



Board of Commissioners

Agenda and Materials

September 25, 2019

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
Wednesday, September 25, 2019
SUBURBAN COLLECTION SHOWCASE
EMERALD/AMETHYST ROOMS
NOVI, MI
1:30 P.M.
AGENDA**

State Bar of Michigan Statement of Purpose

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

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

**A BUFFET LUNCH IS AVAILABLE BEGINNING AT 11:30 A.M.
IN THE HALLWAY OUTSIDE OF THE GARNET ROOM
OF THE SUBURBAN COLLECTION
Committee meetings begin at 12:00 p.m.**

Finance Committee Meeting.....	Topaz Room
Professional Standards Committee Meeting.....	Jade Room
Communications and Member Services Committee Meeting.....	Pearl Room
Public Policy Committee Meeting.....	Coral Room

I. Call to Order.....Jennifer M. Grieco, President

CONSENT AGENDA

II. **Minutes**

- A. July 26, 2019 Board of Commissioners meeting*
- B. July 16, 2019 Executive Committee meeting*
- C. August 20, 2019 Executive Committee meeting*

III. **President’s Activities**.....Jennifer M. Grieco, President

- A. Recent Activities*

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

- A. Recent Activities*

V. **Professional Standards**Dana M. Warnez, Chairperson

- A. Client Protection Fund Claims*
- B. Unauthorized Practice of Law Complaints**

VI. **Finance**.....James W. Heath, Chairperson

- A. FY 2019 Financial Reports through July 2019*

VII. **Public Policy**Dennis M. Barnes, Chairperson

- A. Model Criminal Jury Instructions*

VIII. **Section Bylaw Amendments**Darin Day, Director of Outreach

- A. Health Care Law Section Bylaw Amendment*

LEADERSHIP REPORTS

- IX. **President’s Report**.....Jennifer M. Grieco, President
- X. **Executive Director’s Report**Janet K. Welch, Executive Director
- XI. **Representative Assembly (RA) Report**..... Richard L. Cunningham, Chairperson
A. September 26, 2019 meeting
- XII. **Young Lawyers Section Report**Kara R. Hart-Negrich, Chairperson

COMMISSIONER COMMITTEES

- XIII. **Finance**..... James W. Heath, Chairperson
A. FY 2019 Financial Update
- XIV. **Audit Committee**..... James W. Heath, Chairperson
A. FY 2019 Annual Audit Update
- XV. **Professional Standards**Dana M. Warnez, Chairperson
A. Proposed Amendment of the Client Protection Fund Rules and Proposed Rule 20 of the Rules
Concerning the State Bar (SBR)*
- XVI. **Communications and Member Services** Robert J. Buchanan, Chairperson
A. Insurance Services**
- XVII. **Public Policy**.....Dennis M. Barnes, Chairperson
A. Court Rules**
B. Legislation**

OTHER REPORTS

- XVIII. **American Bar Association (ABA) Report**.....Delegates

SPECIAL PRESENTATIONS

- XIX. **Recognition of Retiring Board Members**Jennifer M. Grieco, President
A. Richard L. Cunningham written and presented by Aaron V. Burrell
B. Syeda F. Davidson written and presented by Kara R. Hart-Negrich
C. Andrew F. Fink III written and presented by Joseph P. McGill
D. Edward J. Haroutunian written and presented by Daniel D. Quick
E. Michael S. Hohausser written and presented by B.D. “Chris” Christenson
F. Victoria A. Radke written and presented by Dana M. Warnez
- XX.. **Recognition of President Jennifer M. Grieco** Dennis M. Barnes, President-Elect

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- XXI. **Comments or Questions from Commissioners**
- XXII. **Comments or Questions from the Public**
- XXIII. **Adjournment**

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

President Grieco called the meeting to order at 9:50 a.m. on Friday, July 26, 2019 in the Board Room of the Michael Franck Building in Lansing, MI.

Commissioners present:

Danielle Mason Anderson
Dennis M. Barnes, President-Elect
Robert J. Buchanan, Vice President
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Josephine A. DeLorenzo
Hon. Shauna L. Dunnings
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Kara R. Hart-Negrich
James W. Heath, Treasurer

Michael S. Hohauser
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Valerie R. Newman
Hon. David A. Perkins
Daniel D. Quick
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Ryan Zemke

Commissioners absent and excused:

David C. Anderson
Joseph J. Baumann
Aaron V. Burrell

Edward L. Haroutunian
Barry R. Powers

State Bar staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Greg Conyers, Director of Diversity
Candace Crowley, Senior Consultant
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Cliff Flood, General Counsel
Kathryn Gardner, Unauthorized Practice of Law Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Darin Day, Director of Outreach
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Wynn Johnson, Assistant General Counsel
Rob Mathias, Pro Bono Services & Justice Initiatives Counsel
Alecia Ruswinckel, Assistant Division Director, Professional Standards Division
Jeanette Socia, Human Resources Director
Kari Thrush, Assistant Director, Communications and Member Services Division
Anne Vrooman, Director of Research & Development

Guests

Jennifer Bentley, Executive Director, Michigan State Bar Foundation

Vince Romano

David Watson, Executive Director, ICLE

Consent Agenda

The Board received the minutes from the June 14, 2019 Board meetings.

The Board received the recent activities of the president.

The Board received the recent activities of the executive director.

The Board received the Client Protection Fund Claims.

The Board received the Unauthorized Practice of Law complaints.

The Board received the FY 2019 Financial Reports through May 2019.

The Board received the Policy for Approval of Checks \$15,000 or Greater.

The Board received the Policy for the Transfer of Funds between Financial Institutions.

The Board received the Policy Concerning Transfers of Cash or Investments from Client Protection Fund

The Board received the Model Criminal Jury Instructions.

Ms. Grieco asked the Board if any items needed to be removed from the consent agenda.

Mr. Heath asked that the three financial policies be removed from the consent agenda and reviewed during the Finance Committee Report.

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

Ms. Grieco recognized newly appointed commissioner, Ms. Newman.

BOARD OFFICER ELECTIONS

Ms. Grieco informed the Board that Mr. McGill, Mr. Quick, and Ms. Washington, submitted letters of interest and resumes for the position of Treasurer of the State Bar of Michigan for the 2019-2020 Bar year.

Ms. Grieco stated that Ms. Washington wanted to speak to the Board.

Ms. Washington informed the Board she was withdrawing her name from consideration for Treasurer of the 2019-2020 Board of Commissioners.

Ms. Grieco stated that Mr. McGill wanted to speak to the Board

Mr. McGill informed the Board he was withdrawing his name from consideration for Treasurer of the 2019-2020 Board of Commissioners.

Mr. Heath nominated Mr. Quick for the position of Treasurer for the 2019-2020 Board year.

Ms. Grieco asked if there were any nominations from the floor for the position of Treasurer. Hearing none, a motion was offered and supported to close the nominations. The motion was approved.

A motion was offered and supported to elect Mr. Quick as Treasurer of the 2019-2020 Board of Commissioners. The motion was approved.

