



Board of Commissioners

Agenda and Materials

September 21, 2023

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
THURSDAY, SEPTEMBER 21, 2023
AGENDA
DETROIT MARRIOTT TROY
9:30 A.M.

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

- I. Call to Order.....James W. Heath, President

CONSENT AGENDA

- II. **Minutes**
A. July 21, 2023 Board of Commissioners meeting*
- III. **President’s Activities**.....James W. Heath, President
A. Recent Activities*
- IV. **Executive Director’s Activities**.....Peter Cunningham, Executive Director
A. Recent Activities*
- V. **Finance**.....Erika L. Bryant, Chairperson
A. FY 2023 Financial Reports through July 2023*
- VI. **Professional Standards** Lisa J. Hamameh, Chairperson
A. Client Protection Fund Claims*
B. Unauthorized Practice of Law Claims**
- VII. **Public Policy**..... Daniel D. Quick, Chairperson
A. Model Jury Instructions*

LEADERSHIP REPORTS

- VIII. **President’s and Executive Director’s Report** James W. Heath, President
Peter Cunningham, Executive Director
A. Rule 21 Update
B. Well-Being in the Law Task Force Report
C. Staff Updates

- XI. **Representative Assembly Report** Gerrow D. Mason, Chairperson
A. September 21, 2023 Meeting Calendar*
- X. **Young Lawyers Section Report** Colemon L. Potts, Chairperson

SPECIAL COMMITTEE

- XI. **Strategic Planning Committee** Thomas H. Howlett, Chairperson

COMMISSIONER COMMITTEES

- XII. **Public Policy** Daniel D. Quick, Chairperson
A. Court Rules**
- XIII. **Finance** Erika L. Bryant, Chairperson
A. FY 2023 Financial Report
B. Contract Renewal for K2dnn*
C. Negligence Law Section Fund Balance**
- XIV. **Audit** Erika L. Bryant, Chairperson
- XV. **Professional Standards** Lisa J. Hamameh, Chairperson
A. Amendments to the CPF Rules*
- XVI. **Communications and Member Services** Joseph P. McGill, Chairperson
A. 2024 Michigan Legal Milestone*

COMMISSIONER RECOGNITION

- XVI. **Recognition of Retiring Board Members** James W. Heath, President
A. Thomas P. Clement written and presented by Thomas H. Howlett
B. Kristina A. Bilowus written and presented by Colemon L. Potts
C. Mark Wisniewski
- XVII. **Recognition of President James W. Heath** Daniel D. Quick, President-Elect

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- XVIII. **Comments or questions from Commissioners**
- XIX. **Comments or questions from the public**
- XX. **Adjournment**

*Materials included with agenda., **Materials delivered or to be delivered under separate cover or handed out.

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES

President Elect Quick called the meeting to order at 9:45 a.m. on Friday, July 21, 2023, in the Board Room of the Michael Franck building in Lansing, Michigan.

Commissioners present:

David C. Anderson
Yolanda M. Bennett
Aaron V. Burrell
Thomas P. Clement
Tanya N. Cripps-Serra
Robert A. Easterly
Hon. Kameshia D. Gant
Lisa J. Hamameh, Secretary
James W. Heath, President
Thomas H. Howlett
Suzanne C. Larsen
James W. Low
Gerard V. Mantese

Gerrow D. “Gerry” Mason
Joseph P. McGill, Vice President
Thomas P. Murray Jr.
Takura N. Nyamfukudza
Nicholas M. Ohanesian
Daniel D. Quick, President-Elect
Colemon L. Potts
Delphia T. Simpson
John W. Reiser III
Hon. Kristen D. Simmons
Matthew B. VanDyk
Danielle Walton

Commissioners absent:

Kristina A. Bilowus
Erika L. Bryant, Treasurer
Hon. B. Chris Christenson
Sherrice L. Detzler

Valerie R. Newman
Hon. David A. Perkins
Hon. Erane C. Washington
Mark A. Wisniewski

Guests

Ponce Clay, 2023-2024 Board Member
Samantha Hallman, Public Member
Joshua Lerner, 2023-2024 Board Member
David Watson, Executive Director, ICLE

State Bar staff present:

Peter Cunningham, Executive Director
Drew Baker, General Counsel
Margaret Bossenbery, Executive Coordinator
Sarah Brown, Brand Designer
Gregory Conyers, Program Director, Diversity Development Program
Darin Day, Program Director, Outreach
Tatiana Goodkin, Chief Financial Officer
Robert Mathis, Pro Bono Services & Justice Initiatives Counsel
Molly Ranns, Director, Lawyers & Judges Assistance Program
Marjory Raymer, Director of Communications
Jeanette Socia, Director of Human Resources
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Director, Governmental Relations
Laurin Thomas, Public Services Counsel
Brittany Griffin, Lawyer Referral Representative
Alicia Walker, Human Resources Assistant
Anne Vrooman, Program Director, Research & Development

Mr. Quick recognized Mr. Ponce Clay and Mr. Joshua Lerner who attended as incoming 2023-2024 Board members.

Consent Agenda

The Board received the minutes from the June 9, 2023, 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 2023 financial reports through May 2023.

The Board received Client Protection Fund Claims.

Mr. Quick asked if any items needed to be removed from the consent agenda. There was none. A motion was offered to approve the consent agenda. The motion was seconded and approved.

LEADERSHIP REPORTS

President and Executive Director's Report: James Heath, President and Peter Cunningham, Executive Director.

2023-2024 Election

Mr. Heath informed the Board that four candidates submitted their names for consideration for the position of treasurer: Mr. Anderson, Mr. Howlett, Mr. Low, and Mr. Mantese.

Mr. Heath asked if there were any nominations from the floor; hearing none, a motion was made to close the nominations. The motion was seconded and approved.

Per Board policy each candidate is given five minutes to address the Board followed by a 15-minute question-and-answer session. Mr. Heath stated that nominees will be invited to speak in alphabetical order. Both Mr. Anderson and Mr. Low both informed the Board they were withdrawing their names from consideration for the treasurer position. Mr. Howlett and Mr. Mantese addressed the Board per the policy.

Mr. Heath asked for a motion that the vote for the position of treasurer be by secret written ballot. The motion was made, seconded, and approved. Mr. Heath appointed Mr. Clement, Mr. Murray, and Judge Simmons to serve as tellers.

Mr. Heath announced that Dan Quick will serve as President of the State Bar of Michigan and Joe McGill will serve as President-Elect of the State Bar of Michigan for the 2023-2024 Bar year.

A motion was offered to elect Lisa Hamameh as Vice President of the State Bar of Michigan for the 2023-2024 Bar year. The motion was seconded and approved.

A motion was offered to elect Erika Bryant as Secretary of the State Bar of Michigan for the 2023-2024 Bar year. The motion was seconded and approved. Ms. Bryant was not present but did offer her acceptance of the anticipated nomination.

Mr. Heath announced that Mr. Howlett was elected as Treasurer for the 2023-2024 Bar year.

A motion was offered, supported, and approved to destroy the ballots of the election.

Rule 21 Update

Mr. Cunningham informed the Board that the portal for SBR 21, which requires mandatory succession planning for all private practice attorneys, is now live within the member portal. Attorneys can login to their SBM profile to identify an interim administrator or have the SBM IAP program name one for them. Approximately 200 members have indicated their succession planning preferences in the member portal, with approximately ten percent having the SBM IAP name one for them.

Well-Being in the Law Task Force

Ms. Ranns provided a brief update on the task force. The task force, which was launched in 2022, will hold the final vote to adopt the report on August 1, 2023, with the plan to present the report to the Michigan Supreme Court on August 18 before being released to the public.

The most significant recommendation of the task force is for an ongoing committee or commission to be created to continue the work of improving well-being in the law. Ms. Ranns shared a few of the 21 recommendations included in the task force's report.

Lawyers and Judges Assistance Program

Ms. Ranns shared that LJAP has been reviewed by the Strategic Planning Committee over the past few months. Ms. Ranns summarized the work that LJAP does which includes providing free consultations for legal professionals to law students, conduct clinical assessments on-site, short term counseling for law students, professional monitoring, provide referrals to trained providers, provide educational presentations, hold regular wellness events. The requests and contacts have more than doubled since 2020.

Staff Update and Introductions

Ms. Socia introduced Alicia Walker who was recently hired as a Human Resources Assistant. Ms. Thomas introduced Brittany Griffin who has been with the Bar since June as a Lawyer Referral Service Representative.

Representative Assembly (RA) Report: Gerrow D. Mason, Chairperson

Mr. Mason stated that he spoke with Chief Judge Melissa Pope of the Potawatomi Nation in July, and he is eager strengthen the relationship between tribal courts and the State Bar by hopefully scheduling a visit to a tribal courthouse with Bar leadership, and possibly holding a future RA meeting at a tribal facility.

Mr. Mason has encouraged Board members to donate and to get involved with Access to Justice. Mr. Mason stated that the RA has been working with the Michigan State Bar Foundation, the offices of Congresswoman Debbie Dingell and Lisa McClain, and Coach Jim Harbaugh, to set up a visit to a Legal Aid clinic to spread awareness and raise funds for the Access to Justice Fund.

Mr. Mason shared that the Board received RA "Reform Committee" materials. The proposals included will be voted on at the September RA meeting.

Mr. Mason also shared that at this time there is one candidate, Nicole Evans, who has submitted their name for RA Clerk.

Young Lawyers Section (YLS) Report: Colemon L. Potts, Chairperson

Mr. Potts provided the Board with a summary of the Summit program, which hosted 110 people and took place in June at Little Caesars Arena. There were many small breakout sessions, a vendor showcase, awards presentation, and keynote speaker, Justice Kyra Bolden.

There is an event on student loan forgiveness on July 25. There will also be delegates attending the Annual ABA meeting in Denver.

Strategic Planning Committee: Thomas H. Howlett, Chairperson

Mr. Howlett shared that the committee has been holding monthly meetings. Their July meeting was led by Ms. Bilowus and focused on the potential of developing a leadership academy. At the August meeting, the committee will conduct a program review of the SBM Lawyer Referral Service.

The committee expects that the September meeting will include a report and recommendations on how to use the net promoter score and other metrics utilized by the State Bar of Michigan.

COMMISSIONER COMMITTEES

Public Policy: Dan D. Quick, Chairperson

Mr. Quick provided the report for the Public Policy committee.

Court Rules

1. ADM File No. 2022-14: Proposed Amendment of MCR 2.311

The proposed amendment of MCR 2.311 would allow a mental examination to be recorded by video or audio under certain circumstances.

A motion was offered and supported to support ADM File No. 2022-14 as drafted. The motion was approved.

2. ADM File No. 2022-11: Proposed Amendments of MCR 2.511 and 6.412

The proposed amendments of MCR 2.511(C) and 6.412(C) align with Fed Crim P 24 and Fed Civ R 47 and would require the court to allow the attorneys or parties to conduct voir dire in civil and criminal proceedings if the court examines the prospective jurors. The proposed requirement is subject to the court's determination that the parties' or attorneys' questions are proper.

A motion was offered and supported to support ADM File No. 2022-11. The motion was approved.

3. ADM File No. 2023-05: Proposed Amendment of MCR 3.613

To avoid confusion, the proposed amendment of MCR 3.613 incorporates the amendment of MCR 3.613 (ADM File No. 2021-21), which takes effect July 1, 2023. The proposed amendment of MCR 3.613 in this ADM file would add a new subrule (H) that is similar to MCR 2.002(I) and would require a court to pay the costs of publication in a name change proceeding if fees are waived under MCR 2.002, publication is required by law, and publication has not been waived under MCR 3.613.

A motion was offered and supported to support ADM File No. 2023-05. The motion was approved.

4. ADM File No. 2022-26: Proposed Amendment of MCR 6.425

The proposed amendment of MCR 6.425(D)(1)(c) would require a trial court, on the record before sentencing, to personally address the defendant regarding his or her allocution rights and to address any victim who is present and allow the victim to be reasonably heard, similar to FR Crim P 32(i)(4).

A motion was offered and supported to support ADM File No. 2022-26. The motion was approved.

5. ADM File No. 2023-08: Amendment of MCR 7.202

The amendment of MCR 7.202 includes in the definition of “final judgment” or “final order” post judgment orders deciding a claim for remaining proceeds under MCL 211.78t.

A motion was offered and supported to support ADM File No. 2023-08. The motion was approved.

Legislation

Tax Tribunal

HB 4563 (Hoadley) Property tax: tax tribunal; electronic hearings of the tax tribunal; provide for. Amends sec. 3a of 1976 PA 267 (MCL 15.263a).

HB 4564 (Outman) Property tax: tax tribunal; methods for tax tribunal to hold hearings; expand to include electronically. Amends secs. 26 & 34 of 1973 PA 186 (MCL 205.726 & 205.734).

A motion was offered that this is *Keller* permissible. The motion to support was seconded and approved. The BOC directed that the vote on the Public Policy Committee’s proposed motion be conducted by e-vote.

HB 4657 (Pohutsky) Courts: state court administration; state pretrial services division; create. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding secs. 11 & 11a to ch. V.

A motion was offered that this is *Keller* permissible. The motion to support was seconded and approved. The BOC directed that the vote on the Public Policy Committee’s proposed motion be conducted by e-vote.

HB 4738 (Breen) Criminal procedure: witnesses; confidentiality of certain information of a witness; require prosecuting attorney to maintain and provide for disclosure in certain circumstances. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 40b to ch. VII.

HB 4739 (Mentzer) Crime victims: rights; practice of redacting victim’s contact information; codify. Amends 1985 PA 87 (MCL 780.751 - 780.834) by adding sec. 8a.

A motion was offered that this is *Keller* permissible. The motion to support was seconded and approved. The BOC directed that the vote on the Public Policy Committee’s proposed motion be conducted by e-vote.

HB 4746 (Steele) Criminal procedure: mental capacity; outpatient treatment for misdemeanor offenders with mental health issues; provide for. Amends sec. 461 of 1974 PA 258 (MCL 330.1461) & adds sec. 1021 & ch. 10A.

The Public Policy Committee recommended that this bill be considered at a later date to be determined. The BOC concurred.

HB 4850 (Glanville) Courts: juries; exemption from jury service for certain military personnel; allow. Amends sec. 1307a of 1961 PA 236 (MCL 600.1307a).

A motion was offered that this is *Keller* permissible. The motion to support was seconded and approved. The BOC directed that the vote on the Public Policy Committee's proposed motion be conducted by e-vote.

Audit: Erika Bryant, Chairperson

Ms. Bryant shared that the Audit Committee has not met since the last Board meeting. However, interim testing procedures for the FY 2023 audit will be completed in August.

Finance: Erika L. Bryant, Chairperson

Financial Reports

Ms. Bryant provided the Board with the FY 2023 financial reports. As of May 30, 2023, the SBM administrative fund had a net position of \$13.1 million, which is an increase of \$2.4 million since the beginning of the fiscal year. SBM net position (without the retiree healthcare trust) increased by \$1.9 million due to operating revenues exceeding expenses by \$1,600,000, and interest income of \$380,714. Operating result was favorable to budget by \$800,641. The positive variance was due to lower expenses for payroll and benefits, lower non-labor expenses, and higher interest income. Revenues were slightly lower at \$8,546. Retiree healthcare trust investments increased in value by \$400,000 due to improved stock market. Excluding income from retiree healthcare trust, which is not included in the budget or forecasted, an increase in net position of \$1.7 million is projected with a favorable year end budget variance of \$574,316. The Client Protection Fund has a net position of \$2.3 million, which has increased by \$210,420 since the beginning of the fiscal year.

As of May 2023, the total number of active, inactive, and emeritus members in good standing is 46,704 attorneys, which is a net decrease of 69 attorneys since the beginning of the year. The number of paying attorneys has decreased by 597. There are 586 new attorneys who have joined the bar since the beginning of the year. These changes are not unexpected due to the fewer number of attorneys joining the bar and the increased number of attorneys retiring and choosing emeritus status.

FY 2024 Budget and Budget Assumptions

Ms. Bryant introduced the Budget process and Mr. Cunningham reviewed the proposed FY 2024 budget. A motion was made to approve the budget. The motion was seconded and approved.

Professional Standards: Lisa J. Hamameh, Chairperson

Ms. Hamameh welcomed David Watson, the Executive Director of ICLE. The committee met on July 19, 2023. They reviewed applications for both the ICLE Executive Committee and the MILS Board of Trustees.

The committee recommended Chad Engelhardt to the ICLE Executive Committee to serve a three-year term commencing October 1, 2023. A motion was made to accept this recommendation. The motion seconded and approved.

There were two vacancies and two applicants for the Michigan Indian Legal Services Board of Trustees. A motion was made to reappoint Sean E. Cahill and Amy Wesaw to MILS. The motion was seconded and approved.

Communications and Member Services (CAMS): Joseph P. McGill, Chairperson

Mr. McGill reported that the committee did not meet in July. Mr. McGill shared that the 50-year Golden Celebration held in May was a great event. The attendance was up 15% from 2022. And attendance at the Great Lakes Legal Conference was up from 2019 by 16%. There were many positive comments shared with SBM staff regarding both events.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Judge Gant shared that the Association of Black Judges of Michigan is hosting a summer soiree on Tuesday, July 25, 2023, at 5:30 p.m. at the Delmar in Detroit. Many judges will be honored, including Judge Gant honored as the outgoing president. All commissioners are invited to attend.

Ms. Bryant shared that Associate Supreme Court Justice Kentanji Brown Jackson is now an honorary member of Delta Sigma Theta.

Comments or questions from the public

Ms. Samantha Hallman addressed the Board. Ms. Hallman expressed her concerns about accessing video hearings around the state. She is also interested in how the bar operates, how it solicits comments from members of the public, and expressed her displeasure in position on SB 257.

Dave Watson thanked the Board for the relationship between the State Bar of Michigan, the Board of Commissioners, and the continued support of the work provided by ICLE.

Adjournment

The meeting was adjourned at 12:10 p.m.

President James W. Heath
President's Activities
July 22, through September 21, 2023

Date	Event	Location
July 25	Jewish American of Michigan Bar Association	Ferndale
July 25	Association of Black Judges Summer Soiree	Detroit
July 29	Liberian Association of Michigan	Detroit
August 3 – 8	ABA Annual Meeting National Conference of Bar Presidents Meeting with Great Rivers Bar Leaders Members ABA House of Delegates	Denver, CO
August 11	MDTC/MAJ Battle of the Bar Softball event	Detroit
August 23	Michigan Advocacy Program and Michigan State Bar Foundation meeting	Ypsilanti
August 25	Michigan Legal Milestone	Idlewild
September 9	Family Law Section Annual Dinner and Program	Detroit
September 13	Meeting with former President of the State Bar, Robert Buchannan	Grand Rapids
September 13	Michigan State Bar Foundation reception	Grand Rapids
September 18	AGC Lunch and Learn	Troy
September 20	Meeting with the Officers of the State Bar of Michigan	Detroit
September 21	Board of Commissioners meeting	Troy

**Executive Director Peter Cunningham
Executive Director Activities
July 21 through September 21, 2023**

Date	Event
July 31	Meeting with David Watson, Executive Director ICLE
August 1	Justice for All (JFA) Executive Committee meeting
August 1 – 5	ABA Annual Meeting National Association of Bar Executives National Conference of Bar Presidents Meeting with Great Rivers Bar Leaders Members
August 7	RA Nominating and Awards Committee meeting
August 7	Diversity Equity and Inclusion (DEI) Commission meeting
August 8	Strategic Planning Committee meeting
August 11	DEI Commission meeting
August 14	JFA Resource Committee
August 14	RA Rules and Calendar Committee meeting
August 16	JFA Commission Special meeting
August 17	JFA Communications Committee meeting
August 18	RA Drafting Committee meeting
August 21-23	Interviews for Assistant Executive Director's position
August 23	Meeting with Commissioner Thomas Howlett
August 25	SBM Michigan Legal Milestone
August 29	All Staff meeting
August 30	DEI Executive Team meeting
August 30	SBM Officers Retreat and meeting with Chief Justice Clement
August 31	DEI Workgroup meeting
September 5	JFA Executive Team meeting
September 6	Meeting with President-Elect Quick and Nathan Triplett
September 8	DEI Commission meeting
September 11	JFA Resource Committee meeting
September 11	JFA Commission meeting
September 13	Michigan State Bar Foundation meeting

Date	Event
September 18	Public Policy Committee meeting
September 19	Finance Committee meeting
September 19	Strategic Planning Committee meeting
September 20	Michigan Supreme Court Administrative Hearing
September 20	Meeting with SBM Officers
September 21	Board of Commissioner meeting 2022-2023 Board of Commissioners meeting 2023-2024 Presidential Inauguration and Awards Luncheon Representative Assembly meeting

State Bar of Michigan Financial Results Summary

For the Ten Months Ended July 31, 2023
Fiscal Year 2023

Administrative Fund - Summary of Results as of July 31, 2023

Operating Revenue	\$10,619,230
Operating Expense	<u>(8,991,221)</u>
Operating Income (Loss)	1,628,009
Non-Operating Income (Loss)	<u>1,212,521</u>
Change in Net Position	2,840,530
Net Position, October 1, 2022	<u>\$9,813,122</u>
Net Position, July 31, 2023	<u>\$12,653,652</u>

As of July 31, 2023, Net Position excluding Retiree Healthcare Trust was \$9,556,025, an increase of \$2,116,972 since the beginning of the year and favorable to budget by \$1,000,337.

YTD Operating Revenue variance – \$24,681, unfavorable to budget (0.2%):

Operating revenue was lower primarily due to lower license fees and related revenue and credit card processing fee recovery, partially offset by higher LRS and C&F revenues.

YTD Operating Expense variance - \$700,908, favorable to budget (7.2%):

Salaries and Employee Benefits/ Payroll Taxes – \$227,392, favorable (3.4%)

- Under budget due to lower salary expenses (\$141,648) and lower payroll taxes and benefits (\$85,744).

