org/lawyer-advertising.html>) that the anticompetitive nature of these bans could subject them to antitrust liability. In response to these concerns, the

North Carolina State Bar had been [considering a more nuanced set of regulations](https://www.ncbar.gov/for-lawyers/ethics/proposed-opinions/) (<https://www.ncbar.gov/for-lawyers/ethics/proposed-opinions/>) of attorney-client matching systems (ACMS) such as Avvo's, rather than an outright ban. However, in the wake of the discontinuation of Avvo's ACMS, that bar's ethics committee decided to table its proposal.

The tide may be turning on ACMS regulation. Illinois recently joined North Carolina in seeking more nuanced regulation of ACMSs. That state's Attorney Registration and Disciplinary Commission recently [issued a study](http://illinoiscourts.gov/Media/enews/2018/052518_ARDC.asp) (http://illinoiscourts.gov/Media/enews/2018/052518_ARDC.asp) calling for solutions beyond an outright ban on lawyer participation in these services, as a way of addressing the access to justice gap.

Unfortunately, these developments have come too late for Avvo Legal Services. From a business perspective, it is understandable that Internet Brands didn't want to continue this service given the regulatory obstacles it faced. However, consumers are now faced with a huge gap in the marketplace for easily accessible, fixed-price legal services. State bars will have to take a more accepting view of ACMSs, or they will not only face antitrust liability, but will also have abdicated their duty to protect access to justice.

Tom Gordon is Executive Director of Responsive Law

Read more [blog posts about online legal services here](https://www.responsivelaw.org/blog/category/online-legal-services) (<https://www.responsivelaw.org/blog/category/online-legal-services>).

(<http://twitter.com/share?url=https://www.responsivelaw.org/1/post/2018/07/after-repeated-attacks-by-bar-avvo-ends-popular-fixed-fee-legal-services-portal.html>)

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Ron Schmidt (<http://www.ThePlanningGroup.Org>)

7/7/2018 01:30:02 pm

When people realize that they need not measure an issue by an attorney's cost per hour to determine what their rights are, that attorneys can help on many issues from the trivial to the traumatic, a subscription model may make more sense.

When a person finds in a traffic stop after hours that someone has committed a crime in their name, they will be grateful to know they invested a dollar a day to have the 24/7/365 emergency access and much more.

Equal access to equal justice is nearing reality and it is the membership model, not fee splitting arrangements, that will bring fairness in the law.

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FIXED FEE LEGAL SERVICES ONLINE—WHAT IS THE STATE BAR DOING ABOUT AVVO?

By Suzanne Lever

At its meeting on October 26, 2017, the Ethics Committee voted to return Proposed 2017 Formal Ethics Opinion 6, regarding participation in Avvo Legal Services, to a subcommittee for further study. Why? To give the subcommittee time to consider the comments in opposition to the proposed opinion received from North Carolina lawyers.

Background Information on Avvo Legal Services

Avvo.com offers “fixed fee legal services from local lawyers” on its website. Known as Avvo Legal Services (ALS), this service allows consumers to select and employ a lawyer to perform an “unbundled” or discrete legal service.

Legal services available on the ALS platform include advice sessions, document reviews, document drafting, and, in some practice areas, a “start to finish” service such as a simple divorce. The legal fee for each service is displayed on the website together with a description of the legal service that identifies “what’s included” and “what’s not included.” After a consumer selects a legal service, the consumer clicks on the “choose a lawyer” button and is prompted to provide a zip code. The profiles of participating lawyers in or near the provided zip code appear. The consumer can then “select” one of the lawyers from the list to perform the legal service.

Avvo determines the fee that will be charged for each service and also charges participating lawyers a fee. The fee charged to the lawyer, which varies depending on the particular legal service, is called a “marketing fee.” Avvo initially collects the entire legal fee from the consumer via a credit card and deposits the funds in an Avvo bank account. On a monthly basis, Avvo pays the participating lawyer the entire amount of legal fees generated by the lawyer in the preceding month. In a separate transaction, Avvo collects its marketing fees for these legal services by debiting the lawyer’s operating account. Avvo represents that it will refund the fee paid by a consumer if the legal services are not delivered or the consumer is not satisfied with the service.

History of Inquiry

ALS came to the attention of the Ethics Committee in October 2016 when State Bar ethics counsel began receiving inquiries from lawyers asking whether participation in ALS was permissible under the Rules of Professional Conduct. Because ALS presented a unique business model, the matter was assigned to an ethics subcommittee for study and evaluation.

Subcommittee Process

The appointed subcommittee consists of five lawyers from large and small firms as well as a nonlawyer advisory member from Lawyer’s Mutual Insurance Company. The lawyers appointed to the subcommittee were selected, in part, based on their initial reactions to ALS. At least three members of the subcommittee were adamantly opposed to the business model.

The chair, vice-chair, and legal counsel to the Authorized Practice Committee also participated in the subcommittee meetings. The subcommittee meetings were attended by numerous guests including State Bar councilors, in-house legal counsel for Avvo, and, most recently, representatives of the Real Estate Lawyers Association of North Carolina (RELANC). The subcommittee also invited a North Carolina lawyer currently participating in ALS to describe her experience to the subcommittee.

The subcommittee met a total of six times in 2017, and spent countless hours researching ALS and discussing the many ethics rules potentially implicated. (The proposed opinion cites 13 Rules of Professional Conduct.) Because of the number of ethics issues involved, the subcommittee recognized early on that Avvo’s rating service should be examined separately from the actual platform for obtaining legal counsel. Therefore, the subcommittee decided to draft a separate proposed ethics opinion addressing the ratings issues. (That proposed opinion has yet to be published for comment.)

After extensive research, each of the subcommittee members arrived at the conclusion that an ethics opinion should not prohibit lawyers from participating in ALS. Throughout these meetings, the subcommittee members were guided by three assumptions: that the marketplace for legal services is changing, the role of the North Carolina State Bar is to protect the consumer of legal services, and there is undeniably a gap in the need and availability of affordable legal services.

The Proposed Opinion

The result of the subcommittee’s hard work is Proposed 2017 Formal Ethics Opinion 6. This opinion provides that lawyers may participate in ALS subject to certain conditions. Most notably, the opinion concludes that, “if there is no interference by Avvo in the independent professional judgement of a participating lawyer and the percentage marketing fees paid by the lawyer to Avvo are reasonable costs of advertising...the lawyer is not prohibited from participating in ALS on the basis of the fee-sharing prohibition [set out in Rule 5.4(a)].” I say “most notably” because, at present, six states have issued ethics opinions on the ALS business model and have concluded that lawyers cannot participate in the business model primarily on the grounds that the model involves prohibited fee-sharing.

The subcommittee carefully reviewed each opinion from the other State Bars and concluded that Proposed 2017 Formal Ethics Opinion 6 is the correct application of Rule 5.4(a), which is specifically intended to protect the lawyer’s professional independence of judgment. See Rule 5.4, cmt. [I]. Indeed, taking payment by credit card, which many lawyers do, is already a form of fee-sharing, since the credit card fee is a percentage of the amount paid. In reaching the conclusions set out in the proposed opinion, the subcommittee members carefully considered the purpose of the rules relative to the State Bar’s duty to protect the public.

North Carolina Lawyer Comments

Following publication of the proposed opinion, we received approximately 30 comments opposing the proposed opinion. (We also received one comment in favor of the opinion.) Pursuant to the process for adopting formal ethics opinions, if *even one* comment is received about a proposed formal ethics opinion, the proposed opinion is reconsidered by the Ethics Committee at its next quarterly meeting after publication. The comments on Proposed 2017 Formal Ethics Opinion 6 were carefully considered at the committee’s meeting on October 26. As a result of this reconsideration process, the Ethics Committee voted to return Proposed 2017 Formal Ethics Opinion 6 to the subcommittee for further study.

The comments received primarily focus on one aspect of the multi-faceted proposed opinion: the discussion of fee sharing with a nonlawyer. Other comments generally suggested that these types of online services allow unqualified lawyers to provide legal services (i.e., lawyers just out of law school working out of a parent’s basement), and diminish the legal profession by emphasizing business rather than professionalism.

The favorable comment commends the Ethics Committee for “prioritizing consumer interests in drafting the proposed opinion,” and states that the result “is a reasonable set of guidelines that maintain the consumer protection principles behind the Rules of Professional Conduct and will maintain their relevance as technology, legal business models, and consumer expectations evolve, rather than making bright-line rules based on current models that may not be a good fit for unforeseen future circumstances.” It concludes that, by engaging in analysis of the actual impact on consumers of online platforms, the Ethics Committee has drafted an ethics opinion that protects consumers while fostering an environment in which access to the legal system will improve for North Carolinians.

What Happens Now

The subcommittee will meet during the upcoming quarter to further consider the comments received in opposition to the proposed opinion, and to consider withdrawing the proposed opinion or revising and republishing it for comment.

Regardless of the future actions of the ethics subcommittee, companies providing online legal services are not going away. As noted by the ABA Commission on Ethics 20/20:

Technology has irrevocably changed and continues to alter the practice of law in fundamental ways. Legal work can be, and is, more easily disaggregated; business development can be done with new tools; and new processes facilitate legal work and communication with clients. Lawyers must understand technology in order to provide clients with the competent and cost-effective services that they expect and deserve.

The State Bar’s role in this legal marketplace is to protect the consumers of these new types of legal services. It is not the role, or the aspiration, of the State Bar to restrict consumers’ access to affordable legal services. Similarly, it is not the role of the State Bar to unnecessarily restrict the right of North Carolina lawyers to participate in a potentially profitable business venture. The Rules of Professional Conduct are not intended to prevent “new and useful ways” of providing legal services. See 2001 FEO 2 (contracting with management firm to administer law office).

Navigating these new legal waters is not easy. The subcommittee members digested information on ALS and other types of online legal platforms for a year before publishing the proposed opinion for comment. The proposed opinion is still a work in progress and we request your participation in the reconsideration process. The subcommittee members specifically request that lawyers writing to express

dissatisfaction with the proposed opinion also include in their comments viable solutions or alternatives. What measures do you recommend to protect consumers? To protect the integrity of the legal profession?

Subcommittee Meetings are Open to the Public

A great way to become educated on the issues involved in services like ALS and to be involved in the reconsideration process is to attend the subcommittee meetings on the proposed opinion. The subcommittee meetings are open public meetings and generally take place by conference call. The dates of the meeting are posted on the State Bar website: ncbar.gov/about-us/upcoming-events. The dates are also posted on the television monitors throughout the State Bar building. In addition, you may also email me if you would like to be notified of the date and time of the next subcommittee meeting: slever@ncbar.gov.

Suzanne Lever is assistant ethics counsel for the North Carolina State Bar.

TO: Board of Commissioners
FROM: Professional Standards Committee
SUBJECT: Withdrawal of Formal Opinion C-211(1972)
MEETING DATE: July 27, 2018 Board of Commissioners Meeting

Attached is Formal Ethics Opinion C-211(1972) that was decided under the former Code of Professional Responsibility that Michigan followed before the Michigan Rules of Professional Conduct were adopted effective October 1, 1988. The Professional Standards Committee, consistent with the Professional Ethics Committee, recommends that Formal Ethics Opinion C-211 be withdrawn as outdated and inconsistent with the current version and interpretation of the court rules regarding lawyers subject to disciplinary action. See Michigan Rules of Court, Chapter 9, Professional Disciplinary Proceedings.