Ms. Grieco announced that Dennis M. Barnes would succeed her as President of the State Bar of Michigan for the 2019-2020 Bar year.

Ms. Grieco announced that Mr. Buchanan would succeed Mr. Barnes as President-Elect of the State Bar of Michigan for the 2019-2020 Bar year.

A motion was offered and supported to elect Ms. Warnez as Vice President of the State Bar of Michigan for the 2019-2020 Bar year. The motion was approved.

A motion was offered and supported to elect Mr. Heath as Secretary of the State Bar of Michigan for the 2019-2020 Bar year. The motion was approved.

LEADERSHIP REPORTS

President's Report, Jennifer M. Grieco, President

Lakeshore Legal Aid Appointment

A motion was offered and supported that Robert Mossel be re-appointed to the Lakeshore Legal Aid Board of Directors for a three-year term. The motion was approved.

Professionalism Work Group

Ms. Grieco reported to the Board that the Professionalism Work Group has developed and continues to review ten professionalism principles that will be submitted to the Supreme Court for their consideration for adoption for courts in the state. These principles and commentary will be presented to the RA in September for their consideration.

Governance Task Force

Ms. Grieco provided the Board with an update on the Governance Task Force. She reminded the Board they had received a survey in June about SBM Governance and that the RA members, both current and past, received surveys in July. The Task Force will meet with the consultants on September 10 to review the results of the surveys and discuss next steps.

Ms. Grieco reported to the Board that a coalition was formed at the beginning of her term comprised of representatives from the State Bar of Michigan, the Oakland County Bar Association, Lakeshore Legal Aid, and the Straker Bar, dealing with the issue of human trafficking. A representative from the FBI, Nate Napper, from the Joseph Project, is also involved. The focus of the coalition is bringing lawyers together to provide pro bono work for victims of human trafficking. She told the Board they are hosting a training session on this issue on October 17 at the Western Michigan University Thomas M. Cooley Law School campus in Auburn Hills. The training session will be simulcast to the campuses in Grand Rapids and Lansing and that the Board would receive detailed information soon.

Ms. Grieco reminded the Board that the Implicit Bias Program is taking place in Lansing on September 11.

A motion was offered and seconded for the Board to go into a closed session. The motion was approved. The Board went into a closed session at 10:07 a.m. to discuss a personnel matter and returned to open session at 10:21 a.m.

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

FY 2020 Proposed Budget

Ms. Welch asked Mr. Horsch to review the preliminary FY 2020 budget. Mr. Horsch stated that the budget had been reviewed by the Finance Committee in early July and approved to move forward to the full Board for their review.

Mr. Horsch reviewed the highlights of the budget and answered questions. After review, a motion was offered and supported to adopt the FY 2020 Budget. The motion was approved.

2019-2020 SBM Committee Resolution

A motion was offered and supported to adopt the 2019-2020 SBM Standing and Special Committee Resolution. The motion was approved.

Civil Discovery Rules

Ms. Welch reported that the Supreme Court adopted the Civil Discovery Rules, which are effective January 1. Ms. Hennessey is working with ICLE to develop materials to distribute to Michigan attorneys.

Fleck v Wetch

Ms. Welch reported there is no opinion out of the 8th circuit on Fleck. Ms. Welch stated that she participated in a conference call this week with the leaders of integrated bars and shared her observations with the Board. She told the Board she is moderating a session on this topic at NABE and will have more information for the Board at the September meeting.

Ms. Welch informed the Board she had been invited to speak at the International Society of Legal International conference in Edinburgh, Scotland and has accepted that invitation.

Ms. Welch reported that the SBM experienced a security event with one of the email accounts in the Finance Department being hacked. This triggered an insurance report and the engagement of a team of forensic experts. Ms. Welch asked Mr. Horsch and Ms. Brown to update the Board on the security event. Mr. Horsch reported on the activities of the forensic team and said that additional controls have been put in place, the staff have been informed of increased security procedures, and that the SBM will follow up on recommendations from the security firm.

Task Force on Ethics and Regulation of Legal Marketing

Ms. Welch reported that the Task Force on Ethics and the Regulation of Legal Marketing is meeting for the first time next week and that a consultant has been hired to assist the task force in its efforts.

CloudLaw

Ms. Welch reported that in response to the action taken by the Board in June, SBM has had several conversations with the CloudLaw's primary investor and is working with the Illinois State Bar to develop their LRS program.

Representative Assembly (RA) Report, Richard L. Cunningham, Chairperson

Mr. Cunningham reported that RA committees are on track with their planning for the agenda for the September RA meeting. He stated that Mr. Burrell and his wife welcomed their first child earlier in the week and recognized Ms. Rebeck for her nomination as one of the Lawyers Weekly 2019 Women of the Year.

Mr. Cunningham reported that over 200 surveys were sent to current and past RA members regarding the Governance Task Force and that 82 people had responded.

Mr. Cunningham stated there was one applicant for the position of Clerk for the 2019-2020 Bar year and that person is Nick Ohanesian. He said that the election for the Clerk will take place at the September RA meeting.

Young Lawyers Section (YLS) Report, Kara R. Hart-Negrich, Chairperson

Ms. Hart-Negrich provided the Board with an update on recent activities of the YLS

COMMISSIONER COMMITTEES REPORTS

Finance Committee, James W. Heath, Chairperson

Mr. Heath reviewed the highlights of the FY 2019 financial reports through May 2019.

Mr. Heath reported to the Board on the proposed Policy for Approval of Checks \$15,000 or Greater.

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

Mr. Heath reported to the Board on the proposed Policy on the Transfer of Funds between Financial Institutions.

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

Mr. Heath reported to the Board on the proposed Policy Concerning Transfers of Cash or Investments from Client Protection Fund.

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

Audit Committee

Mr. Heath told the Board that staff will be meeting with the auditors from Andrews Hooper Pavlik PLC to discuss planning for the FY 2019 audit. He also stated that the SBM will be preparing a RFP for an auditing firm for next year.

Professional Standards, Dana M. Warnez, Chairperson

Institute of Continuing Legal Education (ICLE) Appointment

A motion was offered and supported to re-appoint Katie Lynwood to the ICLE Executive Committee. The motion was approved.

Michigan Indian Legal Services (MILS) Appointments

A motion was offered and supported to appoint Zachary W. Fallstich and Stanette J. Amy to the MILS Board of Trustees. The motion was approved.

Communications and Member Services, Robert J. Buchanan, Chairperson

Event Summary

The Board received a copy of the summaries for the Bar Leadership Forum and the Upper Michigan Legal Institute.

Requests for New Sections

Immigration Law Section

The Board received a request for the SBM to form an Immigration Law Section.

A motion was offered and supported to form the Immigration Law Section. The motion was approved.

Senior Lawyers Section

The Board received a request for the SBM to form a new Senior Lawyers Section. A motion was offered and supported to approve this request. The motion was approved.

In the materials submitted by the organizing group of the Senior Lawyers Section, the group requested financial support from the SBM.

A motion was offered and supported to decline the request. The motion was approved.

Commissioners asked staff to review and potential revise the criteria and process for establishing new State Bar sections.