Non-Labor Operating Expenses - \$473,516, favorable (15.7%)

- Legal - \$55,045, favorable (36.3%) – Under budget primarily in C&F and General Counsel.
- Public and Bar Services - \$118,814, favorable (15.6%) – Under budget primarily in Outreach and IT due to timing of expenses.

- Operations and Policy - \$299,567, favorable (14.3%) – Under budget with the largest variance in Finance due to lower credit card processing fees and depreciation, Bar Journal, Digital, EO, Facilities, and RA expenses, some due to timing.

YTD Non-Operating Revenue Budget Variance - \$1,050,851 favorable to budget 650%:

- Interest income is favorable to budget by \$324,110 (200.5%).
- Retiree Health Care Trust net investment gain of \$726,741 (this amount is *not* budgeted).

Cash and Investment Balance

As of July 31, 2023, the cash and investment balance in the State Bar Admin Fund (net of “*due to Sections, Client Protection Fund, and Retiree Health Care Trust*”) was \$8,687,548, an increase of \$1,362,975 from the beginning of the year primarily due to collection of license fees.

SBM Retiree Health Care Trust

As of July 31, 2023, the SBM Retiree Health Care Trust investments were \$4,264,887, an increase of \$723,560 since the beginning of the year. The change is due to investment gains of \$740,477, net of advisor fees of \$16,917.

Capital Budget

Year-to-date capital expenditures totaled \$355,173, or 62.5% of the FY 2023 capital expenditures budget of \$568,100.

Client Protection Fund

The Net Position of the Client Protection Fund as of July 31, 2023 totaled \$2,377,551, an increase of \$255,760 from the beginning of the year. Claims expenses totaled \$273,459, including \$162,346 of authorized but not paid claims awaiting signed subrogation agreements.

SBM Membership

As of July 31, 2023, the active, inactive, and emeritus membership in good standing totaled 46,812 attorneys, an increase of 39 attorneys since the beginning of the year; the number of paying attorneys decreased by 483. A total of 698 new attorneys have joined SBM since the beginning of the year.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
July 31, 2023**

FY 2023

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

State Bar of Michigan
Statement of Net Position
Administrative Fund
For the Ten Months Ending July 31, 2023

	6/30/2023	7/31/2023	Increase (Decrease)	%	Beginning of FY 2023 10/1/22
ASSETS AND DEFERRED OUTFLOWS					
Cash	\$397,672	\$445,714	\$48,043	12.1%	\$2,451,119
Investments	12,420,808	11,601,075	(819,733)	(6.6%)	7,953,650
Accounts Receivable	28,312	36,887	8,576	30.3%	54,731
Due from (to) CPF	(982)	(383)	598	(61.0%)	(4,068)
Due to Sections	(3,447,478)	(3,358,858)	88,620	(2.6%)	(3,076,129)
Prepaid Expenses	314,351	318,579	4,228	1.3%	396,913
Lease Receivable	33,907	33,046	(861)	(2.5%)	41,636
Capital Assets	3,220,854	3,206,252	(14,602)	(0.5%)	3,193,128
SBM Retiree Health Care Trust	4,137,376	4,264,887	127,512	3.1%	3,541,327
Total Assets	\$17,104,820	\$16,547,199	(\$557,620)	(3.3%)	\$14,552,308
Deferred outflows of resources related to pensions	38,227	38,227		0.0%	38,227
Deferred outflows of resources related to OPEB	616,028	616,028		0.0%	616,028
Total Deferred outflows of resources	654,255	654,255		0.0%	654,255
Total Assets and Deferred Outflows of Resources	17,759,075	17,201,454	(557,620)	(3.1%)	15,206,563
LIABILITIES, DERERRED INFLOWS AND NET POSITION					
Liabilities					
Accounts Payable	\$88	\$10	(\$78)	(88.6%)	\$336,346
Accrued Expenses	685,293	611,779	(73,514)	(10.7%)	633,546
Deferred Revenue	2,630,675	1,782,690	(847,985)	(32.2%)	2,263,179
Net Pension Liability	232,483	232,483		0.0%	232,483
Net OPEB Liability	872,429	872,429		0.0%	872,429

	6/30/2023	7/31/2023	Increase (Decrease)	%	Beginning of FY 2023 10/1/22
Total Liabilities	4,420,968	3,499,391	(921,578)	(20.8%)	4,337,983
Deferred Inflows Leases	35,186	34,481	(705)	(2.0%)	41,530
Deferred Inflows of resources related to pensions	103,071	103,071		0.0%	103,071
Deferred Inflows of resources related to OPEB	910,857	910,857		0.0%	910,857
Total Deferred inflows of resources	1,049,114	1,048,409	(705)	(0.1%)	1,055,458
Total Liabilities and Deferred Inflows	5,470,082	4,547,800	(922,283)	(16.9%)	5,393,441
Net Assets					
Invested in Capital Assets, Net of Related Debt	3,220,854	3,206,252	(14,602)	(0.5%)	3,193,128
Restricted for Retiree Health Care Trust	2,970,117	3,097,629	127,512	4.3%	2,374,069
Unrestricted	6,098,022	6,349,773	251,753	4.1%	4,245,924
Total Net Position	12,288,993	12,653,654	364,663	3.0%	9,813,122
Total Liabilities, Deferred Inflows and Net Position	\$17,759,075	\$17,201,454	(\$557,620)	(3.1%)	\$15,206,563
Net Position <u>excluding</u> the impacts of retiree health care	\$9,318,876	\$9,556,025	\$237,151	(4.3%)	\$7,439,053

Note: Cash and investments actually available to the State Bar Administrative Fund, after deduction of the "Due to Sections" and "Due to CPF" and not including the "Retiree Health Care Trust" is \$8,687,548 (see below)

CASH AND INVESTMENT BALANCES

Cash (including CD's and Money Market)	\$397,672	\$445,714	\$48,043	12.1%	\$2,451,119
Investments	12,420,808	11,601,075	(819,733)	(6.6%)	7,953,650
Total Available Cash and Investments	12,818,480	12,046,789	(771,691)	(6.0%)	10,404,769
Less:					
Due to Sections	3,447,478	3,358,858	(88,620)	(2.6%)	3,076,129
Due to CPF	982	383	(598)	(61.0%)	4,068
Due to Sections and CPF	3,448,460	3,359,241	(89,219)	(2.6%)	3,080,196
Net Administrative Fund Cash and Investment Balance	9,370,020	8,687,548	(682,472)	(7.3%)	7,324,573

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
Administrative Fund
For the Ten Months Ending July 31, 2023

	Actual	Budget	Variance	Percentage	Prior Year	Variance	Percentage
	YTD	YTD			YTD		
Revenue							
Legal							
Ethics	\$2,700	\$4,875	(\$2,175)	(44.62%)	\$2,025	\$675	33.33%
Character & Fitness	338,885	289,383	49,502	17.11%	258,370	80,515	31.16%
Legal Total	341,585	294,258	47,327	16.08%	260,395	81,190	31.18%
Public and Bar Services							
Inaugural and Awards Luncheon (Formerly Annual Meeting)	130	150	(20)	(13.33%)	-	130	0.00%
Lawyer Services	180,585	171,270	9,315	5.44%	176,633	3,952	2.24%
Bar Leadership Forum	36,305	12,000	24,305	202.54%	13,605	22,700	166.85%
Upper Michigan Legal Institute	-	20,000	(20,000)	(100.00%)	20,363	(20,363)	(100.00%)
50 Year Honoree Celebration	5,960	3,350	2,610	77.91%	-	5,960	0.00%
Practice Management Resource Center	2,580	2,500	80	3.20%	200	2,380	1,190.00%
Lawyer Referral Service	149,210	125,003	24,207	19.37%	172,680	(23,470)	(13.59%)
Diversity	-	-	-	0.00%	5,000	(5,000)	(100.00%)
LJAP	51,663	51,580	83	0.16%	40,697	10,966	26.95%
Public and Bar Services Total	426,433	385,853	40,580	10.52%	429,178	(2,745)	(0.64%)
Operations and Policy							
License Fees	9,082,085	9,142,880	(60,795)	(0.66%)	6,445,775	2,636,310	40.90%
Other Revenue	505,517	586,830	(81,313)	(13.86%)	311,286	194,231	62.40%
Bar Journal Directory	213	-	213	0.00%	-	213	0.00%
Bar Journal	148,851	136,603	12,248	8.97%	146,218	2,633	1.80%
Print and Design	38,776	34,150	4,626	13.55%	40,997	(2,221)	(5.42%)
e-Journal	27,892	23,750	4,142	17.44%	26,720	1,172	4.39%
Digital	47,878	39,587	8,291	20.94%	53,915	(6,037)	(11.20%)
Operations and Policy Total	9,851,212	9,963,800	(112,588)	(1.13%)	7,024,911	2,826,301	40.23%
Non-Operating Revenue							
Investment Income - SBM Operations	485,780	161,670	324,110	200.48%	42,094	443,686	1,054.04%
Investment Income - Ret HC Trust	726,741	-	726,741	0.00%	(785,781)	1,512,522	(192.49%)
Total Non-Operating Revenue	1,212,521	161,670	1,050,851	650.00%	(743,687)	1,956,208	(263.04%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
Administrative Fund
For the Ten Months Ending July 31, 2023

	Actual YTD	Budget YTD	Variance	Percentage
Expense				
Legal				
Ethics	\$2,428	\$5,535	(\$3,107)	(56.13%)
Client Protection Fund Dept	9,580	4,872	4,708	96.63%
Interim Administrator Program	1,349	1,415	(66)	(4.66%)
Character & Fitness	27,237	47,833	(20,596)	(43.06%)
UPL	3,963	10,252	(6,289)	(61.34%)
General Counsel	7,570	33,672	(26,102)	(77.52%)
Human Resources	1,694,315	1,783,652	(89,337)	(5.01%)
Salaries	1,140,849	1,142,262	(1,413)	(0.12%)
Legal Total	2,887,291	3,029,493	(142,202)	(4.69%)
Public and Bar Services				
Inaugural and Awards Luncheon (Formerly Annual Meeting)	9,981	10,030	(49)	(0.49%)
Lawyer Services	23,000	26,560	(3,560)	(13.40%)
Bar Leadership Forum	5,860	6,738	(878)	(13.03%)
UMLI	-	1,000	(1,000)	(100.00%)
50 Yr. Golden Celebration	34,967	37,900	(2,933)	(7.74%)
Practice Management Resource Center	5,309	8,875	(3,566)	(40.18%)
Lawyer Referral Service	3,954	7,917	(3,963)	(50.06%)
Outreach	82,777	92,801	(10,024)	(10.80%)
Diversity	29,327	23,450	5,877	25.06%
LJAP	16,733	17,280	(547)	(3.17%)
Technical Services	432,186	530,357	(98,171)	(18.51%)
Salaries	1,751,310	1,780,514	(29,204)	(1.64%)
Total Public and Bar Services	2,395,404	2,543,422	(148,018)	(5.82%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
Administrative Fund
For the Ten Months Ending July 31, 2023

	Actual YTD	Budget YTD	Variance	Percentage
Expense				
Operations and Policy				
Administration	93,740	96,622	(2,882)	(2.98%)
Financial Services	702,720	814,571	(111,851)	(13.73%)
Bar Journal	274,507	294,880	(20,373)	(6.91%)
Print and Design	41,087	50,680	(9,593)	(18.93%)
Digital	91,354	108,080	(16,726)	(15.48%)
e-Journal	12,289	13,745	(1,456)	(10.59%)
General Communications	4,707	12,042	(7,335)	(60.91%)
Executive Office	13,770	53,032	(39,262)	(74.03%)
Board of Commissioners	49,066	60,350	(11,284)	(18.70%)
Representative Assembly	4,482	24,600	(20,118)	(81.78%)
Governmental Relations	53,636	56,400	(2,764)	(4.90%)
Research and Development	7,125	14,165	(7,040)	(49.70%)
Facilities Services	317,797	365,139	(47,342)	(12.97%)
Justice Initiatives	130,533	132,164	(1,631)	(1.23%)
Salaries	1,911,713	2,022,744	(111,031)	(5.49%)
Operations and Policy Total	3,708,526	4,119,214	(410,688)	(9.97%)
Total Expense	8,991,221	9,692,129	(700,908)	(7.23%)
Revenue	11,831,751	10,805,582	1,026,169	9.50%
Increase (Decrease) in Net Assets	\$2,840,530	\$1,113,453	\$1,727,077	155.11%
Human Resources Detail				
Payroll Taxes	358,330	381,568	(23,238)	(6.09%)
Benefits	1,291,642	1,354,148	(62,506)	(4.62%)
Other Expenses	44,342	47,936	(3,594)	(7.50%)
Total Human Resources	1,694,314	1,783,652	(89,338)	(5.01%)
Financial Services Detail				
Depreciation	342,050	385,000	(42,950)	(11.16%)
Other Expenses	360,670	429,571	(68,901)	(16.04%)
Total Financial Services	702,720	814,571	(111,851)	(13.73%)
Salaries				
Legal	1,140,849	1,142,262	(1,413)	(0.12%)
Public and Bar Services	1,751,310	1,780,514	(29,204)	(1.64%)
Operations and Policy	1,911,713	2,022,744	(111,031)	(5.49%)
Total Salaries Expense	4,803,872	4,945,520	(141,648)	(2.86%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
Administrative Fund
For the Ten Months Ending July 31, 2023

Expense	Actual YTD	Budget YTD	Variance	Percentage
Non-Labor Expense Summary				
Legal	96,470	151,515	(55,045)	(36.33%)
Public and Bar Services	644,094	762,908	(118,814)	(15.57%)
Operations and Policy	1,796,813	2,096,470	(299,657)	(14.29%)
Total Non-Labor Expense	2,537,377	3,010,893	(473,516)	(15.73%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the Ten Months Ending July 31, 2023

YTD FY 2023 Increase (Decrease) in Net Position Summary

	YTD FY 2023				Prior Year		
	Actual YTD	Budget YTD	Variance	Percentage	Actual YTD	Variance	Percentage
Operating Revenue							
- License Fees, Dues & Related	9,082,085	9,142,880	(60,795)	(0.7%)	6,445,775	2,636,310	40.9%
- All Other Op Revenue	1,537,145	1,501,031	36,114	2.4%	1,268,709	268,436	21.2%
Total Operating Revenue	10,619,230	10,643,911	(24,681)	(0.2%)	7,714,484	2,904,746	37.7%
Operating Expenses							
- Labor-related Operating Expenses							
Salaries	4,803,872	4,945,520	(141,648)	(2.9%)	4,519,789	284,083	6.3%
Benefits and PR Taxes	1,649,972	1,735,716	(85,744)	(4.9%)	1,542,487	107,485	7.0%
Total Labor-related Operating Expenses	6,453,844	6,681,236	(227,392)	(3.4%)	6,062,276	391,568	6.5%
- Non-labor Operating Expenses							
Legal	96,470	151,515	(55,045)	(36.3%)	131,751	(35,281)	(26.8%)
Public and Bar Services	644,094	762,908	(118,814)	(15.6%)	560,355	83,739	14.9%
Operations and Policy	1,796,813	2,096,470	(299,657)	(14.3%)	1,748,573	48,240	2.8%
Total Non-labor Operating Expenses	2,537,377	3,010,893	(473,516)	(15.7%)	2,440,679	96,698	4.0%
Total Operating Expenses	8,991,221	9,692,129	(700,908)	(7.2%)	8,502,955	488,266	5.7%
Operating Income (Loss)	1,628,009	951,782	676,227	71.0%	(788,471)	2,416,480	(306.5%)
Non-operating Revenue (Expenses)							
Investment Income	485,780	161,670	324,110	200.5%	42,094	22,406	53.2%
Investment Income - Ret HC Trust	726,741	-	726,741	-	(785,781)	(379,545)	N/A
Loss on Disposal of Capital Asset	-	-	-	-	-	-	N/A
Net Non-operating Revenue (Expenses)	1,212,521	161,670	1,050,851	650%	(743,687)	1,956,208	(263%)
Increase (Decrease) in Net Position	2,840,530	1,113,452	1,727,078	N/A	(1,532,158)	4,372,688	N/A
Net Position - Beginning the Year	9,813,122	9,813,122	-	0.0%	11,773,220	(1,960,098)	(16.6%)
Net Position - Year-to-Date	12,653,652	10,926,574	1,727,078	15.8%	10,241,062	2,412,590	23.6%
Increase (Decrease) in Net Position							
Excluding Ret HC Trust Investment Income (Loss)	2,113,789	1,113,452	1,000,337	89.8%	(746,377)	2,860,166	(383.2%)

State Bar of Michigan
Administrative Fund
FY 2023 Capital Expenditures vs Budget
For the Ten Months Ending July 31, 2023

	YTD Actual	YTD Budget	YTD Variance	Notes and Variance Explanations	FY 2023 Year-End Forecast	Total Approved FY 2023 Budget	Projected Year-end Variance
FACILITIES, FURNITURE & OFFICE EQUIPMENT							
Replacement of floor copiers/scanners	-	-	-	Completed in FY 2022	\$ -	\$ 27,000	\$ (27,000)
HVAC system controller upgrade	35,590	35,600	(10)		35,600	35,600	\$ -
Projector replacement for meeting rooms	13,051	13,051	-		15,000	20,000	\$ (5,000)
Wiring closet racks	12,098	10,000	2,098		12,098	10,000	\$ 2,098
New microfiche machine	-	-	-		8,000	8,000	\$ -
New security system camera and DVR replacement	-	-	-		-	10,000	\$ (10,000)
Print center color printer	47,785	47,785	-		47,785	46,700	\$ 1,085
Upgrade of the virtual meeting room equipment for BOC meetings	-	-	-		25,000	20,000	5,000
Sewer line replacement (added in January 2023)	65,420	120,000	(54,580)		65,420	120,000	\$ (54,580)
Total Facilities, Furniture & Office Equipment:	\$173,944	\$226,436	(\$52,492)		\$ 208,903	\$ 297,300	\$ (88,397)
INFORMATION TECHNOLOGY							
<u>IT Infrastructure:</u>							
Replacement of ethernet switches for rooms 2, 3, 4 and garden level	7,229	7,229	-		\$ 27,000	\$ 52,000	\$ (25,000)
Wiring upgrade for the data center	-	-	-		17,375	10,000	\$ 7,375
<u>Application Software Development:</u>							
Receivership /Interim Administrator Program data portal	46,400	46,400	-		46,400	40,600	\$ 5,800
E-commerce Store	11,600	8,700	-		11,600	11,600	\$ -
E-commerce Events	34,800	29,000	5,800		31,900	29,000	\$ 2,900
API Development for NetSuite or Sage Intacct	23,200	11,600	11,600		23,200	11,600	\$ 11,600
E-commerce License Fee Updates	11,600	11,600	-		29,000	34,800	\$ (5,800)
e-Services Application to Court e-Filing (mi-File)	-	-	-		-	11,600	\$ (11,600)
Firm Administration and Billing	11,600	11,600	-		11,600	23,200	\$ (11,600)
Website Functionality Enhancements	11,600	11,600	-		11,600	11,600	\$ -
Character & Fitness Application Module (for BLE)	11,600	11,600	-		23,200	11,600	\$ 11,600
Volunteer Application (Accessibility updates)	5,800	5,800	-		5,800	5,800	\$ -
Consumer Portal (LRS)	5,800	5,800	-		17,400	17,400	\$ -
Total Information Technology:	\$ 181,229	\$ 160,929	20,300		\$ 256,075	\$ 270,800	\$ (14,725)
Total Capital Budget:	\$ 355,173	\$ 387,365	\$ (32,192)		\$ 464,978	\$ 568,100	\$ (103,122)

**STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
July 31, 2023**

FY 2023

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

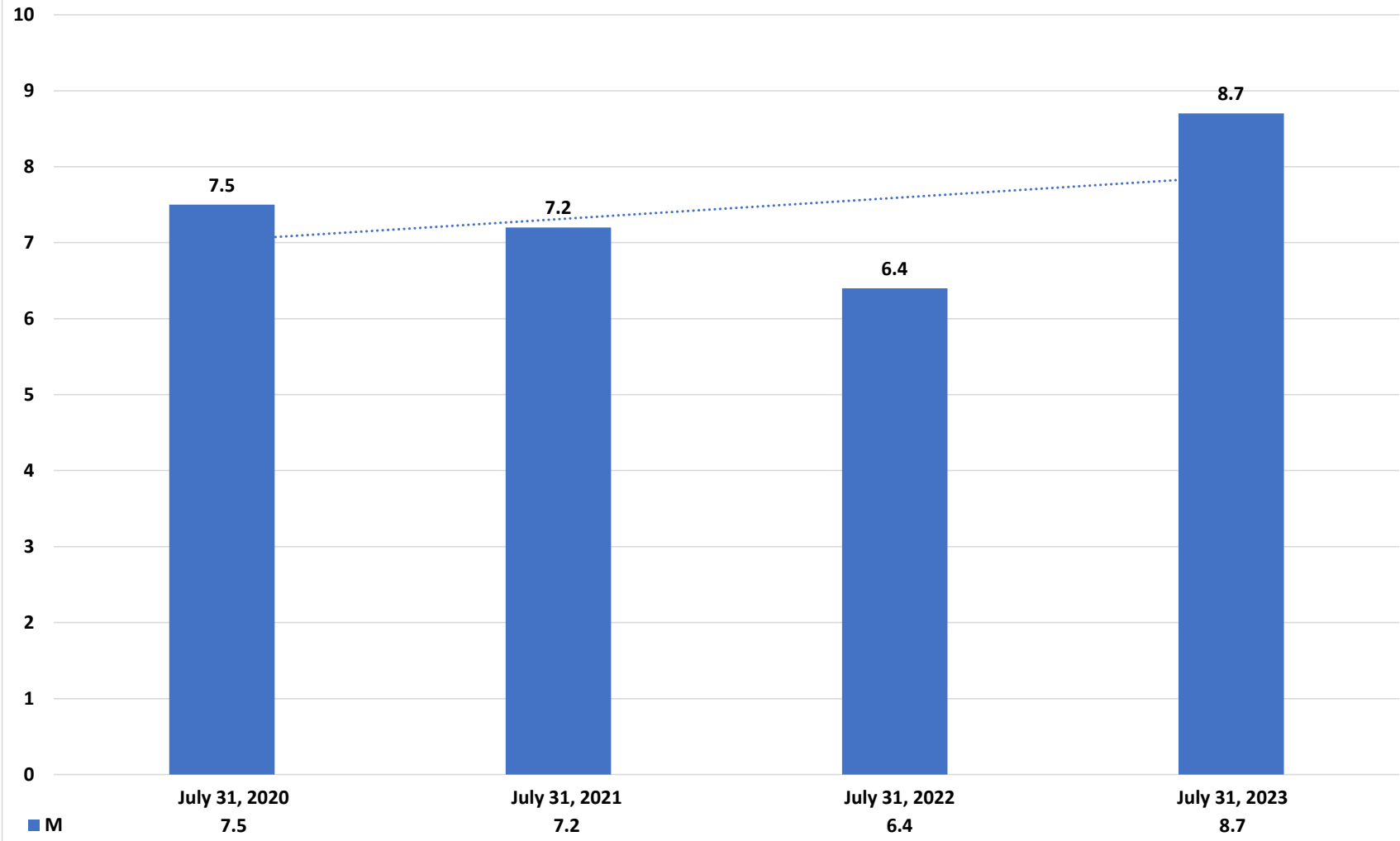
State Bar Of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Ten Months Ending July 31, 2023