Formal Ethics Opinion C-211 opines that it is unethical for a lawyer or law firm to employ a disbarred or suspended lawyer as a “paralegal assistant.” MCR 9.119(E) establishes the requirements for lawyers who have been disqualified from the practice of law. Formal Ethics Opinion C-211 is inconsistent with MCR 9.119(E).

The Committee in conjunction with its disciplinary colleagues prepared frequently asked questions (FAQs) on the topic of lawyers who are suspended, disbarred, inactive, or have resigned from State Bar membership (disqualified lawyers) that provides guidance to disqualified lawyers and SBM members. This document is intended to supplement the court rules and is posted on the ethics webpage at <https://www.michbar.org/file/opinions/ethics/UPL-DisqualifiedLawyersFAQs.pdf>. See e.g., FAQs 8-14, FAQs for Disqualified Lawyers. (Copy attached.)

For the reasons stated herein, the Professional Standards Committee recommends that the Board of Commissioners withdraw Formal Opinion C-211.

C-211

July, 1972

SYLLABUS

The employment by a lawyer or law firm of a disbarred or suspended lawyer to perform any acts of a legal or quasi-legal nature, even under close supervision and scrutiny of the employer, is improper.

A disbarred or suspended lawyer may not be employed as a "paralegal assistant" by a lawyer or law firm in good standing.

While it would not be improper *per se* for a lawyer or law firm in good standing to employ a disbarred or suspended lawyer in some strictly nonprofessional capacity such as a caretaker, chauffeur or for the performance of other duties which would in no way permit even a suspicion that the suspended lawyer is engaged in the practice of law, because of the need of the profession to retain the complete confidence of the public which might be diminished upon the suspicion that an employee of a lawyer is not trustworthy, the lawyer should not extend such employment.

References: MCPR Canon 3; MCPR DR 3-101.

TEXT

A lawyer employs a disbarred lawyer as office manager of the lawyer's office, paying a salary of \$300.00 per week. Prior to disbarment the office manager practiced worker's compensation law. Among the office manager's present duties is the reception and interview of prospective claimants who consult the firm with regard to work-related illness and injury. It is unclear whether the office manager directs the completion and execution of the client's petition for relief or simply passes the interview data to a lawyer.

The State Bar Grievance Administrator asks whether the employment arrangement violates ethics rules.

We see the problem as divided into two parts: (a) may a lawyer employ a disbarred or suspended lawyer to work in the law firm, and (b) should a lawyer employ a disbarred or suspended lawyer to work in the law firm.

The first question should first be considered in connection with the nature of the employment, *i.e.*, the duties and responsibilities to be undertaken. If the employment is extended as a matter of compassion, or as a gesture of friendship or recognition of past associations, or in an honest attempt to aid a former lawyer's rehabilitation, or simply to lend badly needed economic assistance, we recognize no moral or ethical standard which prohibits an offer of employment in a strictly nonlegal capacity. Thus, depending upon the capabilities of the person involved, there is no reason why the disciplined lawyer could not be given employment in some strictly nonprofessional capacity such as a caretaker, chauffeur, operator of business machines and equipment, or for the performance of other duties which would in no way permit even a suspicion that the employee is engaged, even remotely, in the practice of law.

To this must be added the further caveat that there would have to be a rigid, absolute prohibition against any contact whatsoever between the employee and law firm clients, and above all the employee should not be permitted to have anything to do with the practice of law.

We note that MCPR Canon 3 and the ABA Model Code of Professional Responsibility Ethical Considerations for that Canon suggest it is deemed proper for a lawyer to delegate tasks to lay persons so long as the lawyer maintains a direct relationship with the client, supervises the delegated work and has complete professional responsibility for the work product. Such lay persons are generally termed "paralegal" assistants. The Administrator thus inquires whether a suspended or disbarred lawyer may be employed by another lawyer or law firm as "paralegal" assistant.

We think the answer must be no, positing our conclusion on the belief that there is a distinct difference between a "paralegal assistant" and a disbarred or suspended lawyer. A "paralegal" assistant is one who, though not a lawyer, under certain circumstances and under safeguards discharges certain legal services performed under the strict supervision of an employing lawyer, which delegation enables the lawyer to render legal services more economically and efficiently. Thus there is a direct benefit to the client and the public.

On the other hand when a lawyer has been disbarred because he or she has been found to lack the moral qualities required for office and has been stripped of the privilege to practice, it is better for society that the disciplined lawyer's connection with the profession be severed completely. In New York Ethics Op 186 it was stated that if as a matter of law the disbarred lawyer is forbidden to render services (preparing papers, including complaints, answers, and other legal documents) then it is clearly improper for the practicing lawyer to employ the disciplined lawyer for their performance. As a matter of professional propriety, such employment of a disbarred lawyer to perform duties that lie in a doubtful zone between practicing law or not should be disapproved because such employment tempts and conduces to the violation of the plain intendment of the order of disbarment.

ABA Unreported Opinion No. 7 advised against the employment of a disbarred lawyer, even to do only office work and seeing no clients because of the practical difficulty of confining the employee's activities to an area which does not include the practice of law, and because such employment would show disrespect to the courts.

This Committee's Op 936 addressed the subject of lawyers employing disbarred lawyers and although that opinion was limited to the facts submitted in that particular inquiry, some of the authorities hereinabove mentioned were discussed. We see no reason to depart from the views then expressed and reaffirm that employment of a disbarred lawyer to perform any acts of a legal or quasi-legal nature, even under the close scrutiny of the employing lawyer, would subject the employer to criticism as to his or her own professional conduct.

Having expressed our beliefs as to whether or not a lawyer in good standing may employ a disbarred or suspended lawyer and if so, in what capacities, we conclude by considering whether a lawyer should employ a disciplined lawyer. New York City Ethics Op 636 states:

"The practice of the law requires that the highest degree of confidence and trust should exist between clients and their attorneys and between attorneys and the courts. The profession needs and is entitled to have the confidence of the public. The suspicion that an employee of an attorney is not trustworthy diminishes the usefulness of that attorney and of other members of the Bar. This is also true no matter what the duties of the employee are."

While humanitarian elements of past associations and willingness to aid in an attempted rehabilitation reflect valid and moral attitudes and command recognition, those interests should be balanced against the interests of the public and the need for continued confidence and trust in the legal profession. Assuming a sincere desire to help a disciplined lawyer to find employment, that commendable purpose could be achieved by assisting in the person's placement with some organization not engaged in any elements of the practice of law where there could

not be even a remote suspicion of an attempt to thwart a disciplinary order or disbarment. Importantly such an employment could not lend itself to temptation of the disciplined lawyer to engage in activities that lie in the doubtful zone between practicing law or not.

It would be the better part of discretion for a lawyer not to put the disbarred or suspended lawyer to work in a law office.

**FREQUENTLY ASKED QUESTIONS (FAQS) FOR LAWYERS
WHO ARE SUSPENDED, DISBARRED, INACTIVE, OR HAVE RESIGNED
FROM MEMBERSHIP (“DISQUALIFIED LAWYERS”)**

[These FAQs are neither legal advice nor an ethics opinion, and are not a substitute for your obligation to review and adhere to the requirements of [MCR 9.119](#), the Michigan Rules of Professional Conduct (MRPC), statutes, court rules, ethics opinions, and/or case law.]

1. Is there a court rule that a disqualified lawyer should review before the effective date of an order of suspension or disbarment, transfer to inactive status, or resignation from State Bar of Michigan (“SBM”) membership?

Yes. [MCR 9.119](#) specifically deals with the conduct of lawyers who are suspended, disbarred, inactive, or who have resigned from membership of the SBM (“disqualified lawyer[s]”).

2. If a disqualified lawyer has been suspended for non-payment of bar dues and is subject to a disciplinary suspension, does [MCR 9.119](#) apply to the disqualified lawyer?

Yes. If a disqualified lawyer has been suspended from the practice of law for non-payment of bar dues (administrative suspension) and is subject to a disciplinary suspension, the disqualified lawyer must comply with [MCR 9.119](#).

3. If a disqualified lawyer has been suspended for non-payment of bar dues, does [MCR 9.119](#) apply to the disqualified lawyer?

Yes. [MCR 9.119](#) applies if a disqualified lawyer has active client matters as of the effective date of the order of suspension. If a disqualified lawyer has been suspended for non-payment of bar dues, the disqualified lawyer is not an active member of the SBM and, therefore, may not engage in the practice of law. Rule 3(A) of the Rules Concerning the State Bar of Michigan ([SBR](#)).

4. What are the duties of a disqualified lawyer under [MCR 9.119](#)?

A disqualified lawyer has the following duties under [MCR 9.119](#):

- a. A disqualified lawyer must notify clients in all active matters of the following: (i) the status as a disqualified lawyer; (ii) the effective date of the disqualification; (iii) the inability to act as a lawyer; (iv) the process for retrieval of the representation file(s); (v) the option to seek legal advice/counsel and representation by successor counsel; and (vi) the address to which all correspondence may be directed. See [MCR 9.119\(A\)\(1\)-\(6\)](#);
- b. In all pending litigation, by the effective date of the discipline, the disqualified lawyer must provide notice to the tribunal and other parties of the disqualification. The

disqualified lawyer must either file a motion to withdraw or, with the client consent, file a substitution of counsel. See [MCR 9.119\(B\)](#); and,

- c. Within fourteen days after the effective date of the order of disqualification, the disqualified lawyer must file proof of compliance in the form of an affidavit with the Attorney Discipline Board (ADB) and serve a copy on the Grievance Administrator, including a copy of the disclosure notices and mailing receipts. A disqualified lawyer claiming not to have any clients must file an affidavit so stating. Records of compliance must be maintained. See [MCR 9.119\(C\)](#).

5. May a disqualified lawyer's former law firm continue to represent existing clients?

Yes. If the disqualified lawyer was part of a firm, the firm may represent the existing clients upon the clients' written consent.

6. May a disqualified lawyer provide legal services to existing clients after entry of an order of suspension or disbarment but before the effective date of the disqualification?

Yes. Unless ordered otherwise, after the entry of a discipline order but prior to its effective date, a disqualified lawyer may attempt to complete on behalf of any existing client all matters that were pending on the entry date. See [MCR 9.119\(D\)](#).

7. May a disqualified lawyer provide new legal services to existing clients during the period between the entry of an order of suspension or disbarment but prior to the effective date of the order?

No. Unless ordered otherwise, after the entry of a discipline order but prior to its effective date, a disqualified lawyer may not accept any new retainer or engagement as an attorney for another in any new case or legal matter of any nature, unless specifically authorized by the chairperson of the Attorney Discipline Board for good cause shown. This precludes the provision of new legal services to existing clients as well as retention by new clients even if the representation could be completed prior to the effective date of the order of discipline. See [MCR 9.119\(D\)](#).