Michigan Legal Milestones Dedication

The Public Outreach & Education Committee recommends that the 42nd Michigan Legal Milestone, to be dedicated in 2020, commemorate the career of Attorney General Frank Kelley. A motion was offered and supported to support this recommendation. The motion was approved.

The Public Outreach & Education Committee recommends that the 43rd Michigan Legal Milestone, to be dedicated in 2021, commemorate the passage of Senate Bill 31 of 1857, which provides for payment to court-appointed attorneys and thus, greater access to equal justice. A motion was offered and supported to support this recommendation. The motion was approved.

Insurance Services

The Board received information regarding endorsed insurance products for members of the State Bar of Michigan. This item was tabled by the Communications and Member Services Committee, and the Board took no action.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File No. 2002-37: Proposed Amendments of E-Filing Rules

The proposed amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of MCR 2.226 and 8.125 would continue the process for design and implementation of the statewide electronic-filing system.

A motion was offered and supported to support this Court Rule and submit to the Court the comments provided by Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and Family Law Section. The motion was approved.

ADM File No. 2018-12: Proposed Amendment of MCR 2.612

The proposed amendment of MCR 2.612 would clarify that writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. This language was previously included in the court rules before they were rewritten in 1985.

A motion was offered and supported to support the proposed amendment with the amendment proposed by the Civil Procedure & Courts Committee, changing “are abolished” to “remain abolished.” The motion was approved.

ADM File No. 2018-18: Proposed Amendment of MCR 3.106

The proposed amendment of MCR 3.106 would require trial courts to provide a copy of each court officer’s bond to SCAO along with the list of court officers.

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

ADM File No. 2018-16: Proposed Amendment of MCR 3.201 and Proposed Addition of MCR 3.230

The proposed amendment of MCR 3.201 and proposed addition of MCR 3.230 would provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, et seq.) to establish a parent’s paternity or support obligation through a summary action.

A motion was offered and supported to support the proposed amendments to Rule 3.201 and the proposed addition of Rule 3.230 with amendments proposed by the Access to Justice Policy Committee, requiring that: (1) the agency file a domestic violence screening tool completed by each party and that the court be required to hold a hearing if domestic violence is indicated, and (2) the IV-D agency must file a waiver signed by each party that they were informed of their right to opt out of the process. The motion was approved.

ADM File No. 2018-02: Proposed Amendment of MCR 3.501

The proposed amendment of MCR 3.501 would require 50 percent of unclaimed class action funds be disbursed to the Michigan State Bar Foundation or other distribution as deemed appropriate by the court. This proposal is a slightly modified version of a proposal submitted to the Court by the Michigan State Planning Body and Legal Services Association of Michigan.

A motion was offered and supported to take no position on the policy presented in the Rule, but recommend the language presented by the Civil Procedure & Courts Committee, clarifying the language in the proposed Rule 3.501, while not responding to Justice Markman’s questions.

ADM File No. 2017-02: Proposed Amendment of MCR 6.508

The proposed amendment of MCR 6.508 would enable a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, and it was reasonably likely the defendant and court would have accepted the plea (which would have been less severe than the judgment or sentence issued after trial) but for the improper advice.

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

ADM File No. 2019-03: Proposed Amendment of MCR 8.110

The proposed amendment of MCR 8.110 would provide additional opportunity for input by judges in the process for chief judge selection in courts, would clarify that vacation leave time may be taken by notifying the chief judge, and would make vacation leave policies more uniform from one court to another. Under the proposed amendment, a chief judge could require a judge to forego vacation, judicial, or education, or professional leave to ensure docket coordination and coverage.

This item was tabled by the Public Policy Committee, and the Board took no action.

ADM File No. 2018-30: Proposed Amendment of MCR 8.115

The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another and broaden the ability of litigants to use their devices in support of their court cases when possible.

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

ADM File No. 2018-28: Proposed Amendment of Court of Claims LCR 2.119

The proposed amendment of LCR 2.119 for the Court of Claims would require a moving party to affirmatively state that he or she has sought concurrence in the relief sought on a specific date, and opposing counsel denied concurrence in the relief sought.

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

Legislation

HB 4378 (Pagan) Civil rights; public records; identity of parties proceeding anonymously in civil actions alleging sexual misconduct; exempt from disclosure under freedom of information act. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

A motion was offered and supported that this bill is Keller permissible. The motion was approved.

A motion was offered and supported to support this legislation with an amendment that the bill also apply to survivors of human trafficking. The motion was approved.

Judge Dunnings abstained.

HB 4535 (Berman) Law enforcement; law enforcement information network (LEIN); access to law enforcement information network (LEIN); allow for defense attorneys under certain circumstances. Amends sec. 4 of 1974 PA 163 (MCL 28.214) & adds sec. 4a.

A motion was offered and supported that this bill is Keller permissible. The motion was approved.

A motion was offered and supported to support this legislation in concept of defense attorneys have access to LEN information, with one possible solution to just amend “may” to “shall” in Section 4. The motion was approved.

SB 0231 (Runestad) Civil procedure; service of process; proof of service; provide for verification of service. Amends sec. 1910 of 1961 PA 236 (MCL 600.1910).

A motion was offered and supported that this bill is Keller permissible. The motion was approved.

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

OTHER REPORTS

American Bar Association (ABA) Report

Mr. Ulrich reported that the ABA Annual meeting is taking place in San Francisco in August.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

There were none.

Comments or Questions from the Public

There were none.

Adjournment

The meeting was adjourned at. 12:38 p.m.

State Bar of Michigan
Executive Committee Conference Call
Tuesday, July 16, 2019
4:00 p.m.

Call to Order: President Grieco called the meeting to order at 4:04 p.m.

Members Present: President Jennifer M. Grieco, President-Elect Dennis M. Barnes, Vice President Robert J. Buchanan, Secretary Dana M. Warnez, Treasurer James W. Heath, Representative Assembly Chair Richard L. Cunningham, Representative Assembly Vice-Chair Aaron V. Burrell, and Commissioners Syeda F. Davidson, Daniel D. Quick, and Erane C. Washington.

Members Absent: None

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

Approval of May 14, 2019 meeting minutes

The minutes from the May EC meeting were approved via e-mail on June 4, 2019.

President's Report

President Grieco reported on the upcoming Professionalism Workgroup meeting to approve the civility rules that will be presented to the Representative Assembly in September. She also reported on a meeting taking place on July 18 to discuss the General Counsel position.

The SBM Governance Task force completed a survey of the BOC. The RA survey will begin on Friday. The next meeting of the task force is scheduled for September 10 with the consultant.

Lakeshore Legal Aid will be hosting a training program on human trafficking on October 17. Ms. Grieco will be a presenter, and Rob Mathis is the State Bar coordinator for the event.

An invitation has been extended to attend a 95th birthday luncheon for Judge Avern Cohn. If you are interested in attending, please contact Carrie.

Lakeshore Board Appointment

Ms. Welch reviewed the vacancy on the Lakeshore Legal Aid board and asked the SBM to reappoint Robert Mosel. A motion was made and seconded to reappoint Robert Mossel to the Lakeshore Legal Aid board. The motion passed. This appointment will be on the BOC agenda.