	6/30/2023	7/31/2023	Increase (Decrease)	%	Beginning of FY 2023 10/1/22
Assets					
Cash-Checking	\$22,679	\$21,018	(\$1,662)	(7.3%)	\$27,190
Savings	186,323	186,782	459	0.2%	183,275
Investments	2,433,831	2,433,463	(367)	(0.0%)	2,081,625
Account Receivable	-	-	-	0.0%	1,625
Due From SBM	982	383	(598)	(61.0%)	4,068
Total Assets	\$2,643,815	\$2,641,646	(\$2,168)	(0.1%)	\$2,297,783
Liabilities					
Claims Payable	\$98,228	\$162,346	\$64,118	65.3%	\$56,531
Deferred Revenue	155,168	101,750	(53,418)	(34.4%)	119,460
Total Liabilities	253,396	264,096	10,700	4.2%	175,991
Fund Balance					
Fund Balance at Beginning of Year	2,121,791	2,121,791	-	0.0%	1,834,119
Net Income (Expense) Year to Date	268,628	255,760	(12,868)	(4.8%)	287,672
Total Fund Balance	2,390,419	2,377,551	(12,868)	(0.5%)	2,121,791
Total Liabilities and Fund Balance	\$2,643,815	\$2,641,647	(\$2,168)	(0.1%)	\$2,297,782

Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets □
For the Ten Months Ending July 31, 2023

	2023 YTD	2022 YTD
Income:		
3-7-00-000-0005 Contributions Received	23,863	1,916
3-7-00-000-0050 License Fees Assessment	538,750	533,620
3-7-00-000-0051 Pro Hac Vice Fees	9,720	9,675
3-7-00-000-0890 Claims Recovery	21,926	29,129
Total Income	594,259	574,340
Expenses:		
3-9-00-000-0200 Claims Payments	273,459	181,575
3-9-00-000-0910 Administrative Fee	150,000	143,750
3-9-00-000-0994 Bank Service Charges	350	350
Total Expenses	423,809	325,675
3-7-00-000-0921 Gain or Loss on Investment	80,661	1,889
3-7-00-000-0920 Interest and Dividends	4,649	2,075
	85,310	3,964
Increase/Decrease in Net Position	255,760	252,629
Net Position, Beginning of Year	2,121,791	1,834,119
Net Position, End of Period	2,377,551	2,086,748

State Bar of Michigan Cash & Investments
Excluding Sections, Client Protection Fund and Retiree Health Care Trust
For the Ten Months Ending July 31, 2023
\$8.7M



Note: The State Bar of Michigan has no bank debt outstanding

Summary of Cash and Investment Balances by Financial Institution

7/31/2023

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary
		SBM Chase Checking \$ 134,937.58		Client Protection Fund \$ 2,641,264
		SBM Chase Credit Card \$ 5,129.85		State Bar Admin Fund \$ 12,046,789
		SBM Chase E Checking \$ 2,552.50		(including Sections)
		SBM Chase Payroll \$ (509.43)		Attorney Discipline System \$ 4,201,220
		SBM Chase Savings \$ 500.02	0.02%	SBM Retiree Health Care Trust \$ 4,264,887
		ADS Chase Checking \$ 24,546.62		ADB Retiree Health Care Trust \$ 1,413,448
		ADS Chase Petty Cash \$ 1,905.68		AGC Retiree Health Care Trust \$ 4,228,035
		CPF Chase Checking \$ 21,017.93		
\$3.3 Trillion	5 stars	CPF Chase Savings \$ 15,461.28	0.02%	
		** Chase Total \$ 205,542.03		Total \$ 28,795,643
		SBM Horizon Bank Money Market \$ 9.06	0.50%	
\$7.8 Billion	5 stars	Horizon Bank Total w/CD \$ 2,019,762.69		
		SBM Fifth Third Commercial Now \$ 1,640.50	0.40%	
\$208 Billion	5 stars	Fifth Third Total \$ 1,640.50		
		Grand River Bank Money Market \$ 10,191.45	1.75%	
\$515 Million	4 stars	Grand River Bank Total w/CD \$ 10,191.45		
		MSUCU Savings \$ 56.09	0.00%	
		MSUCU Checking \$ 11,000.36	0.00%	
		MSU Credit Union Total \$ 11,056.45		
\$7.4 Billion	5 stars	MSU Credit Union Total w/CD \$ 1,027,818.88		
		LAFUCU Savings \$ 5.00		
\$999 Million	5 stars	LAFUCU Total w/CD \$ 5.00		
		CASE Cr Un \$ 6.38		
\$407 Million	5 stars	CASE Cr Un Total w/CD \$ 6.38		
		SBM Flagstar ICS Checking \$ 50,946.82	3.40%	
\$124 Billion	5 stars	ADS Flagstar ICS Checking Account \$ 122,534.99	3.40%	
		CPF Flagstar ICS Checking \$ 171,321.09	3.40%	
		Flagstar Bank FDIC Insured \$ 344,802.90		

State Bar Admin Fund Summary

Cash and Investments	\$ 12,046,789
Less:	
Due (to)/from Sections	\$ (3,358,858)
Due (to)/from CPF	\$ (383)
Due to Sections and CPF	\$ (3,359,241)
Net Administrative Fund	\$ 8,687,548

SBM Average Weighted Yield:	4.75%
ADS Average Weighted Yield:	4.68%
CPF Average Weighted Yield:	4.41%

Notes:

- Average weighted yields exclude retiree health care trusts.
- All amounts are based on reconciled book balance and interest rates as of 07/31/2023.
- CDARS when used 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 77% equity securities, 23% in bonds, and 2% in money market funds.
- As of 07/31/2023, the funds held by SBM attributable to ADS were \$26,531.12
- Bank Star rating from Bauer Financial.
- Lockbox fees are offset by 0.40% p.a. on average monthly balance (**)
- Actual unreconciled Chase balance per statements was \$234,951.93(**).

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Maturity
N/A	N/A	SBM US Treasuries		
		Y37 \$ 3,598,948.62	4.67%	8/3/23
		Z36 \$ 1,047,553.50	5.07%	8/17/23
		Z44 \$ 996,636.68	5.18%	8/24/23
		CS8 \$ 495,743.31	5.14%	9/28/23
		YJ2 \$ 297,151.74	5.17%	10/6/23
		FA0 \$ 1,484,182.50	5.19%	10/12/23
		FC6 \$ 444,342.54	5.26%	10/26/23
		US Gov MM Fund-SXX \$ 200,000.00	4.51%	-
		SBM US Treasuries Total \$ 8,564,558.89		
		CPF US Treasuries		
		Y37 \$ 249,926.99	4.67%	08/03/23
		CR8 \$ 992,553.65	5.11%	09/21/23
		YJ2 \$ 990,505.79	4.02%	10/05/23
		US Gov MM Fund - GXX \$ 200,477.05	4.51%	
		CPF US Treasuries Total \$ 2,433,463.48		
		ADS US Treasuries		
		UG Gov MM Fund \$ 29,213.56	4.51%	
		Y37 \$ 2,849,167.66	4.67%	08/03/23
		Z36 \$ 1,147,320.50	5.07%	08/17/23
		ADS US Treasuries Total \$ 4,025,701.72		
		US Treasuries Total \$ 15,023,724.09		
		SBM Flagstar Savings \$ 255,779.09	3.92%	
		\$ 255,779.09		
\$25 Billion	5 stars	SBM-CD MSU Credit Union \$ 256,758.19	4.32%	11/21/2023
		SBM-CD MSU Credit Union \$ 256,758.19	4.32%	11/21/2023
		SBM-CD MSU Credit Union \$ 256,758.19	4.32%	11/21/2023
		SBM-CD MSU Credit Union \$ 246,487.86	4.32%	11/21/2023
		Horizon Bank \$ 237,857.02	5.14%	10/28/2023
		Horizon Bank \$ 237,857.02	5.14%	10/28/2023
		Horizon Bank \$ 255,042.66	5.05%	9/9/2023
		Horizon Bank \$ 255,042.00	5.05%	9/9/2023
		Horizon Bank \$ 258,488.73	5.10%	9/5/2023
		Horizon Bank \$ 258,488.73	5.10%	9/5/2023
		Horizon Bank \$ 258,488.73	5.10%	9/5/2023
		Horizon Bank \$ 258,488.74	5.10%	9/5/2023
\$6.8 Billion	5 stars	Bank CD Totals \$ 3,036,516.06		
		Total Cash & Investments (excluding Schwab) \$ 18,889,273.01		
		SBM - Charles Schwab (Ret HC Trust) \$ 4,264,887.25	Mutual Funds	
		ADB - Charles Schwab (Ret HC Trust) \$ 1,413,447.72	Mutual Funds	
		AGC - Charles Schwab (Ret HC Trust) \$ 4,228,034.83	Mutual Funds	
\$7.6 Billion	5 stars	Charles Schwab Totals \$ 9,906,369.80		
		Grand Total (including Schwab) \$ 28,795,636.43		
		Total amount of cash and investments not FDIC Insured (excluding Schwab) \$ 17,577,084.75	93.05%	

Assets & Ratings updated 7/28/2023

Monthly SBM Attorney and Affiliate Report - July 31, 2023

FY 2023

	September 30 2016	September 30 2017	September 30 2018	September 30 2019	September 30 2020	September 30 2021	September 30 2022	July 31 2023	FY Increase (Decrease)
Attorneys and Affiliates In Good Standing									
Active	41,921	42,100	42,342	42,506	42,401	42,393	42,395	42,058	(337)
Less than 50 yrs serv	40,725	40,833	40,973	41,036	40,559	40,504	40,680	40,167	(513)
50 yrs or greater	1,196	1,267	1,369	1,470	1,842	1,889	1,715	1,891	176
Voluntary Inactive	1,250	1,243	1,169	1,139	1,192	1,097	1,072	1,109	37
Less than 50 yrs serv	1,230	1,217	1,142	1,105	1,149	1,055	1,030	1,060	30
50 yrs or greater	20	26	27	34	43	42	42	49	7
Emeritus	1,841	1,973	2,204	2,447	2,727	3,033	3,306	3,645	339
Total Attorneys in Good Standing	45,012	45,316	45,715	46,092	46,320	46,523	46,773	46,812	39
Fees paying Attorneys (Active & Inactive less than 50 yrs of Serv)	41,955	42,050	42,115	42,141	41,708	41,559	41,710	41,227	(483)
Affiliates									
Legal Administrators	13	13	10	10	8	5	2	2	-
Legal Assistants	405	400	401	393	317	219	214	189	(25)
Total Affiliates in Good Standing	418	413	411	403	325	224	216	191	(25)
Total Attorneys and Former Attorneys in the Database									
State Bar of Michigan Attorney and Affiliate Type									
Attorneys in Good Standing:									
ATA (Active)	41,921	42,100	42,342	42,506	42,401	42,393	42,395	42,058	(337)
ATVI (Voluntary Inactive)	1,250	1,243	1,169	1,139	1,192	1,097	1,072	1,109	37
ATE (Emeritus)	1,841	1,973	2,204	2,447	2,727	3,033	3,306	3,645	339
Total Attorneys in Good Standing	45,012	45,316	45,715	46,092	46,320	46,523	46,773	46,812	39
Attorneys Not in Good Standing:									
ATN (Suspended for Non-Payment of Dues)	5,743	5,888	6,072	6,246	6,416	6,472	6,588	6,845	257
ATDS (Discipline Suspension - Active)	418	430	439	440	445	449	454	459	5
ATDI (Discipline Suspension - Inactive)	18	19	19	24	25	25	25	25	-
ATDC (Discipline Suspension - Non-Payment of Court Costs)	3	16	15	16	16	14	14	15	1
ATNS (Discipline Suspension - Non-Payment of Other Costs)	99	94	95	98	100	102	106	104	(2)
ATS (Attorney Suspension - Other)*	1	-	1	1	2	-	-	-	-
ATR (Revoked)	534	562	583	596	613	623	634	644	10
ATU (Status Unknown - Last known status was inactive)**	2,074	2,070	2,070	2,070	2,070	2,070	2,047	2,047	-
Total Attorneys Not in Good Standing	8,890	9,079	9,294	9,491	9,687	9,755	9,868	10,139	271
Other:									
ATSC (Former special certificate)	145	152	155	157	158	164	167	169	2
ATW (Resigned)	1,539	1,612	1,689	1,798	1,907	2,036	2,143	2,254	111
ATX (Deceased)	8,720	9,042	9,287	9,524	9,793	10,260	10,664	10,938	274
Total Other	10,404	10,806	11,131	11,479	11,858	12,460	12,974	13,361	387
Total Attorneys in Database	64,306	65,201	66,140	67,062	67,865	68,738	69,615	70,312	697

* 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 attorneys 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 attorneys to determine a final disposition.

N/R - not reported

Notes: Through July 31, 2023 a total of 698 new attorneys joined SBM.

TO: Board of Commissioners

FROM: Professional Standards Committee

DATE: September 21, 2023, 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 as required in the Rule, and to avoid negative publicity about a lawyer subject to a claim, which 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:

Consent Agenda:

	<u>Claim No.</u>	<u>Amt. Recommended</u>
1.	CPF 3804	\$2,500.00
2.	CPF 3826	\$3,160.00
3.	CPF 3865	\$750.00
4.	CPF 3870	\$17,000.00
5.	CPF 3936	\$4,000.00
6.	CPF 3967	\$2,000.00
7.	CPF 3970	\$9,000.00
8.	CPF 3976	\$500.00
	TOTAL	\$38,910.00

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

1. CPF 3804 \$2,500.00

Respondent was retained to represent Claimant in a child custody matter for a minimum fee of \$2,500. Respondent returned a few of Claimant's calls during the first few months of representation then abandoned the matter. Respondent's failure to complete the legal services or to return the unearned retainer fee paid in advance constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6).

2. CPF 3826 \$3,160.00

Respondent was retained to represent Claimants in a botched driveway repair matter for a non-refundable flat fee of \$3,000, plus \$160 filing fee.

Nonrefundable retainers are ethically permissible if the fee agreement is unambiguous. Respondent's Fee Agreement is clear and unambiguous. However, Respondent's law license was suspended, and later revoked, before the completion of any legal services on behalf of the Claimants, the nonrefundable advance fee may be deemed unreasonable or excessive contrary to MPRC 1.5(a). 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(C)(6). This claim is recommended for reimbursement of \$3,160.

3. CPF 3865 \$750.00

Respondent was retained to represent Claimant in a child support matter for a flat fee of \$3,500. Claimant paid Respondent \$1,750. Respondent died after completing \$1,000 worth of legal services.

In claims involving a deceased respondent, the death of the respondent is not considered dishonest conduct. However, the death of the respondent leads to the discovery of dishonest conduct. Nonrefundable retainers are ethically permissible if the fee agreement is unambiguous. Respondent's retainer letter fails to address the premature termination of the representation either by Claimant or Respondent before completion. Since Respondent did not provide the agreed upon services, the nonrefundable flat fee may be deemed unreasonable or excessive contrary to MPRC 1.5(a).

4. CPF 3870 \$17,000.00

Respondent was retained to represent Claimant in a felony criminal matter for a non-refundable flat fee of \$20,000. Respondent died after completing \$3,000 worth of legal services.

In claims involving a deceased respondent, the death of the respondent is not considered dishonest conduct. However, the death of the respondent leads to the discovery of dishonest conduct. Respondent's retainer letter fails to address the premature termination of the representation either by Claimant or Respondent before completion. Unless an attorney has a written fee agreement that comports with *Cooper*,¹ the fee is refundable and must be held in an attorney trust account. A flat fee is not earned until the conclusion of the representation and must be held in trust until earned.² A respondent's failure to safeguard the funds in an attorney trust account until the conclusion of the

¹ *Grievance Adm'r v Cooper*, 757 NW2d 867 (2008)

² RI-069

representation, which is when the fees are earned, violates MRPC 1.15. The failure of a respondent's law firm or estate to reimburse claimant after Respondent's death is a failure to return an unearned fee in violation of MRPC 1.15 and is a reimbursable loss under CPF Rule 9(C)(1) and Rule 9(D)(6).

5. CPF 3936 \$4,000.00

Respondent was retained to represent Claimant in a criminal matter for a flat fee of \$5,000. Respondent died after completing \$1,000 in legal services.

In claims involving a deceased respondent, the death of the respondent is not considered dishonest conduct. However, the death of the respondent leads to the discovery of dishonest conduct. Nonrefundable retainers are ethically permissible if the fee agreement is unambiguous. Respondent's retainer letter fails to address the premature termination of the representation either by Claimant or Respondent before completion. Since Respondent did not provide the agreed upon services, the nonrefundable flat fee may be deemed unreasonable or excessive contrary to MPRC 1.5(a).

6. CPF 3967 \$2,000.00

Respondent was retained to represent Client in a license restoration matter for a non-refundable flat fee of \$5,000. Respondent died after completing \$3,000 in legal services.

In claims involving a deceased respondent, the death of the respondent is not considered dishonest conduct. However, the death of the respondent leads to the discovery of dishonest conduct. Respondent's retainer letter fails to address the premature termination of the representation either by Claimant or Respondent before completion. Unless an attorney has a written fee agreement that comports with *Cooper*,³ the fee is refundable and must be held in an attorney trust account. A flat fee is not earned until the conclusion of the representation and must be held in trust until earned.⁴ A respondent's failure to safeguard the funds in an attorney trust account until the conclusion of the representation, which is when the fees are earned, violates MRPC 1.15. The failure of a respondent's law firm or estate to reimburse claimant after Respondent's death is a failure to return an unearned fee in violation of MRPC 1.15 and is a reimbursable loss under CPF Rule 9(C)(1) and Rule 9(D)(6).

7. CPF 3970 \$9,000.00

Respondent was retained to represent Claimant in a criminal matter for a non-refundable flat fee of \$10,000. Respondent died after completing \$1,000 in legal services.

In claims involving a deceased respondent, the death of the respondent is not considered dishonest conduct. However, the death of the respondent leads to the discovery of dishonest conduct. Respondent's retainer letter fails to address the premature termination of the representation either by Claimant or Respondent before completion. Unless an attorney has a written fee agreement that comports with *Cooper*,⁵ the fee is refundable and must be held in an attorney trust account. A flat fee is not earned until the conclusion of the representation and must be held in trust until earned.⁶ A respondent's failure to safeguard the funds in an attorney trust account until the conclusion of the representation, which is when the fees are earned, violates MRPC 1.15. The failure of a respondent's

³ *Grievance Adm'r v Cooper*, 757 NW2d 867 (2008)

⁴ RI-069

⁵ *Grievance Adm'r v Cooper*, 757 NW2d 867 (2008)

⁶ RI-069

law firm or estate to reimburse claimant after Respondent's death is a failure to return an unearned fee in violation of MRPC 1.15 and is a reimbursable loss under CPF Rule 9(C)(1) and Rule 9(D)(6).

8. CPF 3976 \$500.00

Respondent was retained to represent Claimant in a criminal matter for a non-refundable flat fee of \$5,000. Respondent died after completing \$4,500 in legal services.

In claims involving a deceased respondent, the death of the respondent is not considered dishonest conduct. However, the death of the respondent leads to the discovery of dishonest conduct. Respondent's retainer letter fails to address the premature termination of the representation either by Claimant or Respondent before completion. Unless an attorney has a written fee agreement that comports with *Cooper*,⁷ the fee is refundable and must be held in an attorney trust account. A flat fee is not earned until the conclusion of the representation and must be held in trust until earned.⁸ A respondent's failure to safeguard the funds in an attorney trust account until the conclusion of the representation, which is when the fees are earned, violates MRPC 1.15. The failure of a respondent's law firm or estate to reimburse claimant after Respondent's death is a failure to return an unearned fee in violation of MRPC 1.15 and is a reimbursable loss under CPF Rule 9(C)(1) and Rule 9(D)(6).

Total payments recommended: \$38,910.00

⁷ *Grievance Adm'r v Cooper*, 757 NW2d 867 (2008)

⁸ RI-069



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a model criminal jury instruction, M Crim JI 7.25a (Self-Defense as Defense to Brandishing a Firearm), for the defense found in the brandishing a firearm in public statute found at MCL 750.234e(2)(b). The instruction is entirely new.

**[NEW] M Crim JI 7.25a Self-Defense as Defense to Brandishing
a Firearm**

(1) The defendant claims that [he / she] acted in lawful [self-defense / defense of [(*identify person*)] when [he / she] brandished the firearm. A person may brandish a firearm to defend [himself / herself / another person] under certain circumstances, even where it would otherwise be unlawful for [him / her] to point it, wave it about, or display it in a threatening manner. If a person brandishes a firearm to act in lawful [self-defense / defense of others], [his / her] actions are justified, and [he / she] is not guilty of brandishing a firearm.