8. What is a disqualified lawyer prohibited from doing after becoming disqualified?

A disqualified lawyer is prohibited from providing legal services, having contact with legal clients or potential legal clients, appearing as an attorney on behalf of clients in administrative or adjudicative proceedings, or holding out as an attorney in any way. [MCR 9.119\(E\)](#).

9. May a disqualified lawyer work as a paralegal or a law clerk?

Yes. So long as the disqualified lawyer has no contact with clients or witnesses, the disqualified lawyer may work as a paralegal or law clerk.

10. May a disqualified lawyer attend a court or administrative trial to provide assistance to the trial lawyer?

Yes. A disqualified lawyer may provide assistance to the trial lawyer during a court or administrative trial, so long as the disqualified lawyer does not appear on behalf of the client and avoids contact with the client, and all interested persons involved in the proceeding are notified that the disqualified lawyer is not eligible to practice law.

11. May a disqualified lawyer research legal issues and prepare memoranda regarding such research?

Yes. A disqualified lawyer may research legal issues and prepare research memoranda, so long as the disqualified lawyer is providing such services to lawyers and not clients.

12. May a disqualified lawyer perform pro bono legal work?

No. Whether a disqualified lawyer may perform or may not perform certain work depends on the nature of the work and not whether or not the individual is paid for the work. A disqualified lawyer shall not provide pro bono legal work, because such conduct by a disqualified lawyer constitutes the unauthorized practice of law.

13. May a disqualified lawyer share legal fees for legal services performed by another lawyer?

No. A disqualified lawyer shall not share legal fees for legal services performed by another lawyer, if the legal services were performed during the period of disqualification. [MCR 9.119\(F\)](#).

14. May a disqualified lawyer accept a referral fee?

A disqualified lawyer cannot earn legal fees for work performed while disqualified and cannot share in the profits of a law firm with respect to profits earned during the period of disqualification. [MCR 9.119\(F\)](#); [MRPC 1.5\(e\)](#); Ethics Opinions [RI-270](#), [RI-030](#), and [RI-019](#).

A disqualified lawyer may receive payment for work performed as a lawyer prior to the time of disqualification. Additionally, a disqualified lawyer may receive an agreed upon referral fee for a matter referred prior to disqualification, so long as the disqualified lawyer performed all services required by the referral agreement prior to disqualification. *Id.*

If a disqualified lawyer refers a matter prior to disqualification, but was required by the referral agreement to perform services during a period of disqualification and was, therefore ineligible to perform those services, the referring lawyer may be compensated on a *quantum meruit* basis for services performed prior to disqualification or after reinstatement. *Id.*

A disqualified lawyer who refers a matter during the period of disqualification may not receive a referral fee.

15. As a disqualified lawyer whose name appears in the law firm name, what duties does the disqualified lawyer have regarding the law firm name?

If the disqualified lawyer's name is in the law firm name, that lawyer has a duty to ensure that communications about the firm name are not false, fraudulent, misleading, or deceptive. See [MRPC 7.1](#) and [7.5](#). For example, it would be misleading for the disqualified lawyer to permit continued use of letterhead, signage, business cards or internet-based communications which state or imply the availability of the disqualified lawyer to perform legal services. A lawyer must take all reasonable measures to alter the content or to discontinue the use of any form of communication that advertises the disqualified lawyer's availability or holds out the disqualified lawyer as eligible to practice law.

16. May a disqualified lawyer continue a professional corporation?

No. It is the unauthorized practice of law for a disqualified lawyer to be a member of a professional corporation, which constitutes an improper holding out as authorized to practice law. A professional corporation organized to provide legal services must not include members who are not licensed to provide the professional services offered by the corporation. All members of a professional corporation who are licensed in Michigan must be active members in the State Bar of Michigan, which includes having paid and being current on membership dues. [MCL 450.1286](#); [MCR 9.119\(E\)\(4\)](#); [SBR 3\(A\)](#); and [SBR 4\(C\)](#).

17. What are the duties of a disqualified lawyer regarding an IOLTA or non-IOLTA trust account?

A disqualified lawyer must properly disburse or otherwise transfer all client and fiduciary funds in the lawyer's possession, custody or control and close all IOLTA and non-IOLTA trust and fiduciary accounts. Upon notice of an impending disqualification from the practice of law, a lawyer should take prompt action to begin winding down the lawyer's law practice. To close an IOLTA or non-IOLTA trust account, the lawyer should:

- a. Fully reconcile the account.
- b. Contact the bank to determine whether there will be any charges associated with closing the account. If a closing fee will be assessed, deposit sufficient funds to cover the closing fee into the account. Do not use client funds to cover this fee.
- c. Prepare and send final client bills, if necessary.
- d. Disburse funds belonging to clients. Send clients their final bill or prepare cover letters refunding any advance payment of fee that has not been earned and advance payment for costs not incurred. [MRPC 1.16\(d\)](#).

- e. Disburse funds belonging to the lawyer (earned fees, reimbursement for costs advanced) and deposit into the lawyer's business account.
 - f. Once all outstanding checks have cleared, close the account. Note: The lawyer is not required to provide notification to the Michigan State Bar Foundation that the account has been closed. The financial institution will do so.
 - g. Shred unused checks and deposit slips once the account is closed to prevent fraud and protect against mistakenly using checks and deposit slips from the closed account.
 - h. Keep the IOLTA check register, client ledgers, bank statements, and other records for at least five years. Ethics Opinion RI-038.
18. May a disqualified lawyer engage in self-representation (pro se), *i.e.*, to collect earned fees from a former client or defend against a lawsuit when sued personally?

Yes.

19. What obligations does a disqualified lawyer have if licensed to practice in another jurisdiction and/or admitted to practice before an agency, state court in another jurisdiction (*e.g.*, pro hac vice admission), a federal court, or a federal administrative agency?

A disqualified lawyer should review the rules of the other jurisdictions, agencies and/or courts to determine whether there is a self-reporting obligation and any other requirements.

20. How may a disqualified lawyer seek reinstatement?

If the disqualification is less than 180 days, the requirements of [MCR 9.123\(A\)](#) must be met. If the disqualification is 180 days or more, the requirements of [MCR 9.123\(B\)](#) and [MCR 9.124](#) must be met. If the lawyer has been disqualified for three years or longer, the lawyer must be recertified by the Board of Law Examiners pursuant to [MCR 9.123\(C\)](#). A lawyer who has been disbarred may seek reinstatement after five years. [MCR 9.123\(D\)\(2\)](#).

21. May a reinstated lawyer engage in the practice of law?

Yes. However, the reinstated lawyer must also meet all of the requirements of [SBR 3](#) and [4](#). Per [SBR 3](#) and [4](#), active membership includes having paid and being current on membership dues.

22. May a lawyer whose license has been suspended for 180 days or longer file a petition for reinstatement before expiration of the order of discipline?

Except as otherwise provided under [MCR 9.123\(D\)\(2\)](#), a disqualified lawyer whose license has been suspended may file a petition for reinstatement 56 days before the end of the suspension term. [MCR 9.123\(D\)\(1\)](#).

TO: Board of Commissioners
FROM: Professional Standards Committee
SUBJECT: Proposed Amendments of MRPC 1.1 and 1.6 to Add Comment on Tech Competence
MEETING DATE: July 27, 2018 Board of Commissioners Meeting

The Professional Standards Committee recommends amendment of the comments to Rule 1.1 and Rule 1.6 of the Michigan Rules of Professional Conduct (MRPC) to guide Michigan lawyers on tech competence and confidentiality when using technology for client communications and/or communications about client matters. The proposed amendments help advance 2017 – 2020 Strategic Plan Goal 1 (supporting professional competence and continuing professional development of State Bar members) and Goal 2 (educating members on ethical rules and regulations).

Proposed Amendment of Comments

Proposed Amended Comment to Rule 1.1 – Competence (Newly proposed language is underlined.)

Maintaining Competence. To maintain the requisite skill and knowledge, a lawyer should engage in continuing study and education, including the skills and knowledge regarding developing technology that is reasonably necessary to provide competent representation for the client in a particular matter. If a system of peer or peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

Proposed New Comment to Rule 1.6 – Confidentiality of Information

When transmitting a communication that contains confidential and/or privileged information relating to the representation of a client, the lawyer should take reasonable measures and act competently so that the confidential and/or privileged client information will not be revealed to unintended third parties. Such reasonable measures should include the lawyer’s adequate knowledge and understanding of the technology used to transmit the confidential and/or privileged client information.

Background Information

The Professional Ethics Committee formed a Subcommittee to review and propose new comments to MRPC 1.1 and MRPC 1.6 on tech competence and confidentiality when using technology for client communications and/or communications about client matters. A copy of MRCP 1.1 and MRPC 1.6 is attached.

The Committee considered ABA Model Rules 1.1 and 1.6 and relevant comments to those rules (copy attached) and articles. The articles listed below are attached as examples of the information considered by the Committee in proposing the amendments.

- *Making Friends with Machines, A Lawyer's Duty to Technological Competence*, Karen H. Safran, Oakland County Bar Association, March 2018
- *Lawyers have an ethical duty to safeguard confidential information in the cloud*, Jason Tashea, ABA Journal, April 2018.

No amendments are proposed regarding the text of either rule. Rather, the proposed amendments to the comments provide guidance to heighten the awareness of Michigan lawyers regarding their ethical obligation to maintain competence and confidentiality when using modern technology to provide legal services to their clients.

Rule: 1.1 Competence

A lawyer shall provide competent representation to a client. A lawyer shall not: (a) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it; (b) handle a legal matter without preparation adequate in the circumstances; or (c) neglect a legal matter entrusted to the lawyer.

Comment:

LEGAL KNOWLEDGE AND SKILL

In determining whether a lawyer is able to provide competent representation in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

A lawyer may offer representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

THOROUGHNESS AND PREPARATION

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

MAINTAINING COMPETENCE

To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

Rule: 1.6 Confidentiality of Information

(a) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(b) Except when permitted under paragraph (c), a lawyer shall not knowingly:

(1) reveal a confidence or secret of a client;

(2) use a confidence or secret of a client to the disadvantage of the client; or

(3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(c) A lawyer may reveal:

(1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;

(2) confidences or secrets when permitted or required by these rules, or when required by law or by court order;

(3) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;

(4) the intention of a client to commit a crime and the information necessary to prevent the crime; and

(5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

(d) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (c) through an employee.

Comment: The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client, but also encourages people to seek early legal assistance.

Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Upon the basis of experience, lawyers know that almost all clients follow the advice given and that the law is upheld.

A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

The principle of confidentiality is given effect in two related bodies of law, the client-lawyer privilege (which includes the work-product doctrine) in the law of evidence and the rule of confidentiality

established in professional ethics. The client-lawyer privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies to confidences and secrets as defined in the rule. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope, ante, p M 1-18.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

AUTHORIZED DISCLOSURE A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or, in negotiation, by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers, or unless the disclosure would breach a screen erected within the firm in accordance with Rules 1.10(b), 1.11(a), or 1.12(c).