Representative Assembly Chair's Report

Representative Assembly Chair Cunningham reported on two committee meetings scheduled. He noted the deadline is three weeks away for submitting proposals for the September RA meeting.

Executive Director's Report

Ms. Thrush provided an information item on the three insurance proposals being considered by the Communications & Member Services Committee. Ms. Thrush explained the RFP process and summarized the proposals received. The endorsed insurance products include term life, disability income, business overhead expense, hospital indemnity, accidental death & dismemberment, and dental.

Mr. Horsch reviewed the latest key budget assumptions for the FY 2020 proposed budget.

Ms. Brown and Mr. Horsch provided an update on the e-mail compromise, including the breach response efforts and the work of the forensics team and outside legal counsel assisting us.

Mr. Conyers provided an update on the Face of Justice Program held on June 7 at the 36th District Court in Detroit. This year's students included 16 police cadets from the Golightly Career and Technical Center.

Ms. Welch provided background on the requests for the establishment of two new proposed sections – Senior Lawyer Section and Immigration Law Section. The Communication & Member Services Committee will be reviewing the requests and making a recommendation to the BOC for consideration at the July meeting. The EC discussed the timing for approval, criteria for forming a section, and other aspects of the establishment of new sections.

Elevator Modernization Contract

Mr. Horsch reviewed the proposed contract from Schindler Elevator which requires EC approval as the amount is over the Executive Director's approval limit. A motion was made and seconded to approve the contract. After discussion, the motion passed.

MSUFCU Business Credit Cards

Mr. Horsch reviewed the proposal to open a line of credit with MSU Federal Credit Union for the purpose of issuing MSUFCU business credit cards. A motion was made and seconded to approve the resolution. After discussion, the motion passed.

Board Agenda for July 26, 2019

Ms. Bossenbery and Ms. Grieco reviewed the proposed BOC agenda and several adjustments were made. A motion was made and seconded to approve the agenda as amended. The motion passed.

Other

Ms. Bossenbery reviewed her schedule for return to work and thanked Carrie Sharlow for assisting during her absence.

Adjournment

There being no further business for the Executive Committee, President Grieco adjourned the meeting at 5:24 p.m.

Submitted by James C. Horsch
August 14, 2019

State Bar of Michigan
Executive Committee Conference Call
Tuesday, August 20, 2019
4:00 p.m.

Call to Order: President Grieco called the meeting to order at 4:05 p.m.

Members Present: President Jennifer M. Grieco, President-Elect Dennis M. Barnes, Secretary Dana M. Warnez, Treasurer James W. Heath, Representative Assembly Chair Richard L. Cunningham, and Commissioners Syeda F. Davidson and Erane C. Washington.

Members Absent: Vice President Robert J. Buchanan, Representative Assembly Vice-Chair Aaron V. Burrell, and Commissioner Daniel D. Quick.

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Nancy Brown, Director of Member and Communication Services; Peter Cunningham, Assistant Executive Director and Director of Governmental Relations; Cliff Flood, General Counsel; Danon Goodrum-Garland, Director of Professional Standards; and James Horsch, Director of Finance & Administration.

Approval of July 19, 2019 meeting minutes

President Grieco introduced the July 19, 2019 EC meeting minutes. After review, a motion was made and seconded to approve the minutes. The motion passed.

President's Report

President Grieco reported on her attendance at the National Association of Bar Presidents meeting in San Francisco and shared highlights of the topics discussed, including implicit bias, branding, integrated bar issues, and a proposed sweeping revision of ethics rules in California. She reported that interviews for the General Counsel position will be held next Monday.

Representative Assembly Chair's Report

Representative Assembly Chair Cunningham reported on the September 26, 2019 RA meeting to be held in Novi at the Suburban Collection Showcase. The meeting will include consideration of four proposals, a presentation on projections for an SBM fee increase, presentation of awards, and other matters.

Executive Director's Report

Ms. Welch reported that she spoke at the Michigan Judges Association annual meeting on "What the SBM does for the MJA." She also met with the Chief Justice and discussed the current challenge to the integrated bar and the need for court discussions with SBM about the challenge and the dues cycle.

Ms. Welch also discussed the recent article in the Free Press concerning the CPF, and the efforts of staff to ensure that the article included the SBM's statement. She asked Mr. Horsch to discuss the accounting procedures that are being implemented to further support the CPF policy approved by the BOC, and the committee expressed support for the changes and direction.

Adjournment

There being no further business for the Executive Committee, President Grieco adjourned the meeting at 4:49 p.m.

Submitted by James C. Horsch
September 13, 2019

III. President's Activities

**President Jennifer M. Grieco
President's Activities
July 27 through September 25, 2019**

Date	Event	Location
August 1	Meeting with Janet Welch, Tish Vincent, and Molly Ranns	Birmingham
August 7 - 14	National Conference of Bar Presidents meeting American Bar Association Annual meeting ABA House of Delegates meeting	San Francisco
August 20	SBM Executive Committee Conference Call	Birmingham
August 22	Meeting with Mark Armitage, Executive Director, Attorney Discipline Board	Birmingham
August 22	Conference call with SBM Officers regarding Taylor v SBM	Birmingham
August 23	Conference call with SBM Officers regarding Taylor v SBM	Birmingham
August 24	Prosecuting Attorney Association of Michigan conference	Mackinac Island
August 26	General Counsel Position Workgroup meeting	Lansing
August 27	School to Prison Pipeline Coalition meeting	Birmingham
August 28	Professionalism in Action Western Michigan University Thomas M. Cooley Law School	Auburn Hills
September 5	Michigan Lawyers Weekly Women in the Law Luncheon	Troy
September 6	General Counsel Position Workgroup conference call	Birmingham
September 10	Task Force on Bar Operation, Structure, and Governance meeting	Troy
September 11	SBM Implicit Bias Program	Lansing
September 11	Michigan State Bar Foundation Reception	Lansing
September 12	Retirement Party for Bill Knight, Lakeshore Legal Aid	Detroit
September 13	General Counsel Position Workgroup conference call	Birmingham
September 16	Conference call with Janet Welch, Darin Day, and Anne Vrooman	Birmingham
September 17	SBM Executive Committee Conference call	Birmingham
September 18	Local Bar Association meeting	Lansing

Date	Event	Location
September 24	Human Trafficking Pro Bono Task Force meeting	Birmingham
September 25	Board of Commissioners Meeting Inaugural Luncheon 50 -Year Golden Celebration Luncheon	Novi