(2) Just as when considering the claim of self-defense to the charge of [*identify principal assaultive charge to which the defendant is asserting self-defense*],¹ you should consider all the evidence and use the following rules to decide whether the defendant used a firearm to act in lawful [self-defense / defense of (*identify person*)]. You should judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to brandish the firearm to protect

[himself / herself / (*identify person*)] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act to defend [himself / herself / (*identify person*)] with a firearm, even if it turns out later that [he / she] was wrong about how much danger [he / she / (*identify person*)] was in.

(4) Second, a person is only justified in brandishing a firearm when necessary at the time to protect [himself / herself / (*identify person*)] from danger of death, great bodily harm, or sexual assault.² The defendant may only point, wave about, or display a firearm in a threatening manner if it is appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the brandishing of the firearm was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself / herself / (*identify person*)], but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Third, at the time [he / she] brandished the firearm, the defendant must not have been engaged in a criminal act that would tend to provoke a person to try to defend [himself / herself] from the defendant.³

Use Note

The court must read M Crim JI 7.20, Burden of Proof – Self Defense, for this instruction.

1. There will not always be an assaultive-offense count charged with the brandishing-a-firearm charge. Eliminate this first phrase if no assaultive offense is charged as a principal offense.
2. *People v Ogilvie*, 341 Mich App 28; 989 NW2d 250 (2022), holds that merely pointing a firearm is not deadly force. The Committee on Model Criminal Jury Instructions expresses no view whether the limitation of brandishing a firearm to cases where the danger of death, great bodily harm, or sexual assault was alleged to have been the reason for brandishing the firearm as used in this sentence may be too restrictive.
3. This paragraph should be given only when supported by the facts; that is, where there is evidence that, at the time the defendant brandished the firearm, he or she was engaged in the commission of some crime likely to lead to the other person's assaultive behavior. For example, this paragraph is usually unwarranted if the defendant was engaged in a drug transaction and used force in self-defense against an unprovoked

attack by the other party in the transaction. *See People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). On the other hand, this paragraph would apply to a defendant who engaged in a robbery of another person and that other person reacted with force. This paragraph is unnecessary where there are no issues other than who was the aggressor in the situation, whether the defendant had an honest and reasonable belief of the use of imminent force by another, or whether the degree of force used was necessary.

Public Policy Position
Model Criminal Jury Instructions 7.25a

Support while Expressing Concerns

Explanation:

The committee voted 10 to 9 with 1 abstention to support the instructions, while noting the following concerns:

- Some committee members felt that these specific instructions were unnecessary and the general instructions could be referred to.
- Committee members thought the second sentence in Section 4 could be deleted for clarification.
- Some committee members felt that the following amendment should be made so that the first sentence of Section 4 reads: Second, a person is only justified in brandishing a firearm when necessary at the time to protect [himself / herself / (*identify person*)] from what the person reasonable believe to be the danger of death, great bodily harm, or sexual assault.

Position Vote:

Voted For position: 10

Voted against position: 9

Abstained from vote: 1

Did not vote (absent): 6

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org

Tobacco Products Tax Act has been paid / had a tax stamp from another state].

(5) Fourth, that when the defendant [exchanged / sold / offered to sell / disposed of] tobacco cigarettes or a tobacco product, [he /she] knew that the tobacco cigarettes or product [did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid / had a tax stamp from another state].

[NEW] M Crim JI 12.10a Illegal Possession or Transportation of Untaxed Cigarettes

(1) [The defendant is charged with the / You may also consider the less serious] crime of acquiring, possessing, transporting, or offering for sale [(3,000 or more untaxed cigarettes / untaxed tobacco products with a value of \$250 or more) / (between 1,200 and 2,999 untaxed cigarettes / untaxed tobacco products with a value of \$100 or more, but less than \$250) / (between 600 and 1,199 untaxed cigarettes / untaxed tobacco products with a value of \$50 or more but less than \$100)]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [acquired / possessed / transported / offered for sale] tobacco cigarettes or a tobacco product.

(3) Second, that the tobacco cigarettes or product did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid.

(4) Third, that when the defendant [acquired / possessed / transported / offered for sale] the tobacco cigarettes or tobacco product, [he /she] knew that the tobacco cigarettes or product did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid.

(5) Fourth, that the defendant [acquired / possessed / transported / offered for sale] [(3,000 or more untaxed cigarettes / untaxed tobacco products with a value of \$250 or more) / (between 1,200 and 2,999 untaxed cigarettes / untaxed tobacco products with a value of \$100 or more but less than \$250) / (between 600 and 1,199 untaxed cigarettes / untaxed tobacco products with a value of \$50 or more but less than \$100)].

**[NEW] M Crim JI 12.10b Making, Possessing, or Using an
Unauthorized Department of
Treasury Tobacco Tax Stamp**

(1) The defendant is charged with the crime of making, possessing, or using [a counterfeit tobacco tax stamp / a tobacco tax stamp without authorization from the Michigan Department of Treasury]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [made / possessed / used] [a counterfeit tobacco tax stamp / a tobacco tax stamp without authorization from the Michigan Department of Treasury].

(3) Second, that the defendant knew that the tobacco tax stamp [he / she] [made / possessed / used] was [a counterfeit tobacco tax stamp / a tobacco tax stamp not authorized by the Michigan Department of Treasury].

**[NEW] M Crim JI 12.10c Illegally Purchasing or Obtaining a
Department of Treasury Tobacco
Tax Stamp**

(1) The defendant is charged with the crime of illegally purchasing or obtaining a Michigan Department of Treasury tobacco tax stamp as a licensee. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant was a licensee under the Tobacco Products Tax Act.

(3) Second, that the defendant bought or obtained a Michigan Department of Treasury stamp for showing that the tax imposed under the Tobacco Products Tax Act has been paid from a person other than the Michigan Department of Treasury.

(4) Third, that when the defendant bought or obtained the Michigan Department of Treasury stamp for showing that the tax imposed under the Tobacco Products Tax Act had been paid, [he / she] knew that the person from whom [he / she] bought or obtained a Michigan Department of Treasury stamp was not an employee of the Michigan Department of Treasury.

[NEW] M Crim JI 12.10d Falsifying a Tobacco Manufacturer's Label

(1) The defendant is charged with the crime of falsifying a tobacco manufacturer's label. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally made a label that was an imitation of a label used by the tobacco manufacturer [*identify tobacco manufacturer*].

(3) Second, that the defendant used the imitation label to falsely identify cigarettes that [he / she] knew were not produced by [*identify tobacco manufacturer*] as being made by [*identify tobacco manufacturer*].

[NEW] M Crim JI 12.10e Making or Possessing a False License to Purchase or Sell Tobacco Products as a Retailer or Wholesaler

(1) The defendant is charged with the crime of [making or possessing a false license to purchase or sell tobacco products as a retailer or wholesaler / possessing a device that could be used to forge, alter, or counterfeit a license to purchase or sell tobacco products as a retailer or wholesaler]. To prove this charge, the prosecutor must prove beyond a reasonable doubt:

[Select according to the charge and evidence:]

(2) That the defendant intentionally [made, counterfeited, or altered / assisted in making or caused to be made / purchased or received] a false [license to purchase or sell tobacco products as a retailer or wholesaler / vending machine disc or marker for the sale of tobacco cigarettes or products] knowing it was false.

[Or]

(2) That the defendant intentionally possessed a device that [he / she] knew could be used to forge, alter, or counterfeit a [license to purchase or sell tobacco products as a retailer or wholesaler / vending machine disc or marker for the sale of tobacco cigarettes or products].

Public Policy Position
Model Criminal Jury Instructions 12.10 12.10a 12.10b 12.10c 12.10d 12.10e

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 12.10 12.10a 12.10b 12.10c 12.10d 12.10e.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 6

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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PROPOSED

The Committee proposes the following amended model criminal jury instruction, M Crim JI 13.15 (Assaulting a prison employee) under MCL 750.197c to match the statutory language as observed by the Court of Appeals panel in *People v Nixon*, unpublished opinion (COA #353438) issued 4/21/22. The statute forbids an assault “through the use of violence, threats of violence or dangerous weapons,” while the instruction as currently written only requires proof of an assault, not mentioning violence, threats of violence or dangerous weapons. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 13.15 Assaulting Employee of Place of Confinement

- (1) The defendant is charged with the crime of assaulting an employee of [*state place of confinement*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant was legally confined at [*state place of confinement*].
- (3) Second, that ~~[he / she] was legally confined there~~ [*name complainant*] was employed at [*state place of confinement*]¹.
- (4) Third, that ~~[he / she] assaulted an employee of [*state place of confinement*]. To prove that there was an assault, the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of assault*].*~~ the defendant knew that [*name complainant*] was an employee² or custodian at [*state place of confinement*].
- (5) Fourth, that ~~at the time of the assault, the defendant knew that [*name complainant*] was an employee of [*state place of confinement*].~~ the defendant intentionally assaulted [*name complainant*]. An assault is an attempt to commit a

battery or to do something that would cause someone to fear a battery. A battery is a forceful, violent, or offensive touching of the person. [An assault cannot happen by accident.]

(6) Fifth, that the defendant committed the assault through the use of violence, a threat to use violence, or the use of a dangerous weapon. Violence is the use of physical force likely to cause embarrassment, injury, or death.³ A dangerous weapon is an instrument that is used in a way that is likely to cause serious physical injury or death.

Use Note

~~*Use M Crim JI 17.1~~ This is a specific intent crime. *See People v Norwood*, 123 Mich App 287; 333 NW2d 255; *leave denied*, 417 Mich 1006 (1983).

~~When the use of a dangerous weapon is alleged, give the definition of dangerous weapon, M Crim JI 11.18. See *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).~~

1. Place of confinement in this context may include a prison. *See People v Wingo*, 95 Mich App 101; 290 NW2d 93 (1980).
2. An employee may include an independent contractor.
3. This definition of *violence* comes from *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

**Public Policy Position
Model Criminal Jury Instructions 13.15**

Support with Amendment

Explanation:

The Committee voted 16 to 4 to support M Crim JI 13.15 with an amendment adding “harm” to the definition of “violence” in Section 6 as follows:

Violence is the use of physical force likely to cause embarrassment, injury, ~~or death,~~ or harm.

The Committee agreed that this amendment would be consistent with *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

Position Vote:

Voted For position: 16

Voted against position: 4

Abstained from vote: 0

Did not vote (absent): 6

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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PROPOSED

The Committee proposes the following amended model criminal jury instruction, M Crim JI 13.17 (Absconding on a Bond) under MCL 750.199a to add an element involving notice to the defendant concerning conditions of bond consistent with *People v Rorke*, 80 Mich App 476; 264 NW2d 30 (1978). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 13.17 Absconding on a Bond

- (1) The defendant is charged with the crime of absconding on a bond posted in a criminal case. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant was on bond for a felony charge. [*(State charge)* is a felony.]¹ A bond is an agreement to do or not do certain things, including to appear in court when required.
- (3) Second, that the defendant was informed that [he / she] could not leave the state of Michigan without permission of the court and that [he / she] had to appear at all scheduled court dates unless otherwise directed by the court.
- (4) Third, that the defendant absconded on the bond. Absconding means to leave the state of Michigan or to hide or conceal oneself.
- (5) Fourth, that the defendant left the state of Michigan or hid or concealed [himself / herself] with the intent to avoid the legal process.

Use Note

1. The defendant may stipulate that he or she was on bond for a felony to avoid

the court identifying that specific felony and the prosecutor offering proof of that felony. *See People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997), citing *Old Chief v United States*, 519 US 172 (1997). If that is the case, the court may say, “The defendant stipulates that [he / she] was on bond for a felony.”

Public Policy Position
Model Criminal Jury Instructions 13.17

Support with Amendment

Explanation:

The committee voted unanimously to support Model Criminal Jury Instructions 13.17 with the following amendment to Paragraph 3:

(3) Second, that the defendant was informed that [he / she] ~~could not leave the state of Michigan without permission of the court and that [he / she] had to appear at all scheduled court dates unless otherwise directed by the court.~~

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes the following new model criminal jury instruction, M Crim JI 27.6, for dumping refuse on the property of another to cover criminal activity under MCL 750.552a. This instruction is entirely new.

**[NEW] M Crim JI 27.6 Dumping Refuse on the Property of
Another**

- (1) The defendant is charged with the crime of dumping refuse or garbage on property belonging to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that [*name complainant*] owned, rented, or possessed the property or premises located at [*identify address of property, including city or township and county*].
- (3) Second, that the defendant placed, deposited, or dumped filth, garbage, or refuse on [*name complainant*]'s property or premises at [*identify address of property*].
- (4) Third, that the defendant did not have [*name complainant*]'s specific permission to place, deposit, or dump the filth, garbage, or refuse on the property or premises at [*identify address of property*].
- (5) Fourth, that the defendant knew that the location where [he / she] dumped, deposited, or placed the filth, garbage, or refuse was not [his / her] own property.¹

Use Note

1. The Committee on Model Criminal Jury Instructions believes that a claim by

the defendant that he or she thought he or she was dumping the refuse on his or her own property is an affirmative defense, and this paragraph should only be read when there is evidence to support the defense.

Public Policy Position
Model Criminal Jury Instructions 27.6

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 27.6.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====
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=====

PROPOSED

The Committee proposes the following new model criminal jury instruction, M Crim JI 27.7, for trespassing on state correctional facility property to cover criminal activity under MCL 750.552b. This instruction is entirely new.

[NEW] M Crim JI 27. 7 Trespassing on State Correctional Facility Property

(1) The defendant is charged with the crime of trespassing on the property of a state correctional facility. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [entered / remained / entered and remained] on property that was part of [*identify state correctional facility*], which is a state correctional facility.

(3) Second, that the defendant knew [he / she] [entered / remained / entered and remained] on property that was part of a state correctional facility.

[*Select the appropriate third element:*]

(4) Third, that the defendant did not have permission or authority to [enter / remain / enter and remain] on the property of the state correctional facility.

[*Or*]

(4) Third, that the defendant [entered / remained / entered and remained] on the property without permission or authority after being instructed [not to enter / to leave] the property.

(5) Fourth, that the defendant knew that [he / she] did not have permission or

authority to [enter / remain / enter and remain] on the property.¹

Use Note

1. This paragraph may not be necessary where the defendant was instructed not to enter or was instructed to leave the property.

Public Policy Position
Model Criminal Jury Instructions 27.7

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 27.7.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org

instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.²

Use Note

1. The court may read any that apply.
2. The definition of computer comes from MCL 752.792(3). MCL 750.145d(9)(a) provides the same definition but adds the following language: “Computer includes a computer game device or a cellular telephone, personal digital assistant (PDA), or other handheld device.”

**Public Policy Position
Model Criminal Jury Instructions 35.13b**

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 35.13b.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes the following new model criminal jury instruction, M Crim JI 40.6 (Indecent or Obscene Conduct) for offenses found in MCL 750.167(f), a subsection of the “disorderly persons” statute.

[NEW] M Crim JI 40.6 Indecent or Obscene Conduct

- (1) The defendant is charged with the crime of indecent or obscene conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant was in a public place at [*identify location*] or was exposed to persons who could see defendant from a public place.
- (3) Second, that while at [*identify location*], the defendant performed an act of [*describe sexual conduct by the defendant*] / [*describe other conduct alleged to have been indecent or obscene*].
- (4) Third, that the defendant’s conduct was shocking to the sensibilities of a reasonable person, was outside of reasonable societal standards of decency, and would be offensive to a reasonable person.

Public Policy Position
Model Criminal Jury Instructions 40.6

Support with Amendment

Explanation:

The Committee voted 10 to 9 to support the proposed model criminal jury instructions with a recommendation that the Jury Instructions Committee either add additional language clarifying that the alleged conduct must not be constitutionally protected, or incorporate the statutory definition of obscenity into the instruction.

Position Vote:

Voted For position: 10

Voted against position: 9

Abstained from vote: 0

Did not vote (absent): 7

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@ndsdetroit.org

CALENDAR
STATE BAR OF MICHIGAN REPRESENTATIVE ASSEMBLY
Thursday, September 21, 2023
2:30 p.m. to 5:30 p.m.
(Detroit Marriott Troy / 200 W. Big Beaver Rd. / Troy, MI / 48084)

*Denotes Action Items

2:30 p.m. MEETING BEGINS

- 2:30 p.m. 1. Introductory Matters
- A. Call to order by Chair Gerrow D. Mason with Parliamentarian Hon. John M. Chmura
- Gerrow D. Mason, Chair, Representative Assembly
[Gerry Mason Law Office, PLLC, 1700 Busha Hwy., Marysville, MI 48040
phone: (810) 989-0057; email: gdblues@yahoo.com]
- Hon. John M. Chmura, Parliamentarian
[37th District Court, 8300 Common Rd., # 104, Warren, MI 48093
phone: (586) 574-4925; email: jchmura@37thdistrictcourt.org]
- B. Certification that a quorum is present by Assembly Clerk, Mr. John W. Reiser, III
[Ann Arbor City Attorney's Office, 301 E Huron St., Fl. 3, Ann Arbor, MI 48104
phone: (734) 794-6184; email: jreiser@a2gov.org]
- C. Adoption of proposed calendar by Rules & Calendar Chair, Deborah Blair
[Wayne County Prosecutor's Office, 1441 Saint Antoine St., Fl. 11, Detroit, MI 48226
phone: (313) 224-8861; email: dlbair@waynecounty.com]
- D. Approval of the April 29, 2023 Summary of Proceedings
- 2:35 p.m. 2. *Filling Vacancies
- Mr. Phillip Louis Strom, Chair, Assembly Nominating & Awards Committee
[City of Grand Rapids, 300 Monroe Ave NW Unit 1, Grand Rapids, MI 49503-2206
phone: (616) 456-4000; email: pstrom@grand-rapids.mi.us]
- 2:40 p.m. 3. Presentation of the Unsung Hero Award to Judge Melissa L. Pope
- Presenter:
Mr. Richard L. Cunningham
[Michigan Dept. of Attorney General, 3030 W. Grand Blvd., Ste. 10-354, Detroit, MI 48202
phone: (517) 881-4509; email: cunninghamr3@michigan.gov]
- 2:45 p.m. 4. Presentation of the Michael Franck Award to Mr. Sheldon G. Larky
- Presenter:
Mr. Edward L. Haroutunian
[Haroutunian Licata Haroutunian, PC, 30600 Telegraph Rd. Ste. 3250, Bingham Farms, MI 48025
phone: (248) 594-9071; email: elh@hlhpc.com]

- 2:55 p.m. 5. Chair's Report
Gerrow D. Mason, Chair, Representative Assembly
[Gerry Mason Law Office, PLLC, 1700 Busha Hwy., Marysville, MI 48040
phone: (810) 989-0057; email: gdblues@yahoo.com]
- 3:10 p.m. 6. *Proposal to Amend the Michigan Court Rules Concerning the State Bar of Michigan Rule 6, Section 6 Regarding the Continuation of Service
Proponents:
Representative Assembly Ad Hoc Reform Committee
Ms. Yolanda M. Bennett, Vice-Chair, Representative Assembly
[Social Security Administration, 4202 Collins Rd., Ste. 200, Lansing, MI 48910
email: yol426@att.net]

Ms. Nicole A. Evans, Chair, Special Issues Committee
[54B District Court, 101 Linden St., East Lansing, MI 48823-4311
phone: (517) 336-8645; email: nevans@54BDistrictCourt.com]

Mr. Mark W. Jane, Member, Nominating & Awards Committee
[Butzel Long, PC, 301 E. Liberty St., Ste. 500, Ann Arbor, MI 48104
phone: (734) 995-3110; email: jane@butzel.com]

Mr. Nicholas M. Ohanesian, Member, Board of Commissioners
[Society Security Administration, Office of Hearings Operations, 1925 Breton Rd., SE, Ste. 200, Grand Rapids, MI 49506
phone: (616) 920-3589; email: nickohanesian@yahoo.com]

Mr. Dennis L. Perkins, Chair, Assembly Review Committee
[Howell City Attorney, P.O. Box 47, Howell, MI 48844-0047
Phone: (517) 546-6623; email: attyperkins@sbcglobal.net]

Mr. John W. Reiser, III, Clerk, Representative Assembly
[Ann Arbor City Attorney's Office, 301 E. Huron St., Fl. 3, Ann Arbor, MI 48104
phone: (734) 794-6184; email: jreiser@a2gov.org]
- 3:25 p.m. 7. *Proposal to Amend the Michigan Court Rules Concerning the State Bar of Michigan Rule 6, Section 4 and State Bar of Michigan Bylaws Article IV, Section 2 Regarding Petitions for Election
Proponents:
Representative Assembly Ad Hoc Reform Committee
- 3:50 p.m. 8. *Proposal to Amend the Michigan Court Rules Concerning the State Bar of Michigan Rule 6, Section 5 Regarding Terms
Proponents:
Representative Assembly Ad Hoc Reform Committee
- 4:15 p.m. 9. *Proposal to Amend the Michigan Court Rules Concerning the State Bar of Michigan Rule 6, Section 4 Regarding Election of Representatives
Proponents:
Representative Assembly Ad Hoc Reform Committee
- 4:40 p.m. 10. *Proposal to Amend the Michigan Court Rules Concerning the State Bar of Michigan Rule 6, Sections 2 & 3 Regarding Redistricting
Representative Assembly Ad Hoc Reform Committee

- 5:05 p.m. 11. *Nomination and Election of Assembly Clerk
- 5:10 p.m. 12. Recognition of Assembly members completing their terms of service and Committee Chairs.
Mr. Gerrow D. Mason, Chair, Representative Assembly
[Gerry Mason Law Office, PLLC, 1700 Busha Hwy., Marysville, MI 48040
phone: (810) 989-0057; email: gdblues@yahoo.com]
- 5:15 p.m. 13. Introduction by Gerrow D. Mason of the Honorable Cynthia D. Stephens (Ret. Judge)
[The Law Offices of Cynthia Diane Stephens, PLLC, P.O. Box 760161, Lathrup Village, MI 48076
phone: (313) 516-1078; email: cynthiadianestephens@stephenslegalsolutions.com]
- 5:20 p.m. 14. Swearing in of Yolanda M. Bennett as the 2023-2024 Chairperson of the Representative Assembly.
Yolanda will be sworn in by the Honorable Cynthia D. Stephens (Ret. Judge)
- 5:25 p.m. 15. Presentation of Recognition to the Immediate Past Assembly Chair.
- 5:30 p.m. 16. Adjournment

Parliamentary Procedures At A Glance

To Do This: (1)	You Say This:	May You Interrupt Speaker?	Must You Be Seconded?	Is the Motion Debatable?	Is the Motion Amendable?	What Vote Is Required?
Adjourn the meeting (before all business is complete)	"I move that we 'adjourn.'"	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Majority vote
Recess the meeting	"I move that we recess 'until...'"	May not interrupt speaker	Must be seconded	Not debatable	Amendable	Majority vote
Complain about noise, room temperature, etc.	"Point of privilege."	May interrupt speaker	No second needed	Not debatable (2)	Not amendable	None (3)
Suspend further consideration of something	"I move we table it."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Majority vote
End debate	"I move the previous 'question.'"	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Two-thirds vote
Postpone consideration of something	"I move we postpone 'this matter until...'"	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote
Have something studied further	"I move we refer this 'matter to a committee.'"	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote
Amend a motion	"I move that this motion 'be amended by...'"	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote
Introduce business (a primary motion)	"I move that..."	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote

Notes

1. These motions or points are listed in established order of precedence. When any one of them is pending, you may not introduce another that's listed below it. But you may introduce another that's listed above it
2. In this case, any resulting motion is debatable.
3. Chair decides.