DISCLOSURE ADVERSE TO CLIENT

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends to commit a crime. To the extent a lawyer is prohibited from making disclosure, the interests of the potential victim are sacrificed in favor of preserving the client's confidences even though the client's purpose is wrongful. To the extent a lawyer is required or permitted to disclose a client's purposes, the client may be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. A rule governing disclosure of threatened harm thus involves balancing the interests of one group of potential victims against those of another. On the assumption that lawyers generally fulfill their duty to advise against the commission of deliberately wrongful acts, the public is better protected if full and open communication by the client is encouraged than if it is inhibited.

Generally speaking, information relating to the representation must be kept confidential as stated in paragraph (b). However, when the client is or will be engaged in criminal conduct or the integrity of the lawyer's own conduct is involved, the principle of confidentiality may appropriately yield, depending on the lawyer's knowledge about and relationship to the conduct in question, and the seriousness of that conduct. Several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is illegal or fraudulent. See Rule 1.2(c). Similarly, a lawyer has a duty under Rule 3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in Rule 1.2(c) to avoid assisting a client in illegal or fraudulent conduct. The same is true of compliance with Rule 4.1 concerning truthfulness of a lawyer's own representations.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated Rule 1.2(c), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character. Even if the

involvement was innocent, however, the fact remains that the lawyer's professional services were made the instrument of the client's crime or fraud. The lawyer, therefore, has a legitimate interest in being able to rectify the consequences of such conduct, and has the professional right, although not a professional duty, to rectify the situation. Exercising that right may require revealing information relating to the representation. Paragraph (c)(3) gives the lawyer professional discretion to reveal such information to the extent necessary to accomplish rectification. However, the constitutional rights of defendants in criminal cases may limit the extent to which counsel for a defendant may correct a misrepresentation that is based on information provided by the client. See comment to Rule 3.3.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. Inaction by the lawyer is not a violation of Rule 1.2(c), except in the limited circumstances where failure to act constitutes assisting the client. See comment to Rule 1.2(c). However, the lawyer's knowledge of the client's purpose may enable the lawyer to prevent commission of the prospective crime. If the prospective crime is likely to result in substantial injury, the lawyer may feel a moral obligation to take preventive action. When the threatened injury is grave, such as homicide or serious bodily injury, a lawyer may have an obligation under tort or criminal law to take reasonable preventive measures. Whether the lawyer's concern is based on moral or legal considerations, the interest in preventing the harm may be more compelling than the interest in preserving confidentiality of information relating to the client. As stated in paragraph (c)(4), the lawyer has professional discretion to reveal information in order to prevent a client's criminal act.

It is arguable that the lawyer should have a professional obligation to make a disclosure in order to prevent homicide or serious bodily injury which the lawyer knows is intended by the client. However, it is very difficult for a lawyer to "know" when such a heinous purpose will actually be carried out, for the client may have a change of mind. To require disclosure when the client intends such an act, at the risk of professional discipline if the assessment of the client's purpose turns out to be wrong, would be to impose a penal risk that might interfere with the lawyer's resolution of an inherently difficult moral dilemma.

The lawyer's exercise of discretion requires consideration of such factors as magnitude, proximity, and likelihood of the contemplated wrong; the nature of the lawyer's relationship with the client and with those who might be injured by the client; the lawyer's own involvement in the transaction; and factors that may extenuate the conduct in question. Where practical, the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to make a disclosure permitted by paragraph (c) does not violate this rule.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this rule, the lawyer should make an inquiry within the organization as indicated in Rule 1.13(b).

Paragraph (c)(3) does not apply where a lawyer is employed after a crime or fraud has been committed to represent the client in matters ensuing therefrom.

WITHDRAWAL

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

DISPUTE CONCERNING LAWYER'S CONDUCT

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of complicity or other misconduct has been made. Paragraph (c)(5) does not require the lawyer to await the commencement of an action or proceeding that charges complicity or other misconduct, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together.

A lawyer entitled to a fee is permitted by paragraph (c)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

DISCLOSURES OTHERWISE REQUIRED OR AUTHORIZED

The scope of the client-lawyer privilege is a question of law. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (b)(1) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See Rules 2.2, 2.3, 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against such a supersession.

FORMER CLIENT

The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9.

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Rule 1.6: Confidentiality of Information

Client-Lawyer Relationship

Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

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Comment on Rule 1.6

Client-Lawyer Relationship

Rule 1.6 Confidentiality Of Information - Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or

required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer

relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any

disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Acting Competently to Preserve Confidentiality

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4]. —

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order

to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

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Rule 1.1: Competence

Client-Lawyer Relationship

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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Comment on Rule 1.1

Client-Lawyer Relationship **Rule 1.1 Competence - Comment**

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

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MAKING FRIENDS WITH MACHINES

A LAWYER'S DUTY TO TECHNOLOGICAL COMPETENCE

by Karen H. Safran, Esq.

“Life moves pretty fast. If you don’t stop and look around once in a while, you could miss it.”
— Ferris Bueller.

That sentiment is especially true with technology, where yesterday’s cutting-edge gadget is today’s dinosaur. Butting up against the fast-paced world of tech is the legal profession. Trained to look back at precedent, lawyers are traditionally slow to embrace change. But change they must; lawyers who fail to educate themselves on the latest technological developments are violating their ethical obligations.

In 2012, the ABA updated the comments to Rule 1.1 of the Model Rules of Professional Conduct to include a duty of technological competence. Under the new rule, “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”¹ Over the past five years, 28 states have adopted the rule, two more have acknowledged the duty as part of a lawyer’s professional obligations, and one now requires technology training within its CLE requirements.² Canada is considering adopting a similar rule. While Michigan has not yet amended MRPC 1.1 to address technological competency, the rule nevertheless requires that lawyers be competent and prepared. Similarly, the comments to the rule recognize a lawyer’s duty to maintain requisite knowledge and skill by engaging in continuing study and education. Thus, even if Michigan does not follow the majority of states and formally incorporate a duty of technological competency into its professional rules, attorneys in Michigan are still obligated to maintain some level of technological competence in their practices.

Why be Technologically Competent?

The quick answer: because you have no choice. The means employed to communicate and to navigate ev-

eryday tasks are rapidly changing. In the span of a few decades, we’ve gone from carbon paper, to fax machines, to high-speed scanners and PDF documents, to file sharing, videoconferencing, webinars and paperless offices. Legal research has moved from books (including “Shepardizing” cases by hand, through several volumes), to online legal research, to Google and, more recently, to

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automation of certain tasks. Those who do not adapt to a changing world will be left behind. A more practical answer is that by developing skills to improve the way we practice, lawyers become more efficient, freeing up time to focus on servicing clients, business development and, hopefully, for personal or professional pursuits.

Technological competence is a matter of survival. Clients are adopting new technologies in their businesses. Lawyers need to be able to speak their clients' language to keep up with them, win, and keep their business. Many clients are also aware of many of the technological tools that are available to lawyers. Tech-savvy clients are able to spot wasteful practices and insist upon streamlined efficiency. Lawyers need to be able to leverage new technology and new methods to deliver legal services to remain competitive.

It is simply not sufficient, professionally and ethically, to continue to do things the same way they were always done. As Suffolk University Law School Dean Andrew Perlman wrote, "Technology is playing an ever more important role, and lawyers who fail to keep abreast of new developments face a heightened risk of discipline or malpractice as well as formidable new challenges in an increasingly crowded and competitive marketplace."³ Writing for the ABA blog "Legal Rebels," attorney Ivy B. Grey notes, "By remaining technologically incompetent, lawyers are knowingly wasting clients' time and money due to lack of computer skills. That is unacceptable. It is time to recognize that inefficient use of technology, such as MS Word, could mean overbilling a client. When lawyers choose not to learn technology because the old way of doing things leads to more billable hours, they are not serving their clients fairly."⁴ Ms. Grey further argues that, from an ethical billing standpoint, "the right person should be performing the work, using the right tools and technology."⁵ Billing clients for busywork that would have been unnecessary had the right tech been used, or if the user had proper training on the technology employed, looks like collecting unearned fees. Thus, by failing to maintain technological competency, attorneys risk violating both MRPC 1.1's duty of competence and MRPC 1.5(a)'s prohibition of charging excess fees.

What Does Technological Competency Mean?

Technological competence should not be confused with – and means more than – e-discovery. Every facet of the practice now involves technology in some form or fashion, carrying with it an obligation to understand technology that impacts the manner in which lawyers represent their clients and conduct their business. Because technology is ever-changing, technological competency is not a static concept and, unfortunately, it is not a well-defined term. Examining the concept, the State Bar of California determined that technological competence requires "a basic understanding of the electronic protections afforded by the technology [lawyers] use in their practice."⁶ While under MRPC 1.1 certain aspects of the practice can be handled competently with assistance of third parties, the general duty of competence is non-delegable.⁷ Lawyers are expected to have a

basic understanding of the technologies that they and their clients use. This obligation is ever-evolving as technology modernizes and changes; it's not sufficient to take a single class and never update your knowledge.⁸

There is good news: you are likely already competent to some degree. A visit to the Oakland County Circuit Court on any motion day confirms that most lawyers are avid consumers of smartphones, although there are still a few holdouts wielding flip phones – even Blackberries make the occasional appearance. Most lawyers have incorporated some facet of technology into their practice, even if it is limited to email, word processing and billing software. Lawyers appearing in the U.S. District Court for the Eastern District of Michigan are already required to review and understand how their respective client's data is stored and retrieved when meeting and conferring regarding e-discovery issues (however, they can also use an e-discovery liaison to assist with this task).⁹

Also good news: technological competency does not mean that you have to be a technological expert. However, you can't plead ignorance of new technologies.¹⁰ Lawyers should learn about the tools in use every day, even ones that seem mundane. This includes email, word processing, spreadsheet and PDF programs. It also includes a basic awareness of "the cloud," the use of mobile devices, and

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understanding the risks and pitfalls of these programs, platforms and devices, including security risks. Technological competency also extends to social media. Even if they are not social media consumers, lawyers should have a basic understanding of common social media platforms, including their limitations, and ethical implications of social media usage.

Both individually and with the assistance of consultants, lawyers should reasonably be expected to demonstrate technological competency over several broad areas, including:

1. Cybersecurity, or safeguarding electronically stored client information;
2. Electronic discovery, including the preservation, review and production of electronic information;
3. Leveraging technology to deliver legal services, such as automated document assembly, electronic court scheduling and file share technologies;
4. Understanding how technology is used by their clients;
5. Technology used to present information and/or evidence in the courtroom; and

6. Internet-based investigations through simple internet searches and other research tools available online.¹¹

Additionally, internet-based and social media marketing platforms (such as blogs, Facebook, Twitter and LinkedIn) are becoming more popular, and lawyers are also using pay-per-lead services (in which third parties generate client leads), and pay-per-click tools (i.e., paying Google for analytical data regarding users of a law firm website). Lawyers need to understand how to use these tools properly in order to preserve confidential information, avoid security breaches and avoid ethics rules violations.¹²

Lawyers also need to be aware of ethics issues involved in performing internet searches for information on witnesses, jurors, clients and opposing parties, including restrictions on “friending” and following litigants, jurors, witnesses and judges.¹³ Social media usage is so commonplace that courts have found it is now “a matter of professional competence for attorneys to take the time to investigate social networking sites.”¹⁴ In other cases, courts have emphasized the importance of using simple internet searches to find missing witnesses and parties.¹⁵

When it comes to technological competency, the bottom line appears to be one of reasonableness, rather than perfection.¹⁶

What can be Done to Maintain Technological Competency?