**IV. Executive Director's
Activities**

**Executive Director Janet K. Welch
Executive Director Activities
July 27 through September 25, 2019**

Date	Event	Location
July 29	Integrated Tech committee meeting	Lansing
July 29	Lunch with former Justice Robert P. Young	Lansing
July 30	Conference call with MI Supreme Court Historical Society Supreme Court Breakfast committee	Lansing
July 30	Task Force on the Ethics and Regulation of Legal Services Marketing meeting	Lansing
July 31	Michigan Supreme Court Historical Society meeting	Detroit
August 1	Meeting with Jennifer Grieco, Tish Vincent, and Molly Ranns	Birmingham
August 2	Conference call with consultants for the Task Force on State Bar Operation, Structure, and Governance	Lansing
August 2	Conference call with Oregon State Bar Association	Lansing
August 6 - 14	American Bar Association Annual meeting NABE meeting NCBP meeting House of Delegates meeting	San Francisco
August 15	Conference calls with work groups from the Task Force on the Ethics and Regulation of Legal Services Marketing	Lansing
August 16	Conference call with work group from Justice for All Task Force	Lansing
August 18 – 20	Michigan Judges Association Conference	Mackinac Island
August 19	Conference call with work group from Justice for All Task Force	Mackinac Island
August 20 – 22	Michigan District Judges Association Conference	Mackinac Island
August 20	SBM Executive Committee conference call	Mackinac Island
August 21	Conference call with Illinois State Bar and CloudLaw	Leland
August 22	Conference call with Justice Megan Cavanagh	Leland
August 22	Conference call with SBM Officers regarding Taylor v. SBM	Leland

Date	Event	Location
August 23	Conference call with Jim Dimos, Deputy Director, General Counsel, ABA	Leland
August 23	Conference call with SBM Officers about Taylor v. SBM	Leland
August 24	Prosecuting Attorneys Association of Michigan Conference	Mackinac Island
August 26	Meeting with General Counsel Position work group	Lansing
August 27	Lunch with former State Bar President, Jon Muth	Lansing
August 28	All Staff Meeting	Lansing
August 28	Task Force on the Ethics and Regulation of Legal Services Marketing meeting	Lansing
August 29	Conference call with consultants for the Task Force on State Bar Operation, Structure, and Governance	Lansing
August 30	Conference call with John Bursch	Lansing
September 5 – 7	International Conference of Legal Regulators	Edinburgh, Scotland
September 9	Justice for All Task Force meeting	Lansing
September 10	Task Force on State Bar Operation, Structure, and Governance meeting	Troy
September 11	SBM Implicit Bias Program	Lansing
September 11	Michigan State Bar Foundation Reception	Lansing
September 12	Conference calls with work groups from the Task Force on the Ethics and Regulation of Legal Services Marketing	Lansing
September 16	Conference call with John Burch and Andrea Bernard	Lansing
September 16	Meeting with James McGrath, Dean, Western Michigan University Thomas M. Cooley Law School	Lansing
September 16	Conference call with Jim Horsch and Dave Haron	Lansing
September 16	Conference call with Jennifer Grieco, Darin Day and Anne Vrooman	Lansing
September 17	SBM Executive Committee conference call	Lansing
September 18	Michigan Supreme Court Public Administrative Hearing	Lansing

Date	Event	Location
September 18	Local Bar Association Meeting	Lansing
September 19	Conference call with MI Supreme Court Historical Society Supreme Court Breakfast committee	Lansing
September 19	Conference call with work group from the Justice for All Task Force	Lansing
September 25 - 27	SBM Board of Commissioners meeting Representative Assembly Meeting Inaugural and Awards Luncheon 50-Year Golden Celebration Luncheon	Novi

TO: Board of Commissioners
FROM: Professional Standards Committee
DATE: September 25, 2019, 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:

a. Consent Agenda

Rec. No.	Claim No.	Amt. Recommended
1.	CPF 3253	\$6,500.00
2.	CPF 3367	\$23,138.58
3.	CPF 3408	\$1,000.00
4.	CPF 3460	\$2,000.00
5.	CPF 3518	\$400.00
6.	CPF 3527	\$1,175.00
7.	CPF 3544	\$750.00
8.	CPF 3549	\$1,506.00
9.	CPF 3554	\$1,800.00
10.	CPF 3561	\$3,125.00
11.	CPF 3580	\$5,000.00
	Total	\$46,394.58

b. Supporting documentation is provided separately.

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

1. CPF 3253 \$6,500.00

Claimant retained Respondent regarding an arbitration proceeding. Respondent negotiated a settlement and received payment of the settlement amount of \$10,000 on behalf of Claimant but deposited the funds into the firm business account where they were stolen by a non-attorney. Respondent stipulated to the entry of an admonishment and agreed to refund \$10,000, of which \$3,500 has been refunded to Claimant. Respondent's failure to safeguard the settlement funds leading to their misappropriation constitutes dishonest conduct and a reimbursable loss as provided by CPF Rules 9(C)(1) and 11(B). If this claim is approved for reimbursement, it is recommended that CPF staff be granted permission to adjust the amount payable to reflect any additional restitution payments received by Claimant prior to the Fund receiving a fully executed subrogation agreement and issuing a check, without further review.

2. CPF 3367 \$23,138.58

Claimant retained Respondent to obtain a refund for an overpayment of property taxes. Respondent received a tax refund payable to Claimant for \$24,386.58 but did not distribute any of the proceeds to Claimant. Claimant filed a civil suit against Respondent and obtained a judgment. Respondent's failure to remit the property tax refund to Claimant is dishonest conduct and is a reimbursable loss under CPF Rules 9(C)(1) and 11(B). This claim also requires the application of CPF Rule 9(F) to waive the one-year filing deadline under CPF Rule 9(B) as there is no evidence that Claimant knew the refund had been remitted to Respondent prior to mid-2016.

3. CPF 3408 \$1,000.00

Claimant retained Respondent to enforce a foreign judgment and made an advanced payment of \$1,000. Respondent did no work on the file, did not provide a bill or refund, and admitted that Claimant was owed a refund. Claimant retained subsequent counsel three years later, who advised him of the existence of the fund. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim also requires the application of CPF Rule 9(F) to waive the one-year filing deadline under CPF Rule 9(B) as there is no evidence that Claimant was notified of the existence of the Fund.

4. CPF 3460 \$2,000.00

Claimant retained Respondent regarding an immigration matter for a fee of \$4,000, which provided that \$2,000 was due for the applications and the remaining \$2,000 was due for representation at the Claimant's interview with USCIS. Claimant paid \$4,000, however, Respondent passed away before Claimant's interview. The failure of Respondent to safeguard the funds in a lawyer trust account until earned so Respondent, the law firm, or estate could return the unearned portion of the fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(C)(6).

5. CPF 3518 \$400.00

Claimant retained Respondent regarding a driver license restoration matter and paid \$400 towards the agreed upon flat fee of \$800. Respondent did not provide any legal services prior to his death and failed to safeguard the funds in a lawyer trust account as ethically required to ensure that the fees received were available for refund, which constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6).