Parliamentary Procedures At A Glance (continued)

To Do This: (4)	You Say This:	May You Interrupt Speaker?	Must You Be Seconded?	Is the Motion Debatable?	Is the Motion Amendable?	What Vote Is Required?
Object to procedure or to a personal affront	"Point of order."	May interrupt the speaker	No second needed	Not debatable	Not amendable	None (3)
Request information	"Point of information."	If urgent, may interrupt speaker	No second needed	Not debatable	Not amendable	None
Ask for a vote by actual count to verify a voice count	"I call for a division of the house."	May not interrupt speaker (5)	No second needed	Not debatable	Not amendable	None unless someone objects (6)
Object to considering some undiplomatic or improper matter	"I object to consideration of this question."	May interrupt speaker	No second needed	Not debatable	Not amendable	Two-thirds vote required
Take up a matter previously tabled	"I move we take from the table..."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Majority required
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	May interrupt speaker	Must be seconded	Debatable if original motion is debatable	Not amendable	Majority required
Consider something out of its scheduled order	"I move we suspend the rules and consider..."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Two-thirds vote required
Vote on a ruling by the chair	"I appeal the chair's decision."	May interrupt speaker	Must be seconded	Debatable	Not amendable	Majority in the negative required to reverse chair's decision

Notes

4. The motions, points and proposals have no established order of precedence. Any of them may be introduced at any time except when the meeting is considering one of the top three matters listed in the chart (motion to adjourn, motion to recess, point of privilege).
5. But division must be called for before another motion is started.
6. Then majority vote is required.

TO: SBM Board of Commissioners
FROM: Meng Xiong, IT Director
CC: Peter Cunningham, Executive Director; Diane Ebersole, IT Services Project Director
RE: Bid Waiver and Independent Contract for Software Development Services
DATE: September 21, 2023

Requested Action

Board approval of a three-year renewal of the contract with K2dnn.net, requiring waiver of the requirement for outside bid solicitation.

Summary

Mr. Kleszynski and his company, K2dnn, have provided sophisticated IT services to SBM under an independent contract since July 1, 2016. The request is for a renewal for a three-year term, commencing October 1, 2023. K2dnn is a trusted company located in Poland that provides high-level programming/developer services at rates far lower than average rates commonly available in the United States. The contract provides for up to three programmers, at SBM's option, lending additional resources necessary for SBM to complete the many IT projects it is currently undertaking. SBM only pays for the services it uses and can cancel the contract without cause at any time.

The renewal contract with K2dnn includes an inflationary adjustment for three full-time developers working 40 hours per week, at approximately \$36.81 per hour. This would be a 10 percent increase over the current contract.

Facts

Mr. Kleszynski first came to SBM's attention for his team's work on the Cloudlaw member directory. He and his team have subsequently consistently demonstrated excellent work on many development projects including the Lawyer Referral portal, the Volunteer Application portal, the Character and Fitness Bar Applicant portal, the Member Area ecommerce portal, the Rapid Response/Frontline Responder helplines, the MiFile integration, and the Interim Administrator Program (Rule 21) implementation. Diane Ebersole, IT Services Project Director, and our in-house technical services team affirm that Mr. Kleszynski's services have been exemplary. His team continues to bring front-end user interface/high level program design services that seamlessly complement our in-house team, and K2dnn has become intimately familiar with SBM's computer systems and website.

K2dnn continues to offer its services at very competitive rates. The current contract allows for up to three full-time programmers at \$5,800 each per month, that is, up to \$17,400 per month. The new contract provides SBM the use of up to three full-time programmers (i.e., working at least 40 hours

per week each) per month, at the rate of \$6,380 per month for each programmer, that is, up to \$19,140 per month. SBM's use of K2dnn has allowed the extensive software development work of the SBM to be completed not only in a timely and superior fashion but at an economical rate.

The Contracts Policy provides that the Board must approve any contract anticipating \$100,000 or more in expenditures over the express term of the contract. The contract with K2dnn will exceed \$100,000 over its course, thus necessitating your approval. **The Board's Bidding Policy authorizes you to waive the bid requirements where a sole provider is desirable, where unique services are required, or for other good reason. The present circumstances warrant an exception because K2dnn has a proven track record with the Bar, they are offering their services at very competitive rates, and they are already familiar with the Bar and its projects. Lining up an alternative vendor would be inefficient and needlessly time consuming and expensive.**

The Board is respectfully requested to approve the independent contract with K2dnn and waive the bidding requirement.

August 17, 2023

Exception Letter Waiving Bid Requirements for Independent Contractor

Meng Xiong, IT Director, is requesting an exception to the SBM Bidding and RFP policy for the independent contract of Chris Kleszynski and his company, K2dnn.net. K2dnn is currently providing services to the State Bar as an Independent Contractor. The contract with K2dnn is changing to reflect a higher price that represents an inflationary 10 percent adjustment. The new contracted amount of \$229,680 per year includes three full-time developers working 40 hours per week, or approximately \$36.81 per hour for programming and development work. The contract and the bid exception letter will be provided to BOC. Total programming hours by K2dnn are allocated to projects based on the annual project plan. The plan is based on the external requirements (e.g., Michigan Supreme Court, MiFile) and specific department needs (license renewals, member services, etc.) and is balanced to address the high impact/critical needs first. The contracted development and testing are capitalized and included in the capital budget. K2dnn's services to the Bar will include the following services: IT website development services, .NET developer services, developing new and existing DNN modules, fixing defects for existing features, monitoring log files, server performance, firewalls and backups, installing patches and upgrades, and security testing and administration as needed.

Meng informs me that K2dnn's services over the past years have been exemplary, as had been anticipated when it was retained. K2dnn continues to provide high level IT development services and has the added advantage of being intimately familiar with SBM's computer systems due to its past work for the SBM. K2dnn continues to offer its services at very competitive rates.

I am satisfied that the circumstances regarding Mr. Kleszynski and his company, K.2dnn.net, continue to warrant a waiver of the SBM Bidding and RFP policy.

Peter Cunningham, Executive Director

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

This Agreement is made between the State Bar of Michigan (“SBM”), and K2dnn.net (“Independent Contractor”).

WHEREAS, the State Bar of Michigan wishes to retain Independent Contractor to provide certain services, consistent with the terms and conditions of this Agreement.

WHEREAS, Independent Contractor is willing to be retained for such services, consistent with the terms and conditions of this Agreement.

Now therefore the parties agree as follows:

1. Term: The term of this Agreement shall commence October 1, 2023 and expire on September 30, 2026, after which this Agreement shall continue on a month-to-month basis until and unless the parties otherwise revise, extend or terminate the contract. Any revision or extension shall be in writing signed by the parties hereto, including the Executive Director of the State Bar of Michigan.

2. Scope of Services: Independent Contractor agrees to provide the State Bar of Michigan with the following services: IT website development services, consistent with Independent Contractor’s expertise and experiences. Independent Contractor’s responsibilities will include functioning as a core .NET developer, developing new and existing DNN modules, fixing defects for existing features, monitoring log files, server performance, firewalls and backups, installing patches and upgrades, and security testing and administration as needed.

It is anticipated that the projects assigned will occupy 120 hours per week of Independent Contractor’s time for the balance of the term of this Agreement. Independent Contractor will promptly notify its Primary Contact Person if the hours needed to complete projects assigned to it will not keep it fully and gainfully engaged for the amounts of time provided under this Agreement. Any hours in addition to 120 hours per week and agreed upon by both the State Bar of Michigan and the Independent Contractor will be paid in the amount of \$36.81 per hour.

3. Compensation: Independent Contractor will provide SBM the use of up to three full-time (i.e., working at least 40 hours per week) programmers per month, at the rate of \$6,380 per month for each programmer, that is, up to \$19,140 per month.

Independent Contractor will maintain a detailed daily accounting of services performed on an hourly basis. Independent Contractor shall submit the detailed daily accounting to the Primary Contact Person on a weekly basis in writing on a form that has been approved by the State Bar of Michigan.

The State Bar of Michigan shall pay Independent Contractor for services rendered, on a monthly basis, at a rate of \$36.81 per hour. SBM shall have the sole discretion each month as to the number or partial number of programmer’s services it uses, including the right to use no services during any given month or year, and it shall only pay for services it uses.

4. Primary Contact Person: Contractor’s point of contact with the State Bar of Michigan is Timothy Maler, Senior UX/UI Designer, or his designee, and Independent Contractor shall act

within this Agreement and the parameters the Contact Person establishes. Other State Bar of Michigan representatives from whom Independent Contractor may receive projects or information, data, and/or direction relating to assigned projects include Diane Ebersole Chris Dack, and Meng Xiong.

5. Relationship Between the Parties: Independent Contractor is an independent contractor under the terms of this Agreement and is not an agent, partner, joint ventures, or employee of the State Bar of Michigan. Neither Independent Contractor nor Independent Contractor's employees (if any) are entitled to the benefits provided by the State Bar of Michigan to its employees. Independent Contractor agrees to be responsible for all Independent Contractor's federal and state taxes, withholding, social security, insurance, including workers compensation and liability insurance, and other benefits and nothing in this Agreement shall be construed to hold the State Bar of Michigan responsible for any payments for which Independent Contractor must answer on behalf of itself or its employees.

6. Indemnification: Independent Contractor shall indemnify, defend and hold harmless the State Bar of Michigan and their respective officers, directors, partners, agents, members and employees from and against any and all demands, claims, damages to persons or property, losses and liabilities, including reasonable attorney's fees (collectively "Claims") arising out of or caused by the Independent Contractor's negligence in connection with the provision of services. Independent Contractor shall not have waived or be deemed to have waived, by reason of this paragraph, any defense that it may have with respect to such claims.

The State Bar of Michigan shall indemnify, defend and hold harmless Independent Contractor and its officers, directors, partners, agents, members and employees from and against any and all demands, claims, damages to persons or property, losses and liabilities, including reasonable attorney's fees (collectively "Claims") arising out of or caused by the negligence of the State Bar of Michigan or its respective officers, directors, partners, agents, members and employees. The State Bar of Michigan shall not be deemed to have waived, by reason of this paragraph, any defense that it may have with respect to such claims.

7. Authority Limitation: Independent Contractor shall not have the authority to contractually obligate the State Bar of Michigan to any other person or entity.

8. Proprietary Information: Independent Contractor agrees that all information, correspondence, and records of any nature concerning Independent Contractor's services performed on behalf of the State Bar of Michigan shall remain the sole property of the State Bar of Michigan and shall not be disclosed without the express written permission of the State Bar of Michigan.

9. Termination: This Agreement may be terminated by either party, with or without cause, upon thirty (30) days written notice to the other party. The State Bar of Michigan shall pay compensation due to Independent Contractor that accrues prior to the termination. The State Bar of Michigan reserves the right to withhold compensation when the work performed fails to meet minimum levels of performance.

10. Non-Financial Foreign Entity: Independent Contractor represents that it is a Non-Financial Foreign Entity (NFFE) as that term is used in IRS Form W-8-BEN-E, that it is located in Poland, and that all work under this Agreement will be performed in Poland (or another non-US entity's

location). Independent Contractor shall promptly complete and return IRS Form W-8-BEN-E to SBM and acknowledges that SBM is relying upon its representation in the form. Independent Contractor shall promptly notify SBM in the event there are any changes in its status as represented in this paragraph.

11. Miscellaneous Provisions:

- a. Entire Agreement. This document (including any Attachments and Exhibits) contains all terms of the Agreement between the parties and may be amended only by a writing signed by all the signatories to this Agreement or their duly constituted successors in office.
- b. Assignment: This Agreement shall not be assigned by Independent Contractor without the prior written consent of the State Bar of Michigan. In the event the Agreement is assigned, all the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by the successors and assignees of the parties to this Agreement.
- c. Severability. The unenforceability of any provision of this Agreement shall not affect the enforceability of the remaining provisions of this Agreement.
- d. Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement.
- e. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- f. Rights Cumulative. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party, whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.
- g. Nonwaiver. No failure nor neglect of either party in any instance to exercise any right, power or privilege under this Agreement or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party must be contained in a written instrument signed by the party to be charged and, in the case of the State Bar of Michigan, by the Executive Director of the State Bar of Michigan or other person duly authorized by the Executive Director.
- h. Notices. Any notice, request, consent, or approval required or permitted to be given to any party under this Agreement shall be sufficient if in writing and sent by certified or registered mail.
- i. Copy Deemed Same as Original: A fully executed copy of this Agreement shall serve in all respects as an original for purposes of enforcement of this Agreement.

- j. Mutual Drafting: In the event this agreement is interpreted in a court of law, it shall be deemed to have been mutually drafted.

Dated: _____

Chris Kleszynski, K2dnn.Net
Independent Contractor

Dated: _____

Peter Cunningham
Executive Director
State Bar of Michigan

Introduction

The Professional Standards Committee at the requests of the Standing Committee on Client Protection Fund (CPF Committee) present this redraft of the Client Protection Fund Rules (CPF Rules) for consideration and vote. The CPF Committee and staff collaborated to revise the [Client Protection Fund Rules \(CPF Rules\)](#) to incorporate policies and provide clarity.

After careful review of the proposed amendments at its meeting on May 4, 2023, the CPF Committee voted to request that the Board of Commissioners implement the proposed amendments. At its meeting on July 19, 2023, the Professional Standards Committee approved the draft with one revision to the title of new Rule 10(E), which amended the title from Summary Decisions to Expedited Procedure. No other changes were recommended.

Background

The State Bar of Michigan Client Protection Fund (CPF or Fund) has been in existence since 1966 to promote public confidence in the profession by reimbursing clients and third parties when a lawyer, acting in a legal setting, misappropriates funds. Annually, claims are filed against only 0.06% of lawyers admitted to practice in Michigan; however, the losses suffered by clients can be in the millions. The Fund is financed through an annual fee paid by all practicing lawyers in Michigan and the CPF rules set maximum recovery limits for claimants to ensure the financial stability of the Fund.

Proposed CPF Rule Amendments

The CPF is governed by Board-approved rules. Through the years, piecemeal amendments have been made to the rules; however, the rules have not undergone a holistic review in decades. For example, in 2019, the Board implemented minor amendments to the language of the CPF rules and additional rules regarding reporting losses over \$20,000 to law enforcement (Current Rule 9(B)) and attorney fees (Current Rule 10(D)). The rules proposed herein are more comprehensive with the goals of streamlining processes, eliminating inconsistencies, and clarifying procedures. Two added sections, which are not in the current rules, are in Proposed Rule (7)(A) to clarify handling matters involving a deceased respondent and the additional of Rule 10(E) to provide for expedited proceedings for claims under \$3,000. These amendments are discussed in more detail below.

Deceased Attorneys (New CPF Rule 7(A)(1))

There has been a significant increase in CPF claims filed against deceased attorneys for failing to return an excessive fee or failing to properly safeguard unearned fees so that they may be refunded upon the lawyer's death. Typically, the Board approves these types of claims because the dishonest conduct arose from the attorney's failure to properly safeguard unearned funds prior to death. The definition of "dishonest conduct" in the CPF Rules, however, focuses on the "failure to refund unearned fees" and does not explicitly include the failure to refund excess fees or the failure to properly safeguard fees so that they may be refunded upon the attorney's death. Therefore, to clarify the rule and make consistent with current practice, SBM staff recommends that the Rule be amended as follows:

Failing to refund unearned fees as required by MRPC 1.16 including the failure to return an excessive fee as determined by MRPC 1.5, or the failure to safeguard funds during the lawyer's lifetime so that unearned fees may be refunded upon the lawyer's death.

Expedited Proceedings for Claims under \$3,000 (New Rule 10(E))

Many claimants wait a significant amount of time for Fund reimbursement. The process is rarely completed in less than six months and can take up to three years, depending on how long it takes for the Attorney Discipline Board to complete its review of the attorney's conduct and SBM to complete its subsequent CPF review. This delay – particularly for small claims – has the potential to negatively impact public confidence in the Fund and the profession.

Some of the delay cannot be avoided. For example, for attorneys under the jurisdiction of the Attorney Disciplinary System, the CPF review process must wait for the completion of the Attorney Grievance Commission investigation and the Attorney Disciplinary Board's review of the attorney's alleged dishonest conduct. SBM can, however, reduce the delay in reimbursements by creating an expedited process for its CPF review for claims under \$3,000.

Currently, SBM has the following multi-level review for all CPF claims regardless of the dollar amount at issue:

1. Review by the CPF Committee (meets quarterly)
2. Review by the Professional Standards Committee (meets 6-7 times a year)
3. Review by the Board of Commissioners (meetings 6-7 times a year)

The minimum length of time for this process is three months, but generally this process takes six to nine months.

To reduce the delay for smaller claims, SBM staff recommends that the Board implement a expedited proceeding that would give the CPF Committee authority to approve payment of claims under \$3,000. This expedited proceeding would significantly reduce the time to complete the CPF review because payment could be made once the time for respondent's request for review has run.

This change would positively impact a large number of claimants. Between September 1, 2015 and April 30, 2023, the Board has approved payment of 170 claims valued at less than \$3,000. Fifteen claims are in the committee review process and 34 claims are pending as of April 30, 2023.

Other states have similar ways of streamlining claims:

- Maryland has an "Expedited Procedure" for claims under \$2,500, which can be voted on via email. Colorado allows Attorney Regulation Counsel (staff) to approve claims under \$2,500.
- Washington's Client Protection Board approves claims up to \$25,000 without review by its Board of Governors.
- Massachusetts has a "small claims" process for claims under \$25,000. They are presented to their Board at its monthly meetings via a one-page memorandum with no exhibits. However, claims over \$25,000 are adjudicated via a hearing.

Proposed Changes

Rule 1 – Purpose and Scope

The proposed changes provide a definition for the term “lawyer” within the rule.

Rule 2 – Establishment

The proposed change includes that the Fund is operated by the SBM and that the new rules take effect when enacted. There are no other substantive changes.

Rule 3 – Funding and Management

No substantive changes were made.

Rule 4 – Funds

No substantive changes were made.

Rule 5 – The Client Protection Fund Committee

The proposed changes provide the Committee’s role in the CPF process and further removes provisions inconsistent with the SBM Bylaws.

Rule 6 – Committee Meetings

This rule is removed as the Bylaws govern meetings of the Committee.

Rule 7 – Duties and Responsibilities of the Committee

This rule is removed as the provisions are incorporated into Rule 5 or are inconsistent with other rules governing the committee.

Rule 8 – Conflict of Interest (New Rule 6)

The proposed changes are to comply with the Conflict of Interest provisions governing the BOC.

Rule 9 – Eligible Claims (New Rule 7)

Current Rule 9(A) and (B) are moved to Proposed Rule 7(B) and expanded to include provisions from other areas of the rule, specifically (1)(A) and (2)(A).

Current Rule 9(C) (New Rule 7(A)) is modified to streamline the language used, incorporate CPF policies on reimbursement, and eliminate confusion regarding deceased attorneys. The language is substantially the same as the current rule except the following emphasized text:

1. Failing to refund unearned fees as required by Michigan Rule of Professional Conduct (MRPC) 1.16, including failure to return an excessive fee as determined under MRPC 1.5, or *failure to safeguard funds during the lawyer’s lifetime so that unearned fees may be refunded upon the lawyer’s passing.*

Current Rule 9(D) (New Rule 7(C)) combines what is excluded from reimbursement in one rule provision and clarifies the language.

The proposed changes include clearer language and encompasses CPF policies that have been in place for many years.

Proposed Rule 8 includes the provisions that were incorporated in Current Rule 9(E-F) to provide clarity.

Rule 10 – Procedures and Responsibilities for Claimants

Has been eliminated.

- (A) Has been moved to Rule (9)(A)
- (B) Has been eliminated as the State Bar already creates the application and will provide for the required information. See Rule (9)(A).
- (C) Has been moved to Rule (9)(A).
- (D) Has been moved to Rule (9)(B).
- (E) See Rule (9) generally.

Rule 11 – Processing Claims (Proposed Rule 10)

- (A) Has been moved to Proposed Rule 10(F)
- (B) Has been moved to Rule 10(D)(1)
- (C) Has been moved to (C)
- (D) Has been eliminated as the committee does not conduct investigations
- (E) Has been moved to (A)
- (F) Has been removed since testimony has never been allowed.
- (G) Has been moved to (D) and clarified
- (H) Has been removed since it is redundant
- (I) Has been moved to (D)(2)
- (J) Has been moved to (7)(B)(7)
- (K) Has been moved to (10)(C)(2)
- (L) Has been moved to (F)
- (M) Has been moved to (G) and clarified

Proposed Addition of Rule 10(E)

E. Expedited Proceedings. The Committee may give final approval of an award of less than \$3,000 subject to the Respondent's right to review provided below. The Committee shall submit regular reports to the Board of all awards approved by the Committee.