Rule 1.1 contemplates retaining experts and vendors, and associating with others to comply with competency obligations. While this is commonly done in e-discovery, it is likely not practical for the balance of tasks. Likewise, as noted above, overall, general competency cannot be delegated to others. MRPC 5.1 and 5.3 contain supervisory obligations; if the supervising attorney is technologically incompetent, the attorney is not truly fulfilling her ethical obligations.

Fortunately, there are a number of resources available to attorneys for both reference and training. Perhaps not surprisingly, a vast number of these resources are available online or within apps. Chances are, your inbox is bombarded with daily offers to sign up for various seminars and webinars, many of which involve tech issues. A good number of them are offered free of charge.

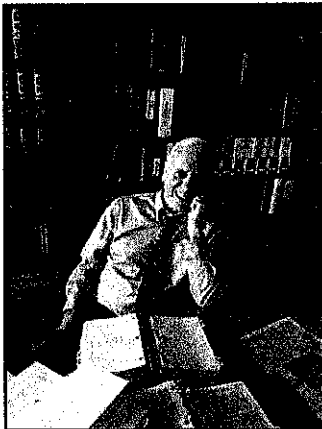
Bar association websites are a further source of information. The State Bar of Michigan’s EZ Practice Management Resource Center contains links to articles, free podcasts and other websites that contain articles, tips, software applications and other resources. The American Bar Association’s Legal Technology Resource Center offers free webinars and publications.

Tech shows, including the ABA Tech Show in Chicago, provide additional sources for networking and education. Other tech shows include, but are surely not limited to: ILTACON, which is sponsored by the International



Dennis W. Cleary, P.C.
Attorney at Law

Mediation, Facilitation and Arbitration



denniscleary@sbcglobal.net
www.dennisclearypclaw.com
(248) 442-9150

Legal Technology Association and focuses on information management, business management, applications/desktop and technology operations; Legaltech, which includes workshops and networking, and bills itself as the world's largest and longest-running trade show for technology; the Clio Cloud Conference, which is sponsored by Clio, a law practice management software company; and the Futures Conference, which is sponsored by the College of Law Practice Management. There are many, many others.

LinkedIn offers legal tech groups, which can provide a forum for ideas and networking. Twitter is another good resource as numerous, well-respected reporters, bloggers, attorneys and other legal professionals publish materials on the platform. The College of Law Practice Management has a "Fellows Blog" that contains numerous articles.

Michigan State University College of Law is highly regarded for its approach to innovation in preparing its students to utilize technology in delivering legal services. For practicing attorneys, Suffolk University Law School in Boston has announced a new series of online courses focusing on legal innovation and technology. The program was designed in response to inquiries from practitioners desiring to learn the types of skills being taught to law students.¹⁷

For non-law-related matters, there are also numerous publications (print and online) with tutorials on commonly used programs like Outlook, Excel, MSWord and PowerPoint. Again, while lawyers don't need to be virtuosos at all of these programs, a general understanding of what they are and how to perform basic functions is essential.

While the legal profession is traditionally slow to accept and adapt to change, remaining static in an increasingly mobile and digital world is not an option. Fortunately for practitioners, there are virtually limitless resources available on all aspects of the legal profession

that conceivably involve technology. The relative ease by which lawyers can become, and remain, technologically competent means there is no excuse for not doing so. ♦



Karen H. Safran is a litigator with **Carson Fischer, P.L.C.**, whose practice focuses on commercial litigation. She chairs the State Bar of Michigan's Civil Procedure and Courts Committee and is a member of the Oakland County Bar Association's board of directors.

Footnotes

- 1 ABA Model Rules of Professional Conduct 1.1[8].
- 2 States that require lawyers to maintain technological competence are: Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Additionally, New Hampshire and California have recognized the duty to maintain technological competence, even though not formally adopted in their professional rules. As of January 1, 2017, Florida requires three hours of technology CLE every three years.
- 3 Andrew Perlman, "The Twenty-First Century Lawyer's Evolving Ethical Duty of Competence," *The Professional Lawyer*, Volume 22, Number 4, ©2014 by the American Bar Association.
- 4 Ivy B. Grey, "Not competent in basic tech? You could be overbilling your clients—and be on shaky ethical ground," *ABAJournal.com/legalrebels*, May 15, 2017.
- 5 *Id.*
- 6 Cal. State Bar, Formal OP 2010-179 (2010).
- 7 Casey Flaherty, "Developing Technological Competency as a Lawyer," *Michigan Bar Journal*, June 2017.
- 8 *Id.*
- 9 <https://www.mied.uscourts.gov/PDFFiles/ModelESIDiscoveryOrderAndRule26f-Checklist.pdf>.
- 10 Ivy Grey, "Exploring the Ethical Duty of Technology Competence, Part I," *Law Technology Today* (www.lawtechnologytoday.org), March 8, 2017.
- 11 Tyler Roberts, "Are you Fulfilling Your Duty of Technology Competence?" *National Jurist, Lawyer & Statesman* (www.nationaljurist.com/lawyer-statesman), November 30, 2017.
- 12 Perlman, *supra*.
- 13 *Id.*
- 14 *Id.*, citing *Griffin v. Maryland*, 995 A2d 791, 801 (MD Ct Spec App 2010), *rev'd on other grounds*; *Griffin v. State*, 419 Md 343 (MD 2011).
- 15 *Id.*
- 16 James Podgers, "You Don't Need Perfect Tech Knowhow for Ethics' Sake – But a Reasonable Grasp is Essential," *ABA Journal – Annual Meeting* (August 9, 2014).
- 17 Robert Ambrogli, "OK, We Get Technology Competence, But How Do We Get Technologically Competent?" *Above the Law* blog, Nov. 6, 2017.

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Home / In-Depth Reporting / Lawyers have an ethical duty to safeguard...

DIGITAL DANGERS

Lawyers have an ethical duty to safeguard confidential information in the cloud

BY JASON TASHEA ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/64729/](http://www.abajournal.com/authors/64729/))

APRIL 2018 (/MAGAZINE/ISSUE/2018/04/)

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funeral home in ashes and an insurance company refusing to pay benefits, the last thing you'd expect to hear about is online security and the cloud.

But that's exactly what happened in 2014 when the Holding Funeral Home lost a building in Castlewood, Virginia, to a fire and Harleysville Insurance Co. refused to pay out the claim, alleging misrepresentation and other issues.

During the investigation, security video footage of the incident was shared between the insurer and the National Insurance Crime Bureau through the cloud storage service Box. The investigator who created the account didn't password-protect it. Pretty soon that account contained the entirety of the plaintiff's case file, including privileged information. Anyone who had a link could access it.

Sure enough, the opposing counsels mistakenly received access. After downloading the entire file, the funeral home's attorneys saw everything, including privileged documents, but they did not notify the insurer's attorneys, thinking that privilege had been waived.

At first, the insurer and its lawyers seemed out of luck. In 2017, U.S. Magistrate Judge Pamela Meade Sargent sided with the funeral home's attorneys in *Harleysville Insurance Co. v. Holding Funeral Home* and determined the failure to limit permissions and create a password did waive privilege. She wrote that it was "the cyberworld equivalent of leaving its claims file on a bench in the public square and telling its counsel where they could find it."

Luckily for the insurer, U.S. District Judge James P. Jones, on appeal, rejected the magistrate's reasoning. Jones concluded that the disclosure was inadvertent and the unique URL of 32 randomly assigned characters created by Box, which was needed to access the account, made it "impossible for anyone, let alone a particular person connected with the case, to accidentally stumble across the Box folder."

While failing at cybersecurity basics, the judge determined that the insurer had acted reasonably and privilege hadn't been waived.

BE REASONABLE

Whether for personal or professional applications, remote storage has become the standard for millions of Americans. However, this and other internet-enabled technologies can create unique ethical quandaries for lawyers. With changes to ethics rules reflecting technology's role in the profession, many find the prevailing reasonableness standard difficult to interpret. For cybersecurity ethicists, however, an ethical attorney is not just doing one thing; they are in a constant state of evolution and growth to keep pace with threats and best practices.

When discussing cybersecurity and legal ethics, "there are four basic rules that govern," says Sharon Nelson, president of Sensei Enterprises, a cybersecurity company. Those are ABA Model Rule 1.1, which deals with competence; Rule 1.4, which involves communications; Rule 1.6, which covers the duty of confidentiality; and rules 5.1 through 5.3, which focus on lawyer and nonlawyer associations. However, she calls competence and confidentiality "the big two."



When the ABA updated the Model Rules of Professional Conduct in 2012, two significant changes occurred regarding confidentiality and competency. The rules now require “reasonable efforts” to avoid the “inadvertent or unauthorized” disclosure and access to client information, and for lawyers to not only keep abreast of the law but

ABA Journal series: Cybersecurity and the law

technology, as well.

By using terms such as “reasonable,” the new rules “are flexible enough to protect the public in the face of new risks that may not have existed at the times the rules were written,” says Michael McCabe, an attorney in Potomac, Maryland, and a co-vice chair of the Ethics and Professional Responsibility Committee of the ABA Intellectual Property Law Section. Further, he says, what is reasonable cybersecurity for a large, multistate firm may not be reasonable for a small or solo operation.

Similar to negligence standards, reasonable cybersecurity has the potential to create many debates and proceedings, such as in *Harleysville*. This is because experts, and often official ethics opinions, generally agree that reasonable efforts are about process more so than a particular technology or practice.

For example, the updated comment to Rule 1.6(c) on confidentiality provides a nonexhaustive list of factors to consider whether an attorney acted reasonably in the lead-up to a breach of client data, but it does not endorse a specific approach. The comment recommends considering the type of information stored, the likelihood of a breach without putting safeguards in place, the challenges and costs to implementing safeguards, and how those safeguards may affect the attorney’s ability to represent the client.

LACK OF SPECIFICS

Last May, the Standing Committee on Ethics and Professional Responsibility built on existing guidance concerning confidentiality with Formal Opinion 477R.

“It’s the most current, most thorough guidance on lawyers’ duties to protect confidential and privileged information,” says Lucian Pera, a partner at Adams and Reese in Memphis, Tennessee, and co-author of an article in the second edition of

the *ABA Cybersecurity Handbook*.

This opinion replaced a document from 1999, which many interpreted as a greenlight to send confidential client communications through nonencrypted email in every circumstance, Pera says.

The new opinion says the 2012 Model Rules changes “do not impose greater or different duties of confidentiality.” However, “how a lawyer should comply with the core duty of confidentiality in an ever-changing technological world” does require some reflection.