- 6. CPF 3527 \$1,175.00**
Claimant retained Respondent to open an informal probate estate and paid a flat fee of \$1,000, plus \$175 for the filing fee. Respondent obtained the death certificate and began drafting probate forms but passed away before opening the estate. Respondent's failure to safeguard the funds in a lawyer trust account as ethically required so Respondent, the law firm or estate could return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6).
- 7. CPF 3544 \$750.00**
Claimant retained Respondent to file a bankruptcy petition for a flat fee of \$750. Respondent did not begin work and failed to safeguard the funds in a lawyer trust account as ethically required to ensure that funds were available to provide a refund after his death. Respondent's failure to safeguard the funds in a lawyer trust account so Respondent, the law firm or estate, could return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6).
- 8. CPF 3549 \$1,506.00**
Claimant retained Respondent to file a bankruptcy petition and paid a flat fee of \$1,506. Respondent filed the petition but did not cure the deficiencies or reinstate the matter once it was closed by the Court. The Attorney Discipline Board ordered Respondent to pay \$1,506 in restitution to Claimant. Respondent's failure to return the unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6).
- 9. CPF 3554 \$1,800.00**
Claimant retained Respondent regarding a parole or commutation matter and to file a motion in circuit court under Rule 6.500 for a total of \$2,050, which Claimant's friend paid. Respondent reviewed Claimant's case file, court transcripts, and the MDOC's documents; performed legal research; and conducted interviews with commutation witnesses. Respondent agreed to accept \$250 for the service provided and return \$1,800. Respondent's failure to return the unearned fees constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(D)(6), and 11(B).
- 10. CPF 3561 \$3,125.00**
Claimant's father paid Respondent a minimum fee of \$5,000 to act as personal representative and probate an estate. Respondent was appointed personal representative but did not complete the administration of the Estate. Respondent entered into a payment plan with the Grievance Administrator but stopped making payments despite a remaining balance of \$3,125. Respondent's failure to complete the legal services or refund the unearned fee constitutes dishonest conduct and is a reimbursable loss under CPF Rules 9(C)(1), 9(D)(6), and 11(B). If this claim is approved for reimbursement, it is recommended that CPF staff be granted permission to adjust the amount payable to reflect any additional restitution payments received by Claimant prior to the Fund receiving a fully executed subrogation agreement and issuing a check, without further review.
- 11. CPF 3580 \$5,000.00**
Claimant retained Respondent to set aside a judgment and paid \$7,500. Respondent did not provide any legal services but refunded \$2,500. Respondent's failure to complete any legal services or return the remaining unearned fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(D)(6), and 11(B).

Total payments recommended: \$46,394.58

State Bar of Michigan Financial Results Summary

10 Months Ended July 31, 2019

Fiscal Year 2019

Administrative Fund

Summary of YTD July 31, 2019 Actual Results

For the ten months ended July 31, 2019, the State Bar had an Operating Loss of \$736,915 and Non-Operating Income of \$609,328, for a decrease in Net Position of \$127,587 so far in FY 2019. Net Position as of July 31, 2019 totaled \$12,673,184. Net Position excluding the impacts of the Retiree Health Care Trust net of the GASB 75 liability totaled \$10,745,643.

YTD Variance from Budget Summary:

YTD Operating Revenue - \$333 favorable to YTD budget, or 0.0%

YTD Operating Expense - \$479,866 favorable to YTD budget, or 5.3%

YTD Non-Operating Income - \$453,133 favorable to YTD budget, or 290.1%

YTD Change in Net Position - \$933,332 favorable to YTD budget

YTD Key Budget Variances:

YTD Operating Revenue variance - \$333 favorable to budget:

- Operating revenue was favorable to budget by \$28,655, or 7.7% in Professional Standards (primarily C&F), by \$10,000 for a Diversity program grant that was not budgeted, and by \$10,158 in Fees and Related net of Pro Hac Vice fees and Other. This was partially offset by an unfavorable variance of \$42,977, or 6.3% in Member & Communication Services (primarily Annual Meeting, and to a lesser extent Bar Journal, Directory, and Print Center; net of a favorable variance in LRS).

YTD Operating Expense variance - \$479,866 favorable to budget:

- Salaries and Employee Benefits/ Payroll Taxes - \$197,142 favorable - (3.4%)
 - Underage in salaries and benefits due to vacancies, lower health care and dental insurance expenses, and no longer expensing retiree health care trust contributions.
- Non-Labor Operating Expenses - \$282,724 favorable - (8.6%)
 - Exec Offices - \$52,892 favorable - (8.2%) - Primarily Gen Counsel, R&D, JI, Outreach, Exec Office, and RA; partially offset by HR (temp staff) and Diversity.
 - Finance & Admin - \$30,520 favorable - (2.7%) - Under in Facilities Services and partially offset in Financial Services due to credit card fees - some timing.

- Member & Communication Services - \$160,554 favorable - (11.6%) - Primarily Bar Journal, Website, and Member & Endorsed Services; and to a lesser extent all other departments; partially offset by IT - some timing.
- Professional Standards - \$38,758 favorable - (29.7%) - Primarily C&F; and to a lesser extent all other departments - some timing.

YTD Non-Operating Revenue Budget Variance - \$453,133 favorable to budget

- Investment income is favorable to budget by \$73,396, or 47.0%, due to higher interest rates, 2018 updated investment policy, and more favorable cash management opportunities than planned. Retiree Health Care Trust investment income is favorable to budget by \$379,737 due to investment gains, as no income or loss was budgeted for this item.

Cash and Investment Balance – Admin Fund

As of July 31, 2019, 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 \$8,379,391.

SBM Retiree Health Care Trust

As of July 31, 2019, the SBM Retiree Health Care Trust had a fund balance of \$3,458,439, which is an increase of \$427,513 so far in FY 2019, due to investment income of \$379,737 and contributions to the trust.

Capital Budget – Admin Fund

Through July 31, 2019, YTD capital expenditures totaled \$144,825 which is over the YTD capital budget by \$52,825 due to higher capital spending on the e-commerce site not anticipated. By deferring some projects, we anticipate being under budget by \$81,450 in FY 2019.

Administrative Fund FY 2019 Year-End Financial Forecast

Based on the July forecast in the proposed budget, we are projecting to do better than the FY 2019 budget by over \$511,000, not including the investment impacts of the retiree health care trust now consolidated within the Administrative Fund and not included in the 2019 budget. This is primarily due to the changes to the Annual Meeting, lower health care expenses, better investment income, and lower operational expenses.

Client Protection Fund

The Net Position of the Client Protection Fund as of July 31, 2019 totaled \$1,930,355, a decrease of \$79,399 so far in FY 2019. Claims payments so far this year totaled \$516,965. In addition, there is a total of \$29,275 of approved claims awaiting subrogation agreements.