Rule 12 – Payment of Reimbursement

- (A) Has been incorporated into Proposed Rules (11)(A) and (B)
- (B) Has been modified to provide clarification
- (C) Has been modified to provide clarification
- (D) Has been moved to (C)
- (E) Has been moved to Proposed Rule (8)
- (F) Has been moved to (D)

Rule 13 – Reimbursement from Fund as a Matter of Grace (Proposed Rule 12)

Has been modified to provide clarity.

Rule 14 – Reimbursement, Restitution and Subrogation (Proposed Rule 13)

- (A) Has been modified for clarification
- (B) Has been incorporated into Proposed Rule (A)
- (C) Has been clarified in Proposed Rule (B)
- (D) Has been moved to Rule 2(C)
- (E) Has been incorporated into Rule (B)(3)
- (F) Has been moved to (C)
- (G) Has been moved to (C)
- (H) Has been moved to (D)
- (I) Has been moved to (8)(D)

Rule 15 – Confidentiality

Has been modified to include that the claimant’s name may be used for subrogation purposes. That information may be shared with other jurisdictions client protection/client security funds where claims cross state lines, these entities also have confidentiality provisions, so the claimant’s information will be protected.

Rule 16 – Amendments to the Rules

Has been moved to Proposed Rule 5(1).

Attachments: Current Client Protection Fund Rules
Proposed Amendments to the Client Protection Fund Rules
ABA Compendium of Client Protection Rules
2019 Memorandums regarding changes
Template Subrogation Agreement
Standards for Evaluating Lawyers’ Fund for Client Protection (2006)
Conference of Chief Justices, Resolution 2, In Support of The National Client Protection Organization’s Standards for Evaluating Lawyers Funds for Client Protection (2013)

1 **RULE 1—PURPOSE AND SCOPE**

2 A. The purpose of the Michigan Client Protection Fund (Fund) is to promote public
3 confidence in the administration of justice and integrity of the legal profession by
4 reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to
5 practice law in Michigan. Reimbursable losses must have occurred in the course of the
6 lawyer-client or other fiduciary relationship between the lawyer and claimant and the
7 reimbursable loss must have a significant contact with Michigan.

8 B. For purposes of the Client Protection Fund Rules (Rules), the term “lawyer” includes a
9 person:

- 10 1. licensed to practice law in Michigan, including Federal Courts;
- 11 2. admitted under a Special Certificate;
- 12 3. admitted temporarily under MCR 8.126;
- 13 4. admitted as a special legal consultant;
- 14 5. admitted only in a non-United States jurisdiction but who is authorized to practice
15 law in Michigan; or
- 16 6. suspended or disbarred whom the client reasonably believed to be licensed to
17 practice at the time the dishonest conduct occurred.

18 **RULE 2—ESTABLISHMENT**

19 A. The Fund is established to reimburse claimants for losses that arise out of dishonest
20 conduct as defined herein. The dishonest conduct must have a significant contact with
21 Michigan and must be committed by a lawyer or lawyers.

22 B. The Fund is operated by the State Bar of Michigan (SBM).

23 C. The Fund is supervised by the Board of Commissioners of the SBM (Board), which shall
24 accept, hold, and manage money received by the Fund and make disbursements from the
25 Fund.

26 D. These Rules are effective for claims filed with the Fund on or after [DATE].

27 **RULE 3—FUNDING AND SUPERVISION**

- 1 A. The Fund is financed through an annual assessment of all Michigan lawyers and a charge
2 to lawyers seeking temporary admission under MCR 8.126.
- 3 B. The Fund also receives surplus judicial campaign contributions pursuant to Canon 7(B) of
4 the Michigan Code of Judicial Conduct, Legal Defense Fund, donations, subrogation
5 collection, and court ordered contributions for unaccounted for lawyer trust account funds.
- 6 C. The Board shall:
- 7 1. Ensure that the Fund is financed at an amount adequate to provide for the
8 payment of claims and costs of administering the Fund, including recommending
9 adjustments to the lawyer assessment as needed to carry out the purpose of the
10 Fund.
 - 11 2. Supervise the prudent investment of Fund money.
 - 12 3. Ensure sufficient reserves to pay reasonably expected claims, within the limits of
13 the resources dedicated to the Fund and pursuant to any policies adopted by the
14 Board.
 - 15 4. Ensure the employment of adequate staff and consultants to carry out the Fund's
16 functions and purposes effectively and efficiently.
 - 17 5. Monitor recovery of restitution to which the Fund is entitled.

18 **RULE 4—FUNDS HELD IN TRUST**

19 All money or other assets of the Fund constitutes a trust and must be held in the name of the
20 Fund, subject to the direction of the Board.

21 **RULE 5—THE CLIENT PROTECTION FUND COMMITTEE**

22 The Standing Committee on Client Protection Fund (Committee) makes recommendations to the
23 Board concerning the Fund, including claims administration processes, amendment of the rules,
24 and subrogation matters. The Committee will meet as frequently as necessary to conduct the
25 business of the Fund and make recommendations in accordance with the SBM's Bylaws,
26 Committee's jurisdiction and policies, these rules, and Rules Concerning the SBM.

27 **RULE 6—CONFLICT OF INTEREST**

<https://thestatebarofmichigan.sharepoint.com/sites/RegulatoryServices/Shared Documents/General/CPF Apps Rules Loss Prevent Cmtee Rosters & Ltrs/2023 Recommendations for CPF Rule Changes/2023-7-19 CPF Rules Draft for Board of Commissioners Review.docx> 2 | Page

<https://thestatebarofmichigan.sharepoint.com/sites/RegulatoryServices/Shared Documents/General/CPF Apps Rules Loss Prevent Cmtee Rosters & Ltrs/2023 Recommendations for CPF Rule Changes/2023-7-19 CPF Rules Draft for Board of Commissioners Review.docx>

- 1 A. Consistent with and subject to the SBM Board Policy 15, Conflict of Interest, a Board
2 member who has any known existing or potential conflict of interest must report the
3 conflict to the President of the Bar. A Board member shall abstain from investigating,
4 recommending, or voting on any matter on which the member has any known or existing
5 or potential conflicts of interests. Conflicts may include, but are not limited to, situations
6 where a Board member has a lawyer-client, financial, or close familial relationship with a
7 claimant or a lawyer who is the subject of a claim.
- 8 B. A Committee member who has any known existing or potential conflict of interest must
9 report the conflict to the Committee Chair. The Committee member shall abstain from
10 investigating, recommending, or voting on any matter on which the member has any
11 known or existing or potential conflicts of interests. Conflicts may include, but are not
12 limited to, situations where a Committee member has a lawyer-client, financial, or close
13 familial relationship with a claimant or a lawyer who is the subject of a claim.

14 **RULE 7—REQUIREMENTS FOR REIMBURSEMENT**

- 15 A. As used in these Rules, "dishonest conduct" means wrongful acts committed by a
16 lawyer, including, but not limited to:
 - 17 1. Failing to refund unearned fees as required by Rule 1.16 of the Michigan Rule of
18 Professional Conduct (MRPC), including failure to return an excessive fee as
19 determined under MRPC 1.5, or the failure to safeguard funds and fees paid and
20 unearned in an appropriate trust account pursuant to MRPC 1.15 during the lawyer's
21 lifetime so that excessive or unearned fees may be refunded upon the lawyer's death.
 - 22 2. Theft or embezzlement of money or the wrongful taking or conversion of property
23 that came into the possession of the lawyer as the result of a lawyer-client or other
24 fiduciary relationship related to the practice of law.
 - 25 3. Borrowing money from a client without the intent to repay it or with disregard of the
26 lawyer's reasonably anticipated inability to repay it.
 - 27 4. Receiving funds or property from a client to invest the funds or property where:

- a. The lawyer knew the client(s) had funds to invest because of information acquired through a lawyer-client relationship regardless of whether there was an ongoing or existing lawyer-client relationship at the time of the investment, and
- b. The lawyer possessed a higher degree of sophistication and knowledge than the client or where there is a historical relationship of trust and reliance on the lawyer by the client, and
- c. The investment vehicle or project:
 - i. did not exist, or
 - ii. the actual nature and characteristics of the investment vehicle or project differed substantially from the representations made to the client regarding the investment vehicle or project, or
 - iii. the disbursement was made directly to the lawyer, friend, relative of the lawyer, or an entity controlled by either, where the investment vehicle or project could reasonably be viewed as a non-legitimate investment vehicle or project under the totality of the facts.

B. To be eligible for reimbursement from the Fund:

1. The loss must have arisen out of a lawyer-client or other fiduciary relationship related to the practice of law.
2. At the time of the dishonest conduct, the lawyer was admitted or licensed to practice law in Michigan or was suspended or disbarred less than six months prior to the dishonest conduct. If the lawyer was suspended or disbarred more than six months prior, the claim shall be denied unless the client demonstrates a reasonable belief that the lawyer was licensed to practice law at the time of the dishonest conduct.
3. The loss must have arisen from the lawyer's practice of law in Michigan. In making this determination, the Committee may consider all relevant factors including, but not limited to, the parties' domiciles, the location of the lawyer's

1 office, the location where the attorney-client relationship was formed, the location
2 where legal services were rendered, and the jurisdiction in which the matter is
3 pending.

- 4 4. The dishonest conduct stated in the claim must either have been reported to the
5 Attorney Grievance Commission or a law enforcement authority or the subject of
6 a lawsuit filed in any court or tribunal having jurisdiction, within two years after
7 the dishonest act occurred, or, if the dishonest act could not then have reasonably
8 been discovered, within six months after the dishonest conduct was discovered or
9 reasonably should have been discovered, whichever is later. Or within one year of
10 notice of respondent's death.
- 11 5. A claimant must report an otherwise eligible claim over \$20,000 to a law
12 enforcement authority before the claim will be considered by the SBM. The SBM
13 has discretion to require any claimant to report the dishonest conduct to a law
14 enforcement authority before a claim is considered.
- 15 6. Claimants do not have to wait for a determination by the Attorney Grievance
16 Commission, Attorney Disciplinary Board, law enforcement authority, or a court
17 to file a claim with the Fund. A claim must be filed with the Fund no later than
18 one (1) year after a determination by the Attorney Grievance Commission and/or
19 Attorney Discipline Board related to the dishonest conduct alleged in the claim.
- 20 7. The SBM may require the claimant to seek reimbursement from any other source
21 that may be legally responsible for the loss before payment of an approved claim.

22 C. Except as provided in these rules, the Fund does not reimburse:

- 23 1. consequential or incidental damages such as lost interest, attorney's fees, or other
24 costs incurred in seeking recovery of a loss.
- 25 2. losses arising from malpractice or inadequate, insufficient, or negligent rendition
26 of services.
- 27 3. claims based on a dispute regarding the correctness or applicability of the attorney
28 fees invoiced.

- 1 4. losses incurred by a spouse, child, parent, grandparent, sibling, heir, partner,
2 associate, employer, or employee of the lawyer responsible for the loss.
- 3 5. losses covered by any bond, banker’s blanket bond, surety agreement, or
4 insurance contract to the extent covered, including any loss to which any bonding
5 agent, surety or insurer is subrogated, to the extent of that subrogated interest.
- 6 6. losses incurred by any business entity controlled by the lawyer.
- 7 7. losses incurred by any governmental entity or agency.
- 8 8. money paid directly to an individual who is not the lawyer or a company that is
9 not the lawyer’s law firm, such as fees paid to a court, fees paid to a different
10 attorney, statutory interest and costs awarded in a lawsuit filed against the lawyer,
11 or wages for missed work time.
- 12 9. current or future values.
- 13 10. money due to a third-party other than the payor where the claimant receives no
14 benefit from the reimbursement.
- 15 11. attorney fees for services rendered or to be rendered, unless:
16 a. there was a failure to refund unearned legal fees.
17 b. the fee was unreasonable in light of the work performed under the factors set
18 forth in MRPC 1.5 or SBM Ethics Opinions regarding attorney's fees.
19 c. the lawyer settled a case without the knowledge and authorization of the client
20 and misappropriated the settlement proceeds. In such instances the Committee
21 may, in its discretion, find that attorney fees are waived by the lawyer if it is
22 determined that the lawyer: 1) settled the matter without claimant’s
23 permission, 2) did not inform claimant of the settlement, and 3)
24 misappropriated the settlement proceeds. In all other matters, the lawyer shall
25 receive credit for any attorney fees earned that are not deemed excessive.

26 **RULE 8—BOARD DISCRETION REGARDING ELIGIBILITY AND RESTITUTION**

- 1 A. In cases of extreme hardship or special and unusual circumstances, the Committee may
2 recommend, and the Board may authorize, payment of a claim that would otherwise be
3 excluded under these Rules.
- 4 B. The Board may approve payment of a claim in an amount that exceeds the maximum
5 limits where the totality of the circumstances, based on the purposes and policies of the
6 Fund, warrants doing so.
- 7 C. In cases where the Board, in its sole discretion, determines that an otherwise
8 reimbursable claim would create unjust enrichment or the claimant unreasonably or
9 knowingly contributed to the loss, the Board shall deny the claim.
- 10 D. The Board has discretion to pursue subrogation in a manner that deviates from these rules
11 or not to pursue subrogation when the totality of the circumstances warrant.

12 **RULE 9—FILING A CLAIM**

- 13 A. A claimant must submit a claim on the SBM claim form and provide sufficient evidence
14 of a reimbursable loss.
- 15 B. A claimant must, during the pendency of the claim, remain in contact with the SBM and
16 provide updates and additional information as necessary or requested by staff.
- 17 C. Claimants do not need to hire an attorney to file a claim; however, all SBM licensees are
18 urged to provide pro bono assistance to any claimant who requires assistance in
19 presenting a claim to the Fund, and no attorney may be compensated for services
20 regarding the CPF application process or the CPF claim administration process beyond a
21 fee of \$250, except as authorized by the Board.

22 **RULE 10—CLAIM ADMINISTRATION**

- 23 A. Service of Process. A copy of the claim shall be served in a manner set forth in Michigan
24 Court Rules 2.103 – 2.107 for service of a civil complaint on the lawyer whose conduct is
25 the subject of the claim, at the lawyer’s address on file with the SBM, or last known
26 address, or on the lawyer’s representative, if known. If served by certified mail and
27 returned “unclaimed” or “refused,” all future documents may be sent to the lawyer via first
28 class mail or electronic means. If documents are returned as undeliverable and no

1 forwarding address can be obtained, then the Fund is exempt from mailing a copy of the
2 claim to the lawyer until a current address can be obtained or a final determination has
3 been mailed to the claimant.

4 B. Response. The lawyer or representative has 30 days to respond or, upon request, within the
5 timeframe specified by the SBM. If the lawyer or representative does not timely respond to
6 the notice of claim, the lawyer will not be given further opportunity to respond or
7 otherwise defend the claim, including a request for review, unless good cause is shown.

8 C. Attorney Grievance Commission and Attorney Discipline Board.

9 1. The SBM will notify the Attorney Grievance Commission of the filing of a claim
10 unless the lawyer is deceased, disbarred, or suspended for a term exceeding 179 days.

11 2. Unless the totality of the circumstances warrants otherwise, no claim should be
12 approved during the pendency of a disciplinary proceeding involving the same
13 conduct alleged in the complaint.

14 3. The SBM will promptly notify the Attorney Discipline Board of payment of any
15 claim and request that any restitution first be made to the Fund until such time the
16 Fund is paid in full unless the lawyer is deceased.

17 D. Finding of Dishonest Conduct. The evidentiary standard for a finding of dishonest conduct is
18 a preponderance of evidence.

19 1. An order disciplining a lawyer or a final non-default judgment imposing civil or
20 criminal liability for the dishonest act or conduct that comports with Rule 7(A) is
21 conclusive evidence that the lawyer engaged in the dishonest conduct. Conversely, a
22 determination from a disciplinary authority or court that the lawyer did not engage in
23 the dishonest conduct bars recovery from the Fund.

24 2. Rules of evidence do not apply to any claim proceeding. All relevant evidence that a
25 responsible person would rely upon in the conduct of serious affairs will be admitted.

26 3. The claimant has the duty to provide sufficient evidence to support the claim.

27 Evidence supporting a claim may be provided by other sources such as the Attorney
28 Grievance Commission, law enforcement, or court proceedings.

- 1 E. Expedited Proceedings. The Committee may give final approval of an award of less
2 than \$3,000 subject to the Respondent's right to review provided below. The
3 Committee shall submit regular reports to the Board of all awards approved by the
4 Committee.
- 5 F. Notification of Committee's Recommendation. The claimant and the lawyer will be
6 notified of the Committee's recommendation or decision under the expedited
7 proceeding as soon as practicable. The notice must include the reasons for the
8 recommendation or decision under the expedited proceeding and information
9 regarding claimant's and the lawyer's respective right to request review.
- 10 G. Request for Review. The claimant or respondent must submit a request for review in
11 writing within 30 days of the notice of a recommendation or decision under the expedited
12 proceeding denying the claim or determining the amount of a claim by the Committee.
13 When a determination has been made by SBM staff or the Committee that a claim is not
14 eligible for reimbursement, the claimant will be notified why the claim is not eligible for
15 reimbursement and that unless additional facts to support eligibility are submitted to the
16 Fund within 30 days, the file will be closed. Requests for review are subject to the
17 following policies and procedures:
- 18 1. A timely request for review of the Committee's recommendation shall be submitted
19 to the Board for review.
 - 20 2. A de novo standard of review applies to a request for review. The requestor must
21 show by a preponderance of the evidence that the recommendation was incorrect.
 - 22 3. Typically, the record established for review by the Board is the sole record to be
23 reviewed. The Board may consider newly discovered evidence that, by due diligence,
24 could not reasonably have been discovered before the Committee made its
25 recommendation. If the claimant or lawyer fails to make a request, the decision of the
26 Board or Committee, in the case of expedited proceedings, concerning the claim is
27 final.

1 H. Notice of final determination. The claimant and the lawyer will be notified of the Board’s
2 final determination. If the Board alters the recommendation of the Committee, the claimant
3 and lawyer may submit a request for review in writing within 30 days of notice of the
4 Board’s final determination. If the final determination notice to either party is returned and
5 a forwarding address cannot be obtained from the post office, then the period to submit a
6 request for review, if applicable, begins to run 5 days after the date on the correspondence.

7 **RULE 11—PAYMENT OF REIMBURSEMENT**

8 A. Claim Reimbursement Maximum. Only one claim will be processed for any person or
9 group of persons who has or have a mutual or common interest in the relationship with the
10 lawyer or group of lawyers acting in collusion, even though each member of such group
11 may have separately sustained a loss. “Group of Persons” may include: corporations,
12 partnerships, associations, estates of decedents, and persons having mutual, common, or
13 joint interests in property. The Board determines the maximum amount that the Fund may
14 reimburse for losses arising from any incident or series of incidents constituting dishonest
15 conduct by a single lawyer or group of lawyers acting in collusion; the current claim
16 reimbursement maximum is \$150,000.

17 B. Aggregate Maximum Reimbursement. The Board determines the aggregate maximum
18 amount that the Fund may reimburse for losses as the result of the dishonest conduct of a
19 single lawyer or group of lawyers acting in collusion; the current aggregate maximum
20 reimbursement is \$375,000.

21 1. When SBM staff forecasts that claims may exceed this limit, all claims against the
22 lawyer or lawyers shall not be paid for two years following the filing of the initial
23 claim against the lawyer or lawyers. The Board will review each claim
24 individually and determine the “Actual Claim Loss,” which is the total loss
25 calculated under these Rules.

26 2. If the total of the combined Actual Claim Losses suffered by all claimants
27 exceeds the aggregate maximum amount approved by the Board, then the
28 reimbursable losses will be apportioned on a pro rata basis as provided below:

- 1 i. The percentage of the aggregate maximum will be calculated by dividing
- 2 the actual Claim Loss by the total of all Actual Claim Losses, then
- 3 ii. Multiplying the percentage by the aggregate maximum.

Actual Claim Loss ÷ Total of all Actual Claim Losses = percentage of aggregate maximum

Actual Claim Loss multiplied by percentage of aggregate maximum = reimbursement amount

4 3. If any payment would exceed the maximum amount payable to a single claimant

5 as defined by 11(A) above, the maximum recommended payment will be capped

6 at the Claim Reimbursement Maximum and the remainder will be prorated

7 between the remaining claimants.

8 C. If a payment is to be made to a minor or a protected individual, reimbursement may be

9 paid to any person or entity authorized by applicable law to receive the reimbursement for

10 the benefit of the payee.

11 D. Payments are made in such amounts and at such times as the Board deems appropriate and

12 may be paid in a lump sum or installment payments.

13 **RULE 12—NO LEGAL RIGHT TO REIMBURSEMENT**

14 No person has the legal right to reimbursement from the Fund.

15 **RULE 13—REIMBURSEMENT, RESTITUTION, AND SUBROGATION**

16 A. A lawyer whose dishonest conduct has resulted in reimbursement shall make restitution

17 to the Fund including interest and the expense incurred by the Fund in collection of

18 reimbursement. A lawyer’s failure to make a satisfactory arrangement for restitution may

19 be cause for suspension, disbarment or denial of an application for reinstatement.

20 B. As a condition of reimbursement, and to the extent of the reimbursement provided by the

21 Fund, a claimant, and where applicable the other person receiving reimbursement from

22 the Fund (payee), must enter into an agreement that provides that the payee:

- 23 1. transfers the payee’s rights against the lawyer, the lawyer’s legal representative,
- 24 estate, or assigns; and of the payee’s rights against any third party or entity who
- 25 may be liable for the payee’s loss, up to the amount paid by the Fund, any related

1 collection costs incurred by the Fund, and interest to the State Bar of Michigan
2 Client Protection Fund unless the Board decides otherwise.