For many reasons, Pera likes the opinion. Notably, he says, one can give it to an IT vendor and, without too much legalese, the company can comprehend the standards lawyers have to meet.

The guidance recommends that an attorney learn about the nature of threats, how client information is transmitted and stored, and best practices generally. It continues by saying client confidential documents should be labeled appropriately; lawyers and nonlawyers working on a matter should be trained in cybersecurity and confidentiality procedures; and due diligence should be conducted on technology vendors.

Read more ...

http://www.abajournal.com/magazine/article/lawyers_ethical_safeguard_confidential_information_cloud/P1

1	2	Next Page
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This article was published in the April 2018 issue of the ABA Journal with the title "Cloudy Ethics: Lawyers have an ethical duty to safeguard clients' confidential information—a task that's become more complicated as the cloud becomes more ubiquitous."



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**State Bar of Michigan
Bar Leadership Forum
Event Summary**

Name of Event/Date: 2018 Bar Leadership Forum, June 8-9

Subcommittee Chair: Hon. James N. Erhart

Location of Event: Grand Hotel, Mackinac Island, MI

Registration Fee: \$165.00 before May 8; \$195.00 after May 8

Hotel Registration Fee: \$508.50 single (tax & fees included); \$109.70 guest

	2014	2015	2016	2017	2018
Total Attendees	130	112	123	116	124
Registered Attendees (includes scholarships)	71	65	72	71	76
Board of Commissioners Registration	28	27	28	29	30
Exhibitors	10	8	6	7	6
Guests	76	88	90	69	88
History of Mackinac Lecture	N/A	N/A	N/A	N/A	6
Grand Hotel Stables Tour	9	9	N/A	N/A	12

Exhibitor Cost: \$195 per exhibit table

Overview:

The Bar Leadership Forum continues to receive excellent ratings and to be a valuable experience for bar and section leaders to network and share ideas. Returning speaker Jeffrey Cufaude's presentation "Values Driven Leadership" was well received—many attendees noted that as the highlight of the conference along with the Grand Reception. Suggestions for future topics focused on technology and facilitated discussions about topics of common concern or other opportunities for engaged interaction. Attendees loved the Grand Hotel, although a few remarked on the cost and difficulty of getting to and around the hotel.

Overall, the greatest value to attendees was the opportunity to gather with other leaders to compare experiences and receive advice on how to handle leadership experiences. One attendee remarked that "Leadership is a constant challenge—the BLF consistently provides new and emerging tools to sharpen and expand the skills needed to meet those challenges."

**State Bar of Michigan
Upper Michigan Legal Institute
Event Summary**

Name of Event/Date: 2018 Upper Michigan Legal Institute, June 8-9
Subcommittee Chair: Victoria A. Radke
Location of Event: Grand Hotel, Mackinac Island, MI
Registration Fee: \$139 before May 8, \$179 after May 8
Hotel Registration Fee: \$508.80 single (tax & fees included); \$109.70 guest

	2014	2015	2016	2017	2018
Registered Attendees (includes speakers)	81	88	88	89	88
Exhibitors	10	8	6	7	6
Guests	51	49	53	74	66
History of Mackinac Lecture	N/A	N/A	N/A	N/A	4
Grand Hotel Stables Tour	8	1	N/A	N/A	2

Exhibitor Cost: \$195 per exhibit table

Evaluation Summary

Attendees highly value the substantive law updates and practical summaries of emerging issues provided by the UMLI as well as the chance to network and interact with other attorneys. John Cameron and Jim Harrington continue to be superstars, and overall the speaker lineup this year received especially good remarks. Attendees had a lot of fun with Judge Farah's Evidence "Jeopardy" session; the criminal law update with Marty Tieber went so well multiple attendees wanted it to be longer; and Jill Daly, Jeff Kirkey, and Odey Meroueh received special accolades as attendee favorites. The evaluations show that this year's topics once again provided our members with the substantive law and practical advice they are looking for from this conference. Attendees appreciate the length of the sessions and the moderators who keep things running on time.

Overall the Upper Michigan Legal Institute continues to be rated very highly, and 100 percent of respondents say they would recommend this program to others. One attendee called UMLI the "Best way to update law knowledge available to Michigan practitioners."



MICHIGAN INDIGENT
DEFENSE COMMISSION

July 5, 2018

Janet K. Welch, Executive Director
State Bar of Michigan
306 Townsend Street
Lansing, MI 48993

Re: Reappointment of Nancy Diehl to Michigan Indigent Defense Commission

Dear Ms. Welch:

I write to ask that you submit Nancy Diehl's name to Governor Snyder for reappointment to the Michigan Indigent Defense Commission.

Ms. Diehl has served as one of the Commission's fifteen members since 2014. She has been a valuable member of the Commission, offering her well-rounded perspective on indigent defense as a former President of the State Bar of Michigan and a long time prosecutor in Wayne County. She has served as a member of the Commission's Nominations Committee and as chair of a committee responsible for reviewing local systems' compliance plans prior to presentation to the full commission. Ms. Diehl is a respected member of the Commission, which has benefitted greatly from her participation.

The Appointments Division for Governor Snyder has requested that the Commission advise you that it wishes for Ms. Diehl to be reappointed to the Commission. You may contact Liz Lukasik, Appointments Associate for the Office of Governor Snyder Appointments Division by email at LukasikL@michigan.gov or by phone at 517-241-5712 to discuss reappointment.

Thank you for your consideration of the Commission's request that Nancy Diehl be recommended for reappointment to the Michigan Indigent Defense Commission.

Sincerely,

/s/Michael Puerner

Michael Puerner, Chair
Michigan Indigent Defense Commission

Cc: Peter Cunningham



RESOLVED: That, pursuant to Article VI of the Bylaws of the State Bar of Michigan, the Board of Commissioners adopts the following as the committees and appointed subentities of the State Bar of Michigan for fiscal year 2018-2019

STATE BAR STANDING AND SPECIAL COMMITTEES 2018-2019

Organizational Principles and Definitions

Regardless of its jurisdiction, no committee, task force, commission or work group speaks for the State Bar. The work of most committees is advisory to the Board of Commissioners. Exceptions are specifically noted in a committee's jurisdiction. To the extent that any public activity or programming can be interpreted as a decision of the State Bar of Michigan or an expression of an ideological viewpoint, the activity or programming must be authorized in advance, in accordance with the bylaws of the State Bar of Michigan. Staff liaisons are accountable for ensuring that the committee's activity is consistent with these rules and within budget. Committees with overlapping subject-matter jurisdictions are encouraged to be aware of each other's work and collaborate where appropriate.

Commissioner Committee: Work supports the deliberations of the Board of Commissioners. Membership is primarily members of the Board of Commissioners, but committee membership may be supplemented to meet needs for particular expertise.

Standing Committee: Work expected to be ongoing, at least throughout the life cycle of the current Strategic Plan. In making standing committee recommendations and appointments, special attention should be paid to experience and continuity.

Special Committee: Work is intended to accomplish a complex but discrete mission, typically lasting at least one year but not exceeding any single Strategic Plan cycle. In making special committee recommendations and appointments, special attention should be paid to the expertise and representation of interested or affected communities. Recruitment from the leadership of sections and local and affinity bars is often essential.

Workgroups: Work is intended to be short-term and narrowly defined. It often reflects an unanticipated need or opportunity not evident during the annual planning of committee work. Workgroups may be formed at any time within a bar year, often on recommendation of a committee to the President, in whom the bylaws invest the authority of appointment. In making workgroup appointments, special attention should be paid to expertise and ability to commit to a fast-paced work schedule.

Subcommittees: The work of subcommittees supports the mission of the committee within which it operates. Unless otherwise directed by SBM leadership, chairs of committees, task forces, and commissions have the authority to create subcommittees as desirable to carry out their work. Subcommittee membership is always drawn from within the appointees of the committee, task force, or commission. If expertise beyond the appointees is necessary, the chair should request the creation of a workgroup.

Special Notes:

The President of the State Bar, at his or her discretion, may appoint for a one-year term, non-voting advisors, including individuals who are not members of the State Bar, to any committee on which such advisors, in his or her judgment, would be beneficial. Such advisors may be re-appointed to subsequent terms without limit.

No standing or special committee has authority to bestow an award or significant honor. Any award or significant honor recommended by a standing or special committee to be bestowed must be approved by the Board of Commissioners or Representative Assembly, as appropriate.



PROPOSED 2018-19 COMMITTEE STRUCTURE

Reflecting the general organization of the Strategic Plan, the organization of committees and workgroups is organized into four basic areas: Professional Standards, Communications and Member Services, and Public Policy, and Innovation, and Implementation. The boundaries between these groupings are permeable. The new jurisdictional statements emphasize the need for coordination and consultation among committees, primarily but not exclusively within the groupings. The new Strategic Planning Commissioner Committee will play the key role in evaluating the effectiveness of the coordination and collaboration within this structure.

PROFESSIONAL STANDARDS

Commissioner Committee	Standing Committees	Special Committees	Task Forces, Commissions
Professional Standards	Character and Fitness Client Protection Judicial Ethics Judicial Qualifications Lawyers and Judges Assistance Law School Deans Professional Ethics UPL	None	None

Professional Standards Commissioner Committee

Commissioner Committee

Jurisdiction Attorney regulation and professionalism

- Review and make recommendations to the Board of Commissioners on policies and actions regarding character and fitness, the client protection fund, ethics, and the unauthorized practice of law, regulation and professionalism
- Review the structure and composition of the committees and workgroups it oversees, and make recommendations to the Board of Commissioners for the upcoming bar year
- Review and evaluate suggested metrics for measuring the effectiveness of SBM's efforts to meet its professional standards strategic goals
- Consider external **collaborations** to advance the professional standards objectives of the Strategic Plan

Character and Fitness Committee

Standing Committee

Jurisdiction Support the work of the State Bar of Michigan conducted under the direction and authority of the Board of Law Examiners and Michigan Supreme Court by:

- Investigating the character and fitness of candidates for admission to the Bar pursuant to Rule 15, Section 1, of the Supreme Court Rules Concerning the State Bar of Michigan. This workproduct is provided to the Board of Law Examiners for its consideration. The workproduct is not provided to, or subject to approval by, the Board of Commissioners or Representative Assembly.
- Making recommendations on changes to rules concerning admissions related to character and fitness, and SBM interaction with Michigan law schools concerning character and fitness
- Meeting on a biennial basis with the Board of Law Examiners

- Determining how the committee’s work might interact with and support the work of the Professional Ethics, Judicial Ethics, Lawyers and Judges Assistance, and Client Protection Fund committees, including through conferring and coordinating regularly with them on trends, data, insights, and **metrics**
- Suggesting metrics for measuring the effectiveness of the work carried out by the Character and Fitness committee

Special Characteristics: This committee may have more than 15 members. The work of this committee is conducted pursuant to the authority, and under the oversight of, the Board of Law Examiners. The committee’s and district committees’ workproduct is not provided to, or subject to review by, the Board of Commissioners or any other entity of the State Bar of Michigan.