SBM Membership

As of July 31, 2019, the total active, inactive and emeritus membership in good standing totaled 46,089 attorney members, for a net increase of 374 members so far in FY 2019. A total of 889 new members have joined the SBM so far during FY 2019.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
July 31, 2019**

FY 2019

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

State Bar of Michigan
Administrative Fund
Statement of Net Position
For the Months Ending June 30, 2019 and July 31, 2019

	June 30, 2019	July 31, 2019	Increase (Decrease)	%	Beginning of FY 2019 October 1, 2018
ASSETS AND DEFERRED OUTFLOWS					
Assets					
Cash	3,111,125	2,230,978	(880,147)	(28.3%)	871,888
Investments (CDARS and CD's)	8,753,528	8,753,528	0	0.0%	9,213,528
Accounts Receivable	218,585	234,482	15,897	7.3%	229,144
Due from (to) CPF	(58,632)	(40,543)	16,140	28.5%	15,354
Due from (to) Sections	(2,656,146)	(2,564,571)	91,575	3.5%	(2,256,271)
Due from Attorney Discipline System	0	0	0	N/A	344,632
Inventory	35,364	49,126	13,762	38.9%	23,412
Prepaid Expenses	292,497	407,943	115,446	39.5%	400,408
Retiree Health Care Trust Investment	3,420,834	3,458,439	37,605	1.1%	3,030,926
Capital Assets, net	3,736,790	3,707,099	(29,692)	(0.8%)	4,008,941
Total Assets	\$16,855,894	16,236,480	(619,414)	(3.7%)	\$15,881,962
Deferred Outflows of Resources related to pensions	38,024	38,024	0	0.0%	38,024
Deferred Outflows of Resources related to OPEB	139,752	139,752	0	0.0%	139,752
TOTAL ASSETS AND DEFERRED OUTFLOWS	\$17,033,670	16,414,256	(619,414)	(3.6%)	\$16,059,738
LIABILITIES, DEFERRED INFLOWS AND NET POSITION					
Liabilities					
Accounts Payable	16	12	(4)	(24.9%)	566,297
Accrued Expenses	446,053	452,658	6,605	1.5%	483,538
Unearned Revenue	1,889,534	1,338,215	(551,319)	(29.2%)	258,946
Net Pension Liability	263,680	263,680	0	0.0%	263,680
Net OPEB Liability	1,634,710	1,634,710	0	0.0%	1,634,710
Total Liabilities	\$4,233,993	\$3,689,275	(544,717)	(12.9%)	\$3,207,171
Deferred Inflows of Resources related to pensions	15,856	15,856	0	0.0%	15,856
Deferred Inflows of Resources related to OPEB	35,940	35,940	0	0.0%	35,940
Total Liabilities and Deferred Inflows	\$4,285,789	\$3,741,071	(544,717)	(12.7%)	\$3,258,967
Net Position					
Invested in capital assets, net of related debt	3,736,790	3,707,099	(29,692)	(0.8%)	4,008,941
Invested in retiree health care, net of related liability	1,889,936	1,927,541	37,605	2.0%	1,500,028
Unrestricted	7,121,155	7,038,544	(82,610)	(1.2%)	8,791,830
Total Net Position	\$12,747,881	\$12,673,184	(74,697)	(0.6%)	\$12,800,771
TOTAL LIABILITIES, DEFERRED INFLOWS AND NET POSITION	\$17,033,670	\$16,414,256	(619,414)	(3.6%)	\$16,059,738

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 \$9,151,824 (See below):

	June 30, 2019	July 31, 2019	Increase (Decrease)	%	Beginning of FY 2019 October 1, 2018
CASH AND INVESTMENT BALANCES					
Cash	3,111,125	2,230,978	(880,147)	(28.3%)	871,888
Investments	8,753,528	8,753,528	0	0.0%	9,213,528
Total Available Cash and Investments	\$11,864,652	\$10,984,505	(880,147)	(7.4%)	\$10,085,416
Less:					
Due to Sections	2,656,146	2,564,571	(91,575)	(3.5%)	2,256,271
Due to CPF	56,682	40,543	(16,140)	(28.5%)	(15,354)
Due to Sections and CPF	\$2,712,829	\$2,605,114	(107,714)	(4.0%)	2,240,917
Net Administrative Fund Cash and Investment Balance (Not including Retiree Health Care Trust)	\$9,151,824	\$8,379,391	(772,433)	(8.4%)	\$7,844,499

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
For the ten months ending July 31, 2019
YTD FY 2019 Revenue

Revenue	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Variance</u>	<u>Percentage</u>
Executive Offices				
Diversity Grant	10,000	0	10,000	N/A
Finance & Administration				
License Fees, Dues & Related	6,481,102	6,491,408	(10,306)	(0.2%)
Investment Income - SBM Operations	229,591	156,195	73,396	47.0%
Investment Income - Ret HC Trust	379,737	0	379,737	N/A
Other Revenue	356,045	335,581	20,464	6.1%
Finance & Administration Total	<u>7,446,475</u>	<u>6,983,184</u>	<u>463,291</u>	<u>6.6%</u>
Member & Communication Services				
Bar Journal Directory	39,700	46,800	(7,100)	(15.2%)
Bar Journal 11 issues	128,332	139,542	(11,210)	(8.0%)
Print Center	57,613	62,783	(5,170)	(8.2%)
e-Journal and Internet	68,767	61,167	7,600	12.4%
BCBSM Insurance Program	83,335	83,333	2	0.0%
Annual Meeting	360	42,000	(41,640)	(99.1%)
Labels	2,031	2,500	(469)	(18.8%)
Upper Michigan Legal Institute	14,030	11,200	2,830	25.3%
Bar Leadership Forum	12,097	10,250	1,847	18.0%
Practice Management Resource Center	20	917	(897)	(97.8%)
Lawyer Referral Service (LRS)	131,519	118,333	13,186	11.1%
Other Member & Endorsed Revenue	103,182	105,138	(1,956)	(1.9%)
Member & Communication Services Total	<u>640,986</u>	<u>683,963</u>	<u>(42,977)</u>	<u>(6.3%)</u>
Professional Standards				
Ethics	7,895	8,000	(105)	(1.3%)
Character & Fitness	280,530	251,875	28,655	11.4%
Lawyers and Judges Assistance Program	36,269	41,667	(5,398)	(13.0%)
Professional Standards Total	<u>324,694</u>	<u>301,542</u>	<u>23,152</u>	<u>7.7%</u>
Total Revenue	8,422,155	7,968,689	453,466	5.7%
Less: Investment Income	229,591	156,195	73,396	47.0%
Investment Income - Ret HC Trust	379,737	0	379,737	N/A
Total Operating Revenue	7,812,827	7,812,494	333	0.0%

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the ten months ending July 31, 2019
YTD FY 2019 Expenses