3 2. agrees to cooperate in all efforts that the SBM undertakes to achieve restitution
4 for the Fund.

5 3. agrees to repay the Fund if the payee is subsequently reimbursed from another
6 source in an amount that exceeds the difference between the amount of total loss
7 identified by the Fund and the Fund award. Such repayment shall not exceed the
8 amount of the Fund award, unless the Board decides otherwise.

9 C. The SBM will undertake all reasonable efforts to recover payments made by the Fund
10 from responsible or related entities that caused the loss to the claimant.

11 1. The Fund may retain an attorney to pursue recovery.

12 2. The Fund will pay fees and costs, including attorney's fees, to attempt to recover
13 payments made by the Fund. Any recovery obtained by the Fund will first be
14 used to reimburse the Fund for fees and costs, including attorney's fees, and
15 second, to reimburse the Fund for the amount paid to the payee.

16 3. If the payee has sustained a loss in excess of the amount of reimbursement
17 received from the Fund, the SBM as subrogee or assignee of a claim, must advise
18 the payee of litigation attempting to recover fund payments, and the payee may
19 join in the action to recover the payee's unreimbursed losses.

20 D. In the event that an action is commenced by anyone other than the SBM to recover
21 unreimbursed losses against the lawyer or another entity that may be liable for the loss, the
22 payee must notify the SBM.

23 **RULE 14—CONFIDENTIALITY**

24 A. Claims, proceedings, and reports involving claims for reimbursement are confidential until
25 the Board authorizes reimbursement, except as provided herein or unless otherwise
26 provided by law or other rules governing the SBM. After payment of the reimbursement,
27 the SBM may publicize the name of the lawyer, nature of the claim, and the amount of

1 reimbursement. The name and address of the claimant will remain confidential except for
2 recovery purposes or when otherwise authorized in writing by the claimant.

3 B. The SBM may use any Client Protection Fund information to pursue its right to recover for
4 payments made by the Fund.

5 C. The SBM may disclose any relevant information to professional discipline agencies, law
6 enforcement authorities, or other state's client protection/security funds. The SBM may
7 also disclose statistical information that does not disclose the identity of the lawyer or
8 Claimant.

1 STATE BAR OF MICHIGAN
2 CLIENT PROTECTION FUND RULES

3
4 **RULE 1—PURPOSE AND SCOPE**

5 A. The purpose of the Michigan Client Protection Fund ~~(Fund)~~ is to promote public
6 confidence in the administration of justice and integrity of the legal profession by
7 reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to
8 practice law in Michigan. Reimbursable losses must have occurred in the course of the
9 lawyer-client or other fiduciary relationship between the lawyer and claimant and the
10 reimbursable loss must have a significant contact with Michigan.

11 B. For purposes of ~~these~~the Client Protection Fund Rules ~~(Rules)~~, the term “~~lawyers admitted~~
12 ~~and lawyer~~” includes a person:

13 1. licensed to practice law ~~includes lawyers in Michigan;~~

14 2. admitted under a Special Certificate;

15 3. admitted *pro hac vice* and lawyers temporarily under MCR 8.126;

16 4. admitted as a special legal consultant;

17 5. admitted only in a non-United States jurisdiction but who is authorized to practice
18 law in Michigan; or

19 6. recently suspended or disbarred whom ~~clients~~the client reasonably believed to be
20 licensed or admitted to practice at the time the dishonest conduct occurred. If the
21 lawyer was under an order of interim suspension, suspension or revocation issued
22 at least six months prior to the dishonest conduct, it may be presumed that the
23 client was unreasonable in believing that the lawyer was licensed or admitted to
24 practice law at the time of the dishonest conduct.

25
26 **RULE 2—ESTABLISHMENT**

27 A. The Fund is established to reimburse claimants for losses that arise out of dishonest
28 conduct ~~that has~~as defined herein. The dishonest conduct must have a significant contact
29 with Michigan and must be committed by a lawyer or lawyers admitted to practice in
30 Michigan.

31 B. The Fund is ~~under~~operated by the supervision ~~State Bar of Michigan (SBM).~~

~~Revised: September 25, 2019~~

~~1~~

1 ~~B.C.~~ The Fund is supervised by the Board of Commissioners of the State Bar of Michigan,
2 (Board), which shall receive~~accept~~, hold, and manage ~~and disburse~~money received by the
3 Fund and make disbursements from the Fund ~~the monies the Fund receives through per~~
4 lawyer assessments, voluntary contributions, unused judicial campaign funds and
5 otherwise.

Commented [AC1]: Moved to 3 B.

6 ~~C.D.~~ These Rules ~~shall be~~are effective for claims filed with the Fund on or after January 1,
7 ~~2004.~~
8 ~~2022.~~

9 **RULE 3—FUNDING AND ~~MANAGEMENT~~SUPERVISION**

- 10 A. The ~~Supreme Court has provided for the financing of the~~ Fund is financed through
11 ~~imposition of an annual, per lawyer~~ assessment of all Michigan lawyers, ~~beginning with~~
12 ~~the 2003-2004 fiscal year and a charge to lawyers seeking temporary admission under~~
13 MCR 8.126.
- 14 B. The Fund also receives ~~unused surplus~~ judicial campaign contributions pursuant to Canon
15 ~~Seven~~7(B) of the Michigan Code of Judicial Conduct, ~~voluntary donations, subrogation~~
16 collection, court ordered contributions for unaccounted for lawyer trust account funds, and
17 other contributions ~~and other miscellaneous contributions as appropriate.~~
- 18 C. The Board ~~of Commissioners~~ shall:

- 19 ~~1. Take all appropriate and available measures to ensure~~ Ensure that the Fund is
20 financed at an amount adequate to provide for the ~~proper~~ payment of claims and
21 costs of administering the Fund.
- 22 1. ~~Prudently invest such monies of the Fund that may not be, including~~
23 recommending adjustments to the lawyer assessment as needed ~~currently to pay~~
24 losses and to maintain sufficient reserves as appropriate ~~carry out the purpose of~~
25 the Fund.
- 26 2. ~~Employ~~ Supervise the prudent investment of Fund money.
- 27 3. ~~Ensure sufficient reserves to pay reasonably expected claims, within the limits of~~
28 the resources dedicated to the Fund and pursuant to any policies adopted by the
29 Board.
- 30 2. ~~Ensure the employment of adequate staff to assure the effective and efficient~~
31 performance of consultants to carry out the Fund's functions and purposes.

Revised: September 25, 2019 2

1 ~~2.4. Retain effectively and compensate consultants, administrative staff, investigators,~~
2 ~~actuaries, agents, legal counsel and other persons as necessary efficiently.~~
3 ~~3.5. Prosecute claims for~~ Monitor recovery of restitution to which the Fund is entitled.
4

5 **RULE 4—FUNDS HELD IN TRUST**

6 All ~~monies~~ money or other assets of the Fund ~~shall constitute~~ constitutes a trust and ~~shall~~ must be
7 held in the name of the Fund, subject to the direction of the Board ~~of Commissioners.~~

8 .
9 **RULE 5—THE CLIENT PROTECTION FUND COMMITTEE**

10 ~~A~~ The Standing Committee ~~on Client Protection Fund (Committee)~~ of at least seven members of
11 ~~the State Bar of Michigan shall administer) makes recommendations to the Board concerning the~~
12 ~~Fund. The appointment and tenure of Committee members shall be in accordance with Article~~
13 ~~VI, Section 2, including claims administration processes, amendment of the Bylaws of the State~~
14 ~~Bar of Michigan unless the Board of Commissioners specifically authorizes otherwise.~~

15
16 **RULE 6—COMMITTEE MEETINGS** rules, and subrogation matters.

17 The Committee ~~shall~~ will meet as frequently as necessary to conduct the business of the Fund and
18 ~~to timely process claims~~ make recommendations in accordance with the State Bar's Bylaws,
19 Committee's jurisdiction and policies, these rules, and Rules Concerning the State Bar.

20 ~~A. The chairperson may call a meeting at any reasonable time and shall call a meeting upon~~
21 ~~the request of at least two members.~~

22 ~~B. A majority of the members of the Committee shall constitute a quorum for the transaction~~
23 ~~of its business.~~

24 ~~C. Minutes of the meetings shall be taken and maintained.~~

25 ~~D. Any Committee member missing three consecutive meetings without an excused absence~~
26 ~~from the Chairperson shall be deemed to have resigned from the Committee and the~~
27 ~~member's seat on the Committee shall be open to appointment.~~

28
29 ~~Any Committee member missing three consecutive meetings with an excused absence may~~
30 ~~be subject to a review of whether their appointment on the Committee remains feasible and~~
31 ~~is the best interest of the Committee.~~

32
33 **RULE 7—DUTIES AND RESPONSIBILITIES OF THE COMMITTEE**

34 ~~A. The Committee shall have the following duties and responsibilities to:~~

Revised: September 25, 2019

3

—3 | Page

1. ~~Review all claims submitted to the Committee by staff after investigation and analysis;~~
2. ~~Make a recommendation to the Board of Commissioners regarding whether the claims should be paid or denied, why the claim is recommended for payment or denial and the amount which should be paid on the claim;~~
3. ~~Make recommendations to the Board of Commissioners regarding policies and procedures involving the Fund as it deems necessary and appropriate;~~
4. ~~Provide a full report, at least annually, to the Board of Commissioners and to provide other necessary reports;~~
5. ~~Publicize its activities to the public and the Bar;~~
6. ~~Retain legal counsel for subrogation recovery efforts for restitution to which the Fund is entitled; and~~
7. ~~Authorize studies and programs for client protection and prevention of dishonest conduct by lawyers.~~

RULE 8—RULE 6—CONFLICT OF INTEREST

A. Consistent with and subject to the SBM Board Policy 15, Conflict of Interest, a Board member who has any known existing or potential conflict of interest must report the conflict to the President of the Bar, who shall in turn inform the Officers of the Board of Commissioners of the disclosure. The Board member shall abstain from investigating, recommending, or voting on any matter on which the member has any known or existing or potential conflicts of interests. Conflicts may include but are not limited to situations where a Board member has a lawyer-client, financial, or close familial relationship with a claimant or a lawyer who is the subject of a claim.

~~A. A Committee member or Commissioner who has or has had a lawyer-client relationship or financial who has any known existing or potential conflict of interest must report the conflict to the Committee. The Committee member shall abstain from investigating, recommending, or voting on any matter on which the member has any known or existing or potential conflicts of interests. Conflicts may include, but are not limited to, situations where a Board member has a lawyer-client, financial, or close familial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.~~

~~A.B. A Committee member or Commissioner with a past or present relationship, other than as provided in Paragraph A, with a claimant or the a lawyer whose alleged conduct who is the subject of the claim, or who has other potential conflicts of interest, shall disclose such~~

1 relationship to the Committee and the Board of Commissioners and, if the Committee and
2 Board of Commissioners deems appropriate, that Committee member or Commissioner
3 shall not participate in any proceeding relating to such claim.
4 a claim.

5 **RULE 9 — ELIGIBLE CLAIMS — REQUIREMENTS FOR REIMBURSEMENT**

6 ~~A. The loss must be caused by dishonest conduct that has a significant contact with the State~~
7 ~~of Michigan and shall have arisen out of a lawyer-client relationship or other fiduciary~~
8 ~~relationship between the lawyer and the claimant where the lawyer was admitted or~~
9 ~~licensed to practice law in Michigan at the time of the dishonest conduct or the lawyer was~~
10 ~~suspended or disbarred but whom the client reasonably believed to be licensed or admitted~~
11 ~~when the dishonest conduct occurred. If the lawyer was under an order of interim~~
12 ~~suspension, suspension or revocation issued at least six months prior to the dishonest~~
13 ~~conduct, it may be presumed that the client was unreasonable in believing that the lawyer~~
14 ~~was licensed or admitted to practice law at the time of the dishonest conduct.~~

Commented [AC2]: Moved to 9 A.

15 ~~B. The dishonest conduct upon which the claim is predicated must have been reported to~~
16 ~~either the Attorney Grievance Commission, or a law enforcement authority, or the~~
17 ~~claimant must have filed a claim in any court or tribunal having jurisdiction within two~~
18 ~~years after the dishonest act, or, if the dishonest act could not then have reasonably been~~
19 ~~discovered, within six months after the claimant did or reasonably should have discovered~~
20 ~~the dishonest conduct upon which the claim is predicated, whichever is later. A claim for~~
21 ~~reimbursable losses must be reported to a law enforcement authority by the claimant when~~
22 ~~in excess of \$20,000 or requested by Client Protection Fund staff.~~

23
24 ~~A claim must be filed with the Client Protection Fund no later than one (1) year after the~~
25 ~~determination by the Attorney Grievance Commission and/or Attorney Discipline Board.~~

26 A. As used in these Rules, "dishonest conduct" means wrongful acts committed by a
27 lawyer ~~like theft or embezzlement of money or the wrongful taking or conversion of~~
28 ~~money, property or other things of value~~, including, but not limited to:

- 29 1. Failure to refund unearned fees as required by Michigan Rule 1.16 of the Michigan
30 Rules of Professional Conduct (MRPC) 1.16, including failure to return an excessive
31 fee as determined under MRPC 1.5, and/or failure to safeguard funds during the
32 lawyer's lifetime so that unearned fees may be refunded upon the lawyer's passing.
33 2. Theft or embezzlement of money or the wrongful taking or conversion of property
34 that came into the possession of the lawyer as the result of a lawyer-client or other
35 fiduciary relationship related to the practice of law.

Commented [AC3]: Rule 9 A reworded

1 ~~2.3~~ Borrowing money from a client without the intent to repay it, or with disregard of
2 the lawyer's ~~inability or~~ reasonably anticipated inability to repay it.

3 ~~1. Settling a case without the authorization and knowledge of the client and~~
4 ~~misappropriating the settlement proceeds. In such instances the Committee may, in~~
5 ~~its discretion, presume that the lawyer settled the case for less than full value and~~
6 ~~waives the right or is estopped from receiving a credit for the attorney's fees.~~

Commented [AC4]: Moved to 7(C)(11)(c)

7 ~~3.4~~ Receiving funds or property from a client to invest the funds or property where:

- 8 a. The lawyer knew the client(s) had funds to invest because of information
9 acquired through a lawyer-client relationship regardless of whether there was
10 an ~~on-going~~ ongoing or existing lawyer-client relationship at the time of the
11 investment, and
- 12 b. The lawyer possessed a higher degree of sophistication and knowledge than
13 the client or where there is a historical relationship of trust and reliance on the
14 lawyer by the client, and
- 15 c. The investment vehicle or project:
 - 16 i. ~~Did~~ did not exist, or
 - 17 ii. ~~The~~ the actual nature and characteristics of the investment vehicle or
18 project differed substantially from the representations made to the client
19 regarding the investment vehicle or project, or
 - 20 iii. ~~The~~ the disbursement was made directly to the lawyer, friend, relative of
21 the lawyer, or an entity controlled by either, where the investment vehicle
22 or project could reasonably be viewed as a non-legitimate investment
23 vehicle or project under the totality of the facts.

24 B. To be eligible for reimbursement from the Fund:

- 25 1. The loss must have arisen out of a lawyer-client or other fiduciary relationship
26 related to the practice of law.
- 27 2. At the time of the dishonest conduct, the lawyer was admitted or licensed to
28 practice law in Michigan or was suspended or disbarred less than six months prior
29 to the dishonest conduct. If the lawyer was suspended or disbarred more than six
30 months prior, the claim shall be denied unless the client demonstrates a

1 reasonable belief that the lawyer was licensed to practice law at the time of the
2 dishonest conduct.

3 3. The loss must have arisen from the lawyer's practice of law in Michigan. In
4 making this determination, the Committee may consider all relevant factors
5 including, but not limited to, the parties' domiciles, the location of the lawyer's
6 office, the location where the attorney-client relationship was formed, and the
7 location where legal services were rendered.

8 4. The dishonest conduct stated in the claim must have been reported to the Attorney
9 Grievance Commission or a law enforcement authority, or a lawsuit concerning
10 the dishonest must have been filed in any court or tribunal having jurisdiction,
11 within two years after the dishonest act occurred, or, if the dishonest act could not
12 then have reasonably been discovered, within six months after the dishonest
13 conduct was discovered or reasonably should been have discovered, whichever is
14 later. Or within one year of notice of respondent's death.

15 5. A claim must be filed with the Fund no later than one (1) year after a
16 determination by the Attorney Grievance Commission and/or Attorney Discipline
17 Board related to the dishonest conduct alleged in the claim.

18 6. A claimant must report an otherwise eligible claim over \$20,000 to a law
19 enforcement authority before the claim will be considered by the SBM. The SBM
20 has discretion to require any claimant to report the dishonest conduct to a law
21 enforcement authority before a claim is considered.

22 7. The SBM may require the claimant to seek reimbursement from any other source
23 that may be legally responsible for the loss as a condition precedent for before
24 payment of an approved claim.

25 C. Except as provided ~~by section F of this Rule~~ in these rules, the following losses shall Fund
26 does not be reimbursable:reimburse:

27 ~~1. Losses incurred by spouses, children, parents, grandparents, siblings, partners,~~
28 ~~associates, employers and employees of lawyer(s) causing the losses;~~

29 1. ~~Losses~~ consequential or incidental damages such as lost interest, attorney's fees, or
30 other costs incurred in seeking recovery of a loss.

- 1 2. losses arising from malpractice or inadequate, insufficient, or negligent rendition
- 2 of services.
- 3 3. claims based upon attorney fee disputes.
- 4 4. losses incurred by a spouse, child, parent, grandparent, sibling, heir, partner,
- 5 associate, employer, or employee of the lawyer responsible for the loss.
- 6 5. losses covered by any bond, banker's blanket bond, surety agreement, or
- 7 insurance contract to the extent covered, including any loss to which any bonding
- 8 agent, surety or insurer is subrogated, to the extent of that subrogated interest;
- 9 ~~2. Losses incurred by any financial institution which are recoverable under a "banker's~~
- 10 ~~blanket bond" or similar commonly available insurance or surety contract;~~
- 11 6. ~~Losses~~ losses incurred by any business entity controlled by the lawyer, ~~or any~~
- 12 ~~person or entity described in section D(1), (2), or (3) hereof;~~
- 13 7. ~~Losses~~ losses incurred by any governmental entity or agency;
- 14 8. ~~Loss of money or property that was not misappropriated by the lawyer, such as~~
- 15 ~~money paid to a lawyer-third party.~~
- 16 9. current or future values.
- 17 10. money due to a third-party where the claimant receives no benefit from the
- 18 reimbursement.
- 19 11. attorney fees for services rendered or to be rendered, unless:
 - 20 a. there was a failure to refund unearned legal fees or
 - 21 ~~a-b.~~ the fee was unreasonable in light of the work performed under the factors set
 - 22 forth in Michigan Rule of Professional Conduct MRPC 1.5 and the or State Bar
 - 23 of Michigan Ethics Opinions regarding attorney's attorney's fees;
 - 24 c. the lawyer settled a case without the knowledge or authorization of the client
 - 25 and misappropriated the settlement proceeds. In such instances the Committee
 - 26 may, in its discretion, find that attorney fees are waived by the lawyer if it is
 - 27 determined that the lawyer: 1) settled the matter without claimant's
 - 28 permission, 2) did not inform claimant of the settlement, and 3)
 - 29 misappropriated the settlement proceeds. In all other matters, the lawyer shall
 - 30 receive credit for any attorney fees earned that are not deemed excessive.

1 **RULE 8—BOARD DISCRETION REGARDING ELIGIBILITY AND RESTITUTION**

2 A. In cases of extreme hardship or special and unusual circumstances, the Committee may
3 recommend, and the Board may, ~~in its discretion,~~ authorize, payment of a claim that
4 would otherwise be excluded under these Rules.

5 B. The Board may approve payment of a claim in an amount that exceeds the maximum
6 limits where the totality of the circumstances, in light of the purposes and policies of the
7 Fund, warrants doing so.

8 B.C. In cases where ~~it appears that there will be~~ the Board determines that the payment
9 of an otherwise covered claim would create unjust enrichment, or the Board determines
10 in its sole discretion that claimant unreasonably or knowingly contributed to the loss, the
11 Board ~~may, in its discretion,~~ shall deny the claim.
12

13 **RULE 10—PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS**

14 ~~A. The Committee shall prepare and approve an application form for claiming~~
15 ~~reimbursement.~~

16 ~~B. The form shall include at least the following information provided by the claimant under~~
17 ~~penalty of perjury:~~

18 ~~1. The name and address of claimant, home and business telephone, occupation and~~
19 ~~social security number;~~

20 ~~D. The name, address and telephone number of the lawyer alleged to have dishonestly taken~~
21 ~~the claimant's money or property, and any family or business relationship of the The~~
22 ~~Board has discretion not to pursue subrogation or pursue in a fashion that deviates from~~
23 ~~these rules when the totality of the circumstances warrant.~~

24 **RULE 9—FILING A CLAIM**

25 ~~2. A claimant to the lawyer;~~

26 ~~3. The legal or other fiduciary services the lawyer was to perform for the claimant;~~

27 ~~4. The amount paid to the lawyer;~~

28 ~~5. A copy of any written agreement pertaining to the claim;~~

29 ~~6. Satisfactory evidence of payment;~~

30 ~~7. The amount of loss and the date when the loss occurred;~~

- ~~8. The date when the claimant discovered the loss and how the claimant discovered the loss;~~
- ~~9. A description of the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;~~
- ~~10. The name of the entity that the loss has been reported to (e.g. prosecuting attorney, police, disciplinary agency, or other person or entity) and a copy of any complaint and description of any action that was taken;~~
- ~~11. The source, if any, from which the loss can be reimbursed including any insurance, fidelity or surety agreement;~~
- ~~12. The description of any steps taken to recover the loss directly from the lawyer or any other source;~~
- ~~13. Information regarding any source from which the claimant may be reimbursed for any part of the claim (including the amount received, or to be received, and the source) and a statement that the claimant agrees to notify the Fund of any reimbursements received during the pendency of the must submit a claim;~~
- ~~14. The facts believed to be important to the Fund's consideration of the claim;~~
- ~~15. How the claimant learned about the Fund;~~
- ~~16. The name, address, and telephone number of the claimant's present lawyer;~~
- ~~17. The claimant's agreement to cooperate with the State Bar of Michigan regarding the claim or with any civil actions which may be brought in the name of the State Bar of Michigan pursuant to a subrogation and assignment clause;~~
- ~~18. The claimant's agreement to repay the Fund if the claimant is subsequently reimbursed from another source;~~
- ~~19. The name and address of any other fund to which the claimant has applied or intends to apply for reimbursement and a copy of the application; and~~
- ~~20. A statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement if reimbursement is made.~~

- A. ~~The claimant shall have the responsibility to complete the on the SBM claim form and provide satisfactory evidence of a reimbursable loss.~~
- B. ~~No attorney shall be~~ The assistance of an attorney is not necessary to file a claim. All members of the State Bar of Michigan are urged to provide pro bono assistance to any claimant who requires assistance in presenting a claim to the Fund, and no attorney may be compensated for providing services regarding the CPF application process or the CPF claim administration process ~~except for an amount not to exceed beyond a fee of \$250 or,~~ except as authorized by the Board.