Client Protection Fund Committee

Standing Committee

Jurisdiction Advise the Board of Commissioners on the operation of the Client Protection Fund program pursuant to the [Client Protection Rules](#) adopted by the Board of Commissioner by:

- Making recommendations on the reimbursement of claims authorized by the Board of Commissioners
- Proposing or advising on revisions to rules and policies concerning the Client Protection Fund
- Recommending subrogation actions to recoup monies paid from the Client Protection Fund
- Reviewing and recommending loss prevention measures to minimize claims and public loss
- Determining how the committee’s work might interact with and support the work of the Professional Ethics, Judicial Ethics, Lawyers and Judges Assistance, and Character and Fitness committees, including through conferring and coordinating regularly with them on trends, data, insights, and **metrics**
- Being aware of and discussing **metrics** measuring the effectiveness of national and state efforts to reduce lawyer misappropriation of funds and to reimburse victimized clients

Special characteristics: This committee may have more than 15 members.

Judicial Ethics Committee

Standing Committee

Jurisdiction Offer analysis and guidance concerning the Michigan Code of Judicial Conduct, and, to the extent that they relate to judicial conduct in Michigan, to provisions of the Michigan Rules of Professional Conduct, the ABA Code of Judicial Conduct, and other applicable standards of professional conduct, as well as emerging issues of professional conduct affecting judges and judicial candidates by:

- Drafting informal opinions on judicial ethics published on the State Bar of Michigan website
- Drafting proposed formal opinions for consideration by the Board of Commissioners
- Making recommendations concerning amendments to the Michigan Code of Judicial Conduct and other standards professional conduct, on the committee’s own initiative or upon request by the Board of Commissioners or Representative Assembly
- Meeting biennially with the Judicial Tenure Commission and the leadership of the Michigan Judicial Institute
- Determining how the committee’s work might interact with and support work of the Professional Ethics, Lawyers and Judges Assistance, Character and Fitness, and Client Protection Fund committees, including through conferring and coordinating regularly with them on trends, data, insights, and **metrics**
- Being aware of and discuss **metrics** measuring the effectiveness of national and state efforts to reduce behavior leading to judicial discipline and promote civility.

Special Characteristics: *Members are nominated by and drawn from among the membership of the Michigan Judges Association, the Michigan Probate Judges Association, the Michigan District Judges Association, the Michigan Association of District Court Magistrates, and the Referee Association of Michigan.*

Judicial Qualifications Committee

Standing Committee

Jurisdiction As requested by the Governor, evaluate candidates for possible appointment to judicial vacancies and report in confidence to the Governor.

Special Characteristics: *The evaluations of this committee are advisory only to the Governor and are not provided to, or subject to approval by, the Board of Commissioners or Representative Assembly. The chief staff attorney of the Attorney Grievance Commission serves as reporter for this committee. Chairs of the committee may serve more than three two-year terms. This committee may have more than 15 members.*

Law School Deans Committee

Standing Committee

Jurisdiction Confer on issues and subjects that affect the law schools of Michigan and the State Bar, and its members, including legal preparation, law school admissions, education, standards, and testing of candidates for admission to the bar.

Special Characteristics: *This committee meets upon the initiative of a majority of the Michigan law school deans. Its membership includes the officers of the State Bar and the executive director of the Board of Law Examiners.*

Lawyers & Judges Assistance Committee

Standing Committee

Jurisdiction Propose and support measures to advance the well-being of lawyers, judges, and law students by:

- Recommending, developing, and supporting programs and educational presentations that provide assistance to law students, lawyers, and judges regarding substance use issues, mental health issues, anxiety, and general wellness
- Reviewing and making recommendations concerning proposed statutes and court rules affecting assistance to lawyers and judges faced with personal and professional problems related to substance use and mental health issues
- Monitoring national trends and data on attorney and judge wellness and treatment
- Determining how the committee's work might interact with and support work of the Professional Ethics, Judicial Ethics, Character and Fitness, and Client Protection Fund committees, including by conferring and coordinating regularly with them on trends, data, insights, and **metrics**
- Being aware of and discussing **metrics** measuring the effectiveness of national and state efforts to reduce attorney drug and alcohol addiction and depression
- Reviewing and evaluating **metrics** measuring the effectiveness of efforts to promote attorney wellbeing, including evaluating available online wellness assessment tools for lawyers

Special characteristics: *The LJAP Committee may develop and carry out programming consistent with this jurisdiction and within allocated budgetary resources, without explicit approval by the Board of Commissioners or Professional Standards Committee. This committee may have more than 15 members and may include non-State Bar members.*

Professional Ethics Committee

Standing Committee

Jurisdiction Offer analysis and guidance concerning the Michigan Rules of Professional Conduct, and, to the extent that they relate to attorney conduct in Michigan, provisions of the ABA Model Rules of Professional Conduct, the ABA Model Code of Judicial Conduct, and other applicable professional conduct standards, as well as emerging issues of professional conduct affecting lawyers:

- Drafting informal opinions on professional ethics published on the State Bar of Michigan website
- Drafting proposed formal opinions for consideration by the Board of Commissioners
- Making recommendations concerning amendments to the Michigan Rules of Professional Conduct, and other standards of professional conduct that relate to lawyer conduct, on the committee's own initiative or upon request by the Board of Commissioners or Representative Assembly
- Proposing and advising on revisions to court rules or legislation affecting professional ethics
- Determining how the committee's work might interact with and support work of the Judicial Ethics, Lawyers and Judges Assistance, Character and Fitness, and Client Protection Fund committees, including through a meeting of the chairs at least annually to discuss trends, data, insights, and **metrics**
- Conferring with the Attorney Grievance Commission and the Attorney Discipline Board to discuss trends, data, insights
- Reviewing and evaluating **metrics** measuring the effectiveness of efforts to reduce behavior subject to professional discipline and promote professionalism and civility

Special Characteristics: *Pursuant to operating rules adopted by the Board of Commissioners, informal ethics opinions of this committee are made public on the committee's own initiative, without approval of the Board of Commissioners. This committee may have more than 15 members.*

Unauthorized Practice of Law Committee

Standing Committee

Jurisdiction Provide advice on and support for the State Bar of Michigan's unauthorized practice of law responsibilities under Rule 16 of the Supreme Court Rules Concerning the State Bar of Michigan:

- Proposing and supporting measures to educate the public and the legal profession about unauthorized practice of law issues
- Providing guidance to the Board of Commissioners concerning matters involving the alleged unauthorized practice of the law (UPL), including recommendations on the filing and prosecuting of actions to enjoin the unauthorized practice of law.
- Proposing and advising on revisions to courts rules and legislation related to the unauthorized practice of law
- Determining how the committee's work might interact with and support work of the Professional Ethics, Public Outreach and Education, and Affordable Legal Services committees, including through conferring and coordinating regularly with them on trends, data, insights, and metrics
- Reviewing and evaluating metrics for measuring the effectiveness of efforts to carry out the responsibilities of the State Bar of Michigan under Rule 16, MCL 600.916, and MCL 450.681

Special characteristics: *UPL activity of the State Bar of Michigan is subject to the ongoing oversight of the Michigan Supreme Court and recommendations of the committee on specific UPL prosecution must be approved by the Board of Commissioners. This committee may have more than 15 members.*



COMMUNICATIONS AND MEMBER SERVICES

Commissioner Committee	Standing Committees	Special Committees	Task Forces, Commissions
Communications and Member Services	Awards Michigan Bar Journal Prof. Education & Events Public Outreach & Educ. Social Media and Website	None	None

COMMUNICATIONS AND MEMBER SERVICES COMMITTEE

Commissioner Committee

Jurisdiction Communications and member services

- Review and make recommendations to the Board of Commissioners on policies and actions regarding communications and member services
- Review and evaluate metrics for measuring the effectiveness of SBM’s efforts to meet its professional standards strategic goals
- Consider and recommend external **collaborations** to advance the communications and member services objectives of the Strategic Plan

Committees: Awards, Michigan Bar Journal, Education & Events, Public Outreach & Education, Social Media & Website

Awards Committee

Standing Committee

Jurisdiction Support the nomination process for and recommend recipients of awards made in the name of the State Bar of Michigan, by:

- Assisting in the management of the timetable for soliciting, reviewing, and recommending award nominations
- Providing input on effective solicitation of awards to ensure a high quality pool of diverse nominees
- Providing recommendations on the establishment of new awards or discontinuation of existing awards
- Offering guidance on how best to honor awardees and create an inspiring and accessible online archive of award recipients

Michigan Bar Journal Committee

Standing Committee

Jurisdiction Provide recommendations to the Board of Commissioners on any changes concerning the Michigan Bar Journal consistent with the State Bar’s strategic plan and provide regular editorial assistance to the editor of the Michigan Bar Journal by:

- Developing annual plans for the content of each Michigan Bar Journal issue
- Soliciting and reviewing submissions to the Michigan Bar Journal

- Make recommendations to the Board of Commissioners on any substantial changes to the publication of the Michigan Bar Journal, including format, number of issues, and budget
- Recommending **collaborations** to advance the communication and member service objectives of the Strategic Plan
- Conferring and coordinating regularly with the Social Media and Website committee
- Reviewing and evaluating **metrics** for evaluating the effectiveness of the Michigan Bar Journal in advancing the State Bar of Michigan’s strategic goals

Special Characteristics: *This committee may have more than 15 members.*

Professional Education & Events Committee

Standing Committee

Jurisdiction Support the professional education services of the State Bar of Michigan:

- Making recommendations on and assisting in the development of budgeted educational events for State Bar members events such as the Bar Leadership Forum, Upper Michigan Legal Institute, and the Annual Meeting
- Assessing the quality and relevance of SBM professional education services and their coordination and **collaboration** with ICLE and local bar education programming, and suggest and support any other desirable **collaboration**
- Making recommendations on improving access to legal information for members through traditional and emerging methods of conducting legal research, including SBM-endorsed research programs, legal publications, print and online digital libraries
- Providing guidance to the Practice Management Resource Center (PMRC) on the development, maintenance, and evaluation of resources, programs, and services designed to help members build and strengthen their law practices, with particular emphasis on the use of online resources as the primary vehicle to market and disseminate PMRC services
- Assisting in the publicity and promotion of mentorship programs throughout the state
- Reviewing and evaluating **metrics** measuring the effectiveness of the State Bar’s professional education and events efforts

Special Characteristics: *This committee may have more than 15 members.*

Public Outreach & Education Committee

Standing Committee

Support the public education services of the State Bar of Michigan

- Assisting in developing educational events and programs advancing lay understanding of law and the legal profession, with particular emphasis on community programs, including Law Day and Constitution Day
- Providing review and recommendations concerning the State Bar of Michigan’s online resources available to the public
- Exploring and assessing opportunities for **collaboration** in public outreach consistent with SBM strategic goals with local bar associations, nonlegal professional associations, and other external entities
- Conferring and coordinating regularly with the Unauthorized Practice of Law committee to discuss how each committee’s work might interact with and support the other’s work
- Recommending Michigan Legal Milestones that commemorate significant cases, events, places and people in the State’s legal history, and upon approval of the Board of Commissioners, helping implement the milestone and its celebration

- Reviewing reports on effectiveness of public outreach programming from the Social Media and Website Committee based on evaluation metrics and utilizing these reports as a basis for recommending improvements in content, or modification or discontinuation of programs.