Revised: September 25, 2019 10

1 All members of the State Bar of Michigan are urged to give assistance to any claimant in
2 presenting claims to the Fund without fee. Claimants are advised that, except in unusual
3 circumstances, the assistance of an attorney may not be necessary in filing a claim since
4 the Committee has available staff, which will investigate the underlying facts. The
5 foregoing sub-paragraph shall appear prominently on the application form.

6 ~~C. The claim shall be filed with the State Bar of Michigan in the manner and place~~
7 ~~designated.~~
8

9 **RULE 11—PROCESSING CLAIMS****10—CLAIM ADMINISTRATION**

10 ~~A. When it appears that a claim is not eligible for reimbursement under Rule 9, the claimant~~
11 ~~shall be notified why the claim is not eligible for reimbursement, and, if appropriate, that~~
12 ~~unless additional facts to support eligibility are submitted to the Fund, the file will be~~
13 ~~closed, and that the claimant may submit a request for review of this decision by the Board~~
14 ~~of Commissioners in writing within 30 days of the date of notice.~~

15 ~~B. An order disciplining respondent for the same dishonest act or conduct alleged in a claim,~~
16 ~~or a final judgment imposing civil or criminal liability therefor, shall be conclusive~~
17 ~~evidence that the respondent committed the dishonest act or conduct.~~

18 ~~C. The Fund will promptly notify the Attorney Grievance Commission of the claim and~~
19 ~~request information related to its investigation on the matter. The Fund will promptly~~
20 ~~notify the Attorney Discipline Board of payment of any claim and request that any order~~
21 ~~include language requiring that restitution first be made directly to the Fund until the Fund~~
22 ~~is paid in full.~~

23 ~~D. The Committee may conduct its own investigation when it deems it appropriate.~~

24 A. Service of Process. A copy of the claim shall be served in a manner set forth in the
25 Michigan Court Rules for service of a civil complaint ~~upon~~on the ~~respondent~~lawyer whose
26 conduct is the subject of the claim, at the ~~respondent's~~lawyer's address on file with the
27 ~~State Bar of Michigan~~SBM, or last known address, or on the ~~respondent's~~lawyer's
28 representative. ~~The respondent or representative shall have 30 days to respond or such~~
29 ~~further time as permitted by staff, if known.~~ If served by certified mail and returned
30 "unclaimed" or "refused", all future documents may be sent to ~~respondent~~the lawyer via
31 first class mail or electronic means. If documents are returned as undeliverable and no
32 forwarding address can be obtained, then the Fund is exempt from mailing a copy of the
33 claim to ~~respondent~~the lawyer until a current address can be obtained or a final
34 determination has been mailed to ~~Claimant~~the claimant.

1 ~~A.B.~~ Response. The lawyer or representative has 30 days to respond or, upon request, within
2 ~~the timeframe specified by the SBM.~~ If the ~~respondent fails to~~lawyer or representative
3 ~~does not~~ timely respond to the notice of claim, the ~~respondent shall~~lawyer will not be
4 given further opportunity to respond or otherwise defend the claim, including a request for
5 review, unless good cause is shown.

6 ~~E. The Committee may request that testimony be presented to complete the record. Upon~~
7 ~~request, the claimant or respondent, or their representatives, may be given an opportunity~~
8 ~~to be heard, the decision being within the discretion of the Committee or the Board of~~
9 ~~Commissioners.~~

10 ~~F. The Committee may make a finding of dishonest conduct premised upon a preponderance~~
11 ~~of evidence to determine whether a claim should be approved or denied. Such a~~
12 ~~determination is not a finding of dishonest conduct for purposes of professional discipline.~~

13 ~~G. When the record is complete, the claim shall be determined based upon all available~~
14 ~~evidence and the claimant and the respondent notified of the Committee's determination~~
15 ~~and its reasoning. The approval or denial of a claim requires the affirmative vote of the~~
16 ~~majority of attending Committee members, provided there is a quorum for the meeting.~~

17 ~~H. Rules of evidence, procedures, and witnesses do not apply to any claim proceeding. All~~
18 ~~relevant evidence shall be admitted if it is the type of evidence on which responsible~~
19 ~~persons are accustomed to rely in the conduct of serious affairs. The claimant shall have~~
20 ~~the duty to supply relevant evidence to support the claim. Evidence of a claim may be~~
21 ~~provided by other sources such as the Attorney Grievance Commission, law enforcement,~~
22 ~~or court proceedings.~~

23 ~~I. The Committee may require the claimant to seek reimbursement from any other source~~
24 ~~that may be legally responsible for the loss.~~

25 C. Attorney Grievance Commission and Attorney Discipline Board.

26 1. The SBM will notify the Attorney Grievance Commission of the filing of a claim.

27 ~~2.~~ Unless the totality of the circumstances warrants otherwise, no claim should be
28 approved during the pendency of a disciplinary proceeding involving the same
29 conduct alleged in the complaint.

30 3. BothThe SBM will promptly notify the claimant-Attorney Discipline Board of
31 payment of any claim and request that any restitution first be made to the respondent
32 Fund until such time the Fund is paid in full.

33 D. Finding of Dishonest Conduct. The evidentiary standard for a finding of dishonest conduct is
34 a preponderance of evidence.

1 1. An order disciplining a lawyer or a final non-default judgment imposing civil or
2 criminal liability for the dishonest act or conduct that comports with Rule7(A) is
3 conclusive evidence that the lawyer engaged in the dishonest conduct. Conversely, a
4 determination from a disciplinary authority or court that the lawyer did not engage in
5 the dishonest conduct bars recovery from the Fund.

6 2. Rules of evidence, procedures, and witnesses do not apply to any claim proceeding.
7 All relevant evidence if it is the type of evidence on which that a responsible person
8 would rely upon in the conduct of serious affairs will be admitted.

9 3. The claimant shall have the responsibility to complete the claim form and has the
10 duty to provide satisfactory evidence of a reimbursable loss. sufficient evidence to
11 support the claim. Evidence supporting a claim may be provided by other sources
12 such as the Attorney Grievance Commission, law enforcement, or court proceedings.

13 E. Expedited Proceedings. The Committee may give final approval of an award of less
14 than \$3,000 subject to the Respondent's right to review provided below. The
15 Committee shall be advised submit regular reports to the Board of all awards
16 approved by the Committee since the Board's last meeting.

17 B.F. Notification of Committee's Recommendation. The claimant and the lawyer will be
18 notified of the Committee's findings, recommendation and reasons as soon as
19 practicable and shall be informed of the final determination by the Board of
20 Commissioners. The notice must include information regarding claimant's and the
21 opportunity lawyer's respective right to submit a request for review.

22 G. Request for Review. The claimant or respondent may must submit a request for review in
23 writing within 30 days of the notice of a recommendation of denial or determination of the
24 amount of a claim by the Committee. Only When a determination has been made by SBM
25 staff or the Committee that a claim is not eligible for reimbursement, the claimant will be
26 notified why the claim is not eligible for reimbursement and that unless additional facts to
27 support eligibility are submitted to the Fund within 30 days, the file will be closed.
28 Requests for review are subject to the following policies and procedures:

29 1. A timely request for review of the Committee's recommendation shall be submitted
30 to the Board for review.

1 ~~1.2.~~ A de novo standard of review shall apply applies to a request for review. The
2 requestor must show by a preponderance of the evidence that the recommendation
3 was incorrect.

4 ~~3.~~ Typically, the record established for review by the ~~Committee may be considered in a~~
5 ~~request for review, except the Board of Commissioners, in its discretion, Board is the~~
6 ~~sole record to be reviewed. The Board~~ may consider newly discovered evidence ~~in a~~
7 ~~request for review which that~~, by due diligence, could not ~~be~~ reasonably have been
8 discovered ~~in time for review and determination by before~~ the Committee. ~~made its~~
9 recommendation. If the claimant or ~~respondent~~ lawyer fails to make a request, the
10 decision of the ~~Committee~~ Board concerning the claim is final ~~if the Board~~.

11 ~~J.~~ ~~Notice of Commissioners fully accepts the Committee's final~~ determination ~~as. The~~
12 claimant and the lawyer will be notified of the Board's final determination. -

13
14 ~~A timely request for review of the Committee's decision shall be submitted to If~~ the Board
15 ~~of Commissioners for review and a final determination.~~

16 C.H.

17 ~~A de novo standard of review shall apply to a request for review. The requestor must~~
18 ~~show by a preponderance alters the recommendation of the evidence that Committee, the~~
19 ~~decision was incorrect.~~

20
21 ~~The~~ claimant and ~~respondent~~ lawyer may submit a request for review in writing within 30
22 days of notice of the ~~Board of Commissioner's final determination only when the Board of~~
23 ~~Commissioners does not fully accept the Committee's determination as the final~~
24 ~~determination- Board's final determination~~. If the final determination notice to either party
25 is returned and a forwarding address cannot be obtained from the post office, then the
26 period to submit a request for review, if applicable, begins to run 5 days after the date ~~of on~~
27 the correspondence.

28
29 **RULE ~~1211~~—PAYMENT OF REIMBURSEMENT**

30 ~~A.~~ The Board of Commissioners may establish a maximum amount of reimbursement that is
31 ~~payable by the Fund.~~

1 A. ~~The maximum amount payable by the Fund due to any incident or series of incidents~~
2 ~~constituting the execution of a coordinated plan or system of fraud against a single~~
3 ~~claimant; and the maximum payable to any claimant because of the dishonesty of a single~~
4 ~~lawyer or group of lawyers acting in collusion, shall~~Claim Reimbursement Maximum.
5 Only one claim will be \$150,000. A "Claimant" processed for this purpose may be taken to
6 mean any person or group of persons who shall have or have a mutual or common interest
7 in the relationship with the lawyer, or group of lawyers acting in collusion, even though
8 each member of such group may have separately sustainsustained a loss, as with. "Group
9 of Persons" may include: corporations, partnerships, associations, estates of decedents, and
10 persons having mutual, common, or joint interests in property. Losses arising from any
11 incident or series of incidents constituting dishonest conduct by a single lawyer or group of
12 lawyers acting in collusion, is currently \$150,000.

13 B. Aggregate Maximum Reimbursement. ~~The aggregate maximum amount for which that the~~
14 ~~Fund shall~~may reimburse for losses as the result of the ~~dishonesty~~dishonest conduct of a
15 single lawyer or group of lawyers acting in collusion is set by the Board and is currently
16 \$375,000. Whenever it appears to the Fund

- 17 1. When State Bar staff forecasts that claims may exceed this limit, ~~additional~~all
18 claims against the lawyer or lawyers shall not be paid for two years following the
19 filing of the initial claim against the lawyer or lawyers. The claims that have been
20 processed and those approved by the Committee and not yet paid are, if
21 necessary, apportioned on a pro-rata basis so that the total payments do not
22 exceed \$375,000 using the following calculation:The Board will review each
23 claim individually and determine the 'Actual Claim Loss,' which is the total loss
24 calculated under these Rules.

$$\frac{\text{Individual claim amount lost}}{\text{Total amount lost}} = \% \text{ of maximum limit to be paid on claim}$$

- 25 2. However, If the total of the combined Actual Claim Losses suffered by all
26 claimants exceeds the aggregate maximum amount approved by the Board, then
27 the reimbursable losses will be apportioned on a prorata basis as provided below:

- 1 i. The percentage of the aggregate maximum will be calculated by dividing
2 the 'Actual Claim Loss' by the total of all Actual Claim Losses, then
3 ii. Multiplying the percentage by the aggregate maximum

Actual Claim Loss ÷ Total of all Actual Claim Losses = percentage of aggregate maximum

Actual Claim Loss multiplied by percentage of aggregate maximum = reimbursement amount

4 2.3. If any payment would exceed the maximum amount payable to a single claimant
5 may not exceed \$150,000.00, if so, the percentage awarded to that claimant is
6 set as defined by 11(A) above, the maximum recommended payment will be
7 capped at 40% or \$150,000.00 the Claim Reimbursement Maximum and the
8 remainder of the funds are pro-rated will be prorated between the remaining
9 claimants.

10 B.C. If a claimant payment is to be made to a minor or an incompetent, the a protected
11 individual, reimbursement may be paid to any person or entity authorized by applicable
12 law to receive the reimbursement for the benefit of the claimant payee.

13 B. The Board of Commissioners may approve payment of a claim at an amount that exceeds
14 the maximum limits where the totality of the circumstances, in light of the purposes and
15 policies of the Fund, warrants doing so.

16 C.D. Payments shall be made in such amounts and at such times as the Committee or staff
17 recommends and the Board of Commissioners deems appropriate; and may be paid in a
18 lump sum or installment payments.

19
20 **RULE 13—12—NO LEGAL RIGHT TO REIMBURSEMENT FROM FUND IS A**
21 **MATTER OF GRACE**

22 No person shall have has the legal right to reimbursement from the Fund whether as a claimant,
23 third party beneficiary or otherwise.

24
25 **RULE 1413—REIMBURSEMENT, RESTITUTION, AND SUBROGATION**

26 A. A lawyer whose dishonest conduct results in reimbursement to a claimant may be liable to
27 the Fund for restitution and the State Bar of Michigan may initiate an action seeking
28 reimbursement.

1 A. A lawyer whose dishonest conduct has resulted in reimbursement ~~to a claimant~~ shall
2 make restitution to the Fund including interest and the expense incurred by the Fund in
3 collection ~~reimbursement. A lawyer's failure to make satisfactory arrangement for~~
4 ~~restitution may be cause for suspension, disbarment or denial of an application for~~
5 ~~reinstatement of reimbursement.~~

6 B. As a condition of reimbursement, and to the extent of the reimbursement provided by the
7 Fund, a claimant ~~shall be required to provide the Fund with a transfer of the claimant's~~
8 ~~rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the~~
9 ~~claimant's rights against any third party or entity who may be liable for the claimant's~~
10 ~~loss, unless the Board of Commissioners decides otherwise, or other person receiving~~
11 ~~reimbursement from the Fund (payee) must enter into a subrogation agreement that~~
12 ~~provides that the payee:~~

13 ~~B. To the extent the claimant has sustained a loss in excess of the amount of reimbursement~~
14 ~~received from the Fund, the claimant shall be entitled to participate in any action~~
15 ~~commenced by the State Bar of Michigan pursuant to the subrogation rights received by~~
16 ~~the Fund's reimbursement to the claimant. Upon commencement of an action by the State~~
17 ~~Bar of Michigan as subrogee or assignee of a claim, it shall advise the claimant, who may~~
18 ~~then join in such action to recover the claimant's unreimbursed losses.~~

19 ~~1. The claimant shall be required to agree~~transfers the payee's rights against the
20 lawyer, the lawyer's legal representative, estate, or assigns; and of the payee's
21 rights against any third party or entity who may be liable for the payee's loss,
22 unless the Board decides otherwise.

23 ~~2. agrees~~ to cooperate in all efforts that the ~~State Bar of Michigan~~SBM undertakes to
24 achieve restitution for the Fund, ~~and.~~

25 ~~3. agrees~~ to repay the Fund if ~~claimant~~the payee is subsequently reimbursed from
26 another source in an amount that exceeds the difference between the amount of
27 total loss identified by the Fund and the Fund award. Such repayment shall not
28 exceed the amount of the Fund award, unless the Board of Commissioners
29 decides otherwise.

30 C. The ~~Fund may~~SBM will undertake all reasonable efforts to pursue subrogation rights
31 assigned to the Fund. ~~The Fund is authorized to obtain necessary services to pursue such~~
32 ~~subrogation rights including legal services, and to pay reasonable fees for those services.~~

Revised: September 25, 2019 ~~17~~

1 The normal legal and equitable principles regarding subrogation actions ~~shall~~ apply to ~~the~~
2 ~~State Bar of Michigan's efforts~~ any effort to recoup the amount paid ~~to~~ by the
3 ~~claimant~~ Fund.
4

1 ~~1. While all~~The Fund will pay fees and costs, including ~~attorney~~attorney's fees,
2 incident to ~~its~~ prosecution of subrogation rights ~~shall be paid by the Fund, any,~~
3 ~~Any~~ recovery obtained by the Fund ~~shall will~~ first be used to reimburse the Fund
4 for ~~such fees and costs, including attorney's fees and costs, including attorney~~
5 ~~fees,~~ and second, to reimburse the Fund for the amount paid to ~~claimant. The~~
6 ~~remainder~~the payee.

7 ~~2. If the payee has sustained a loss in excess of the amount of any~~
8 ~~recovery~~reimbursement received by the Fund shall be paid to the claimant unless
9 the Fund has unreimbursed claims from ~~other claimants that involve the Fund, the~~
10 ~~SBM~~ as subrogee or assignee of a claim, must advise the ~~same attorney. In such~~
11 ~~an instance, payee of the distributions~~subrogation suit and ~~division of the excess~~
12 ~~recovery between payee may join in the State Bar of Michigan and claimant shall~~
13 ~~be subject to negotiation between action to recover the parties, and subject to~~
14 ~~Board of Commissioners approval.~~payee's unreimbursed losses.

15 D. In the event that ~~an action is commenced by anyone other than the claimant commences an~~
16 ~~action~~SBM to recover unreimbursed losses against the lawyer or another entity that may
17 be liable for the ~~claimant's~~ loss, the ~~claimant shall be required to~~payee must notify the
18 ~~State Bar of Michigan of such action~~SBM.

19 ~~C. The Committee or staff may make a recommendation to the Board of Commissioners that~~
20 ~~subrogation not be pursued or, pursued in a fashion that deviates from these rules when the~~
21 ~~totality of the circumstances warrant.~~

23 ~~1514~~—CONFIDENTIALITY

24 A. Claims, proceedings, and reports involving claims for reimbursement are confidential until
25 the Board authorizes reimbursement, except as provided ~~below~~herein or unless ~~provided~~
26 otherwise ~~provided~~ by law; ~~or other rules governing the SBM~~. After payment of the
27 reimbursement, the ~~Fund~~SBM may publicize the ~~name of the lawyer,~~ nature of the claim,
28 ~~and the amount of reimbursement, and the name of the lawyer.~~ The name and address of
29 the claimant ~~shall not be publicized by the Board will remain confidential~~ unless ~~specific~~
30 ~~permission has been granted~~authorized in writing by the claimant. ~~A protective order will~~

1 ~~be sought to preserve confidences of the claimant where appropriate~~ or for subrogation
2 purposes.

3 B. This Rule shall not be construed to deny access to relevant information by professional
4 discipline agencies ~~or other~~, law enforcement authorities ~~as the Board shall authorize, or~~
5 other state's client protection/security funds, or the release of statistical information
6 ~~which~~that does not disclose the identity of the ~~parties~~lawyer or Claimant, or the use of
7 such information as is necessary to pursue the Fund's subrogation rights.
8

9 **RULE 16—AMENDMENTS TO THE RULES**

10 ~~The Committee may, by majority vote, recommend to the Board of Commissioners~~
11 ~~amendments to these Rules and the Board may amend these Rules at any time.~~
12
13



MEMORANDUM

To: BOC Communications & Member Services (CAMS) Committee

From: Public Outreach & Education Committee (POEC)

Date: September 8, 2023

Re: Recommendation for 45th Michigan Legal Milestone: Jacob Howard

No person in the history of the United States has contributed more to the constitutional framework abolishing slavery, guaranteeing citizenship to former slaves and securing their right to vote, than Michigan lawyer Jacob M. Howard.

Born in Vermont and educated in Massachusetts, Howard opened a law practice in Detroit in 1832 which included clients who were runaway slaves seeking to avoid capture and penalties under the federal Fugitive Slave Act. In 1834, Howard was appointed Attorney for the City of Detroit and later served as Michigan Attorney General. He represented Detroit in the state legislature and in Congress.

In 1854, Howard helped organize the Under the Oaks Convention in Jackson, Michigan, galvanizing political opposition to slavery. He was asked to draft the platform for the newly named Republican Party and his anti-slavery plank read: "Resolved, that the Institution of slavery, except in punishment of a crime, is a great moral, social and political evil; ...Resolved, that slavery is a violation of the rights of man as man; that law of nature, which is the law of liberty, gives to no man rights superior to those of another; That God and nature have secured to each individual the inalienable right of equality, any violation of which must be the result of superior force". This powerful creed reflects Howard's character and conviction. He saw African-Americans as dignified human beings, like any other, and advocated passionately for equal rights throughout his life.

Following the Civil War, his actions led to the creation of the 13th, 14th and 15th Amendments to the United States Constitution. His words are those of the 13th Amendment: Section 1: "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Senator Jacob Howard was one of six U. S. senators to serve on the Joint Commission for Reconstruction.

Howard died April 8, 1871. The words of the 13th Amendment are inscribed on his monument in historic Elmwood Cemetery in Detroit. Howard's wish was that his grave would be marked with a tall obelisk, and that if racial equality had not been achieved by the time of his death that the top of the obelisk be broken, symbolic of his incomplete life's work. To this day the obelisk remains unfinished.

SBM

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