Special Characteristics: *This committee may have more than 15 members and may include non-State Bar members.*

Social Media & Website Committee

Standing Committee

Support the development and maintenance of the State Bar’s website and use of social media:

- Providing assistance in the development, curation, and culling of content for the SBM website and social media
- Offering suggestions regarding resources and information related to social media
- Exploring and assessing the opportunities for **collaboration** consistent with SBM strategic goals in collaborative social media campaigns with local bar associations, nonlegal professional associations, and other external entities
- Conferring and coordinating regularly with the Michigan Bar Journal committee
- Providing guidance and support for the promotion of the SBM website, social media, and SBM e-publications (e-Journal, Public Policy Newsletter, and SBM News)
- Reviewing and evaluating **metrics** measuring the effectiveness of the State Bar’s public outreach and education efforts



PUBLIC POLICY

Commissioner Committee	Standing Committees	Special Committees	Task Forces, Commissions
Public Policy	Access to Justice Access to Justice Policy American Indian Law Civil Procedure & Courts Crim. Juris. & Practice U.S. Courts	Civil Discovery Court Rule Review	

PUBLIC POLICY COMMITTEE

Commissioner Committee

Jurisdiction Public policy development and advocacy

- Review and make recommendations to the Board of Commissioners on policies and actions regarding proposed court rules and legislation and public policy issues within the State Bar’s *Keller* constraints
- Review the structure and composition of the committees and workgroups it oversees, and make recommendations to the Board of Commissioners for the upcoming bar year
- Review and evaluate metrics for measuring the effectiveness of the State Bar’s public policy program
- Consider and recommend external **collaborations** to advance the public policy objectives of the Strategic Plan

Committees: Access to Justice; Access to Justice Policy: American Indian Law, Access to Justice Policy, Civil Procedure & Courts, Criminal Jurisprudence and Practice, Civil Discovery Court Rule Review

Access to Justice Committee

Standing Committee

Jurisdiction Support the State Bar’s access to justice efforts by:

- Developing and recommending proposals for proactive programs to benefit underserved populations, including the poor, racial and ethnic minorities, gender identity, juveniles, domestic violence survivors
- Supporting resources for civil legal aid programs
- Providing recommendations and support for the State Bar’s pro bono legal services program
- Recommending John W. Cumiskey Award recipient
- Identifying the need for any workgroups to support the jurisdiction of the committee
- Conferring and coordinating regularly with the Access to Justice Policy, Affordable Services, and Online Legal Resource and Referral committees on common strategic goals
- Identifying possible **collaborations** to support the committee’s jurisdiction

Special Characteristics: *This committee may have more than 15 members and may include non-State Bar members.*

Access to Justice Policy Committee

Standing Committee

Jurisdiction Support the State Bar of Michigan's public policy program by:

- Reviewing and making recommendations on proposed court rules and legislation concerning access to justice, particularly access policy issues that impact underserved populations
- Making recommendations for administrative, court rule, and statutory changes concerning access to justice, particularly access policy issues that impact underserved populations
- Conferring and coordinating regularly with the Access to Justice, Affordable Services, and Online Legal Resource and Referral committees

Special Characteristics: *This committee may have more than 15 members.*

American Indian Law Committee

Standing Committee

Jurisdiction Support the State Bar of Michigan's efforts to support effective and appropriate interaction between sovereign tribal courts and state and federal courts, and on the practice of law in those courts by:

- Reviewing and making recommendations on relevant proposed court rules and legislation
- Proposing court rule, legislative, or policy changes to advance more effective and appropriate interaction between sovereign tribal courts and state and federal courts

Special Characteristics: *This committee may have more than 15 members, includes a representative from the Michigan Supreme Court, and may include non-State Bar members.*

Civil Discovery Court Rule Review Committee

Special Committee

Jurisdiction Support the adoption of the committee-developed and SBM-approved proposed revisions to the Michigan Court Rules concerning civil discovery, including analysis and recommendations on any further proposed revisions.

Civil Procedure & Courts Committee

Standing Committee

Jurisdiction Support the public policy program of the State Bar of Michigan by:

- Reviewing and making recommendations on proposed court rules and legislation related to civil practice in the courts
- Making recommendations for administrative, court rule, and statutory changes concerning improvements in the administration, organization, and operation of Michigan state courts.
- Collaborating with other State Bar committees to provide feedback on proposed administrative, court rule, and statutory changes related to civil practice in the courts.

Special Characteristics: *This committee may have more than 15 members.*

Criminal Jurisprudence & Practice Committee

Standing Committee

Jurisdiction Support the public policy program of the State Bar of Michigan by:

- Reviewing and making recommendations on proposed court rules and legislation related to criminal jurisprudence and practice
- Making recommendations for administrative, court rule, and statutory changes concerning improvements in criminal jurisprudence and practice
- Collaborating with other State Bar committees to provide feedback on proposed administrative, court rule, and statutory changes related to criminal jurisprudence and practice in the courts

Special Characteristics: *This committee may have more than 15 members.*

U.S. Courts Committee

Standing Committee

Jurisdiction Provide advice and recommendations concerning the State Bar of Michigan's interaction with federal courts in Michigan and on practice of law in those courts by:

- Reviewing and making recommendations on proposed federal court rule amendments
- Proposing court rule, legislative, or policy changes to improve practice in federal courts in Michigan

Special Characteristics: *This committee may have more than 15 members and may include non-State Bar members. The Federal Bar Association Eastern District and the Federal Bar Association Western District may each nominate an advisor for appointment to the committee.*



INNOVATION AND IMPLEMENTATION

Commissioner Committee	Standing Committees ¹	Special Committees	Task Forces, Commissions
Strategic Planning	Affordable Legal Services Diversity and Inclusion Past Presidents	Online Legal Resource and Referral Center	

Strategic Planning Committee

Commissioner Committee

Jurisdiction Strategic plan accountability, development

- Review all existing committees to identify overlap or omissions, and make recommendations concerning their effectiveness in carrying the strategic plan forward
- Recommend the creation or termination of committees, task forces, commissions and workgroups
- Identify possible new collaborations to advance SBM strategic objectives of the State
- Review and evaluate metrics for measuring the effectiveness of committee and staff efforts to advance the Strategic Plan

Special characteristics: *This committee shall include the officers of the Board of Commissioners, and shall include non-commissioners whose experience, knowledge, and expertise will aid the BOC in assessing the effectiveness of efforts to advance the Strategic Plan.*

Affordable Legal Services Committee

Standing Committee

Jurisdiction Support the State Bar of Michigan’s access to justice and member services goals by:

- Reviewing, developing, and recommend innovative practices to provide low-cost legal services and evaluate efforts to expand access to affordable legal services for persons of modest means, including low bono services; non-profit law firms and sliding scale civil legal services; online dispute resolution and alternative dispute resolution services; lean process analysis, both at law practice and court administrative levels; alternative fee agreements; and fixed fee packages.
- Identifying possible **collaborations** to support the committee’s jurisdiction
- Identifying the need for any workgroups to support the jurisdiction of the committee
- Conferring and coordinating regularly at least annually with the Access to Justice and Online Legal Resources and Referral Center committees
- Identifying possible collaborations to support the committee’s jurisdiction
- Reviewing and evaluating **metrics** measuring the effectiveness of the State Bar’s public outreach and education efforts

Special Characteristics: *This committee may have more than 15 members.*

¹ The work of all State Bar committees is directly tied to the SBM Strategic Plan and thus concerns the Strategic Planning Committee whose work requires understanding the coordination of all committees. But the committee is directly responsible only for the Diversity and Inclusion Advisory Committee, whose work supports the strategic goals permeating all strategic planning; the Past Presidents committee, which provides historic perspective and insight; and for committees primarily engaged in piloting major strategic objectives from the innovation stage to implementation. For 2018-19, those committees are Affordable Legal Services and Online Legal Resource and Referral Center.

Diversity and Inclusion Advisory Committee

Standing Committee

Jurisdiction Support the diversity goals of the SBM Strategic Plan by:

- Identifying strategies to promote a diverse and inclusive voice in all State Bar of Michigan work and communications
- Recommending practices, tools and strategies to advance diversity and inclusion at the SBM staff level, section and committee levels, and throughout the justice system
- Encouraging examination of the status of diversity and inclusion efforts of Michigan law firms, courts, and law schools
- Suggesting methods for celebrating successful diversity and inclusion efforts
- Identifying the need for any workgroups to support the jurisdiction of the committee
- Identifying possible **collaborations** to support the committee's jurisdiction

Special characteristics: *This committee may develop and carry out collaborative programs consistent with this jurisdiction, and within allocated budgetary resources, with approval of the Executive Committee.*

Online Legal Resource and Referral Center

Special Committee

Jurisdiction Provide guidance and recommendations concerning the development and operation of the SBM Online Legal Resource and Referral Center, and the integration of the State Bar's pilot lawyer referral (LRS) program into the Center, through:

- Identifying strategies for the recruitment of qualified LRS panel members
- Evaluating pilot progress
- Proposing standards and rules for participation
- Suggesting potential **collaborations**
- Advising on marketing to the public
- Reviewing and advising on integration with SBM enhanced profile directory and tools
- Assessing **metrics** to help measure the effectiveness of the Online Legal Resource and Referral Center in advancing Strategic Plan goals
- Providing input on how ethics rules relate to the pilot and its development
- Conferring and coordinating regularly with the Access to Justice and Affordable Legal Services committees
- Suggesting metrics to measure the effectiveness of the Online Legal Resource and Referral Center and lawyer referral program efforts
- Identifying the need for any workgroups to support the jurisdiction of the committee.

Past Presidents' Advisory Council

Standing Committee

Jurisdiction Provide counsel and recommendations on all matters concerning the State Bar, at the request of the Board of Commissioners.



**Organizational Chart for Commissioner Committees (CC), Standing Committees (ST), Special Committees (SP),
Workgroups (W), and Subcommittees (SC)**

Professional Standards Commissioner Committee (CC)	Public Policy Commissioner Committee (CC)	Communications & Member Services Commissioner Committee (CC)	Strategic Planning Commissioner Committee (CC)
Committees	Committees	Committees	Committees
Character & Fitness (ST)	Access to Justice (ST)	Awards (ST)	Affordable Legal Services (ST)
Client Protection (ST)	Access to Justice Policy (ST)	Michigan Bar Journal (ST)	Diversity & Inclusion Advisory (ST)
Judicial Ethics (ST)	American Indian Law (ST)	Professional Education & Events (ST)	Online Legal Resource & Referral Center (SP)
Judicial Qualifications (ST)	Civil Discovery (SP)	Public Outreach & Education (ST)	Past Presidents Advisory (ST)
Lawyers & Judges Assistance (ST)	Civil Procedure & Courts (ST)	Social Media & Website	
Law School Deans (ST)	Criminal Jurisprudence & Practice (ST)		
Professional Ethics (ST)	U.S. Courts (ST)		
Unauthorized Practice of Law (ST)			