Expenses	YTD Actual	YTD Budget	Variance	Percentage
Executive Offices				
Executive Office	64,649	72,558	(7,909)	(10.9%)
Representative Assembly	16,917	23,033	(6,116)	(26.6%)
Board of Commissioners	97,318	98,567	(1,249)	(1.3%)
General Counsel	17,582	33,485	(15,903)	(47.5%)
Governmental Relations	57,448	58,151	(703)	(1.2%)
Human Resources (incl. empl benefits)	1,541,267	1,674,231	(132,964)	(7.9%)
Outreach, Local Bar & Section Support	109,269	118,250	(8,981)	(7.6%)
Research and Development	7,515	22,415	(14,900)	(66.5%)
Justice Initiatives	133,537	143,067	(9,530)	(6.7%)
Diversity	33,546	25,983	7,563	29.1%
Salaries	1,217,416	1,231,495	(14,079)	(1.1%)
Executive Offices Total	3,296,464	3,501,235	(204,771)	(5.8%)
Finance & Administration				
Administration	27,026	32,887	(5,861)	(17.8%)
Facilities Services	305,785	350,233	(44,448)	(12.7%)
Financial Services	781,381	761,592	19,789	2.6%
Salaries	365,555	379,550	(13,995)	(3.7%)
Finance & Administration Total	1,479,747	1,524,262	(44,515)	(2.9%)
Member & Communication Services				
Bar Journal Directory	53,115	58,000	(4,885)	(8.4%)
Bar Journal 11 Issues	396,417	454,256	(57,839)	(12.7%)
Print Center	46,869	55,020	(8,151)	(14.8%)
Website	77,114	107,250	(30,136)	(28.1%)
e-Journal	27,712	35,908	(8,196)	(22.8%)
Media Relations	47,102	56,134	(9,032)	(16.1%)
Member & Endorsed Services	85,735	113,833	(28,098)	(24.7%)
Annual Meeting	11,729	14,500	(2,771)	(19.1%)
Bar Leadership Forum	24,801	38,100	(13,299)	(34.9%)
Practice Mgt Resource Center (PMRC)	2,908	5,258	(2,350)	(44.7%)
UMLI	25,204	29,600	(4,396)	(14.9%)
Lawyer Referral Service (LRS)	4,974	14,350	(9,376)	(65.3%)
Information Technology Services	422,892	404,917	17,975	4.4%
Salaries	1,596,923	1,631,542	(34,619)	(2.1%)
Member & Communication Services Total	2,823,495	3,018,668	(195,173)	(6.5%)
Professional Standards				
Character & Fitness (C&F)	38,224	58,220	(19,996)	(34.3%)
Client Protection Fund Dept	8,655	13,960	(5,305)	(38.0%)
Ethics	13,110	16,250	(3,140)	(19.3%)
Unauthorized Practice of Law (UPL)	11,880	18,083	(6,203)	(34.3%)
Lawyer & Judges Assistance Program	19,769	23,883	(4,114)	(17.2%)
Salaries	858,398	855,047	3,351	0.4%
Professional Standards Total	950,036	985,443	(35,407)	(3.6%)
Total Expense	8,549,742	9,029,608	(479,866)	(5.3%)
Human Resources Detail				
Payroll Taxes	299,027	312,632	(13,605)	(4.4%)
Benefits	1,190,786	1,314,981	(124,195)	(9.4%)
Other Expenses	51,454	46,618	4,836	10.4%
Total Human Resources	1,541,267	1,674,231	(132,964)	(7.9%)
Financial Services Detail				
Depreciation	446,667	446,667	0	0.0%
Other Expenses	334,715	314,925	19,790	6.3%
Total Financial Services	781,382	761,592	19,790	2.6%
Salaries				
Executive Offices	1,217,416	1,231,495	(14,079)	(1.1%)
Finance & Administration	365,555	379,550	(13,995)	(3.7%)
Member Services & Communications	1,596,923	1,631,542	(34,619)	(2.1%)
Professional Standards	858,398	855,047	3,351	0.4%
Total Salaries Expense	4,038,292	4,097,634	(59,342)	(1.4%)
NonLabor Summary				
Executive Offices	589,235	642,127	(52,892)	(8.2%)
Finance & Administration	1,114,192	1,144,712	(30,520)	(2.7%)
Member Services & Communications	1,226,572	1,387,126	(160,554)	(11.6%)
Professional Standards	91,638	130,396	(38,758)	(29.7%)
Total NonLabor Expense	3,021,637	3,304,361	(282,724)	(8.6%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the ten months ending July 31, 2019
YTD FY 2019 Increase (Decrease) in Net Position Summary

	Actual YTD	Budget YTD	Variance	Percentage	Last Year Actual YTD
Operating Revenue					
- License Fees, Dues & Related	6,481,102	6,491,408	(10,306)	(0.2%)	6,497,939
- All Other Op Revenue	1,331,725	1,321,086	10,639	0.8%	1,327,236
Total Operating Revenue	<u>7,812,827</u>	<u>7,812,494</u>	<u>333</u>	<u>0.0%</u>	<u>7,825,175</u>
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	4,038,292	4,097,634	(59,342)	(1.4%)	3,864,724
Benefits and PR Taxes	1,489,813	1,627,613	(137,800)	(8.5%)	1,534,815
Total Labor-related Operating Expenses	<u>5,528,105</u>	<u>5,725,247</u>	<u>(197,142)</u>	<u>(3.4%)</u>	<u>5,399,539</u>
- Non-labor Operating Expenses					
Executive Offices	589,235	642,127	(52,892)	(8.2%)	553,245
Finance & Administration	1,114,192	1,144,712	(30,520)	(2.7%)	1,036,348
Member & Communication Services	1,226,572	1,387,126	(160,554)	(11.6%)	1,179,929
Professional Standards	91,638	130,396	(38,758)	(29.7%)	99,853
Total Non-labor Operating Expenses	<u>3,021,637</u>	<u>3,304,361</u>	<u>(282,724)</u>	<u>(8.6%)</u>	<u>2,869,375</u>
Total Operating Expenses	<u>8,549,742</u>	<u>9,029,608</u>	<u>(479,866)</u>	<u>(5.3%)</u>	<u>8,268,914</u>
Operating Income (Loss)	(736,915)	(1,217,114)	480,199	N/A	(443,739)
Nonoperating Revenue (Expenses)					
Investment Income	229,591	156,195	73,396	47.0%	154,099
Investment Income - Ret HC Trust	379,737	0	379,737	N/A	0
Net Nonoperating revenue (expenses)	<u>609,328</u>	<u>156,195</u>	<u>453,133</u>	<u>290.1%</u>	<u>154,099</u>
Increase (Decrease) in Net Position	<u>(127,587)</u>	<u>(1,060,919)</u>	<u>933,332</u>	<u>N/A</u>	<u>(289,640)</u>
Net Position - Beginning the Year	<u>12,800,771</u>	<u>12,800,771</u>	<u>0</u>	<u>0.0%</u>	<u>12,277,875</u>
Net Position - Year-to-Date	<u>\$12,673,184</u>	<u>\$11,739,852</u>	<u>\$933,332</u>	<u>8.0%</u>	<u>\$11,988,235</u>

State Bar of Michigan Administrative Fund
Revenues, Expenses and Net Assets
FY 2019 - Year-End Forecast
Updated on July 23, 2019

	FY 2019 Year-End Forecast	FY 2019 Budget	Variance	Percentage	FY 2018 Actual
Operating Revenue					
- License Fees, Dues & Related	7,746,000	7,743,000	3,000	0.0%	7,732,039
- All Other Op Revenue	<u>1,517,735</u>	<u>1,598,397</u>	<u>(80,662)</u>	<u>(5.0%)</u>	<u>1,632,613</u>
Total Operating Revenue	9,263,735	9,341,397	(77,662)	(0.8%)	9,364,652
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	5,096,134	5,140,392	(44,258)	(0.9%)	4,819,766
Benefits, PR Taxes, and Ret HC Exp	<u>1,771,066</u>	<u>1,924,056</u>	<u>(152,990)</u>	<u>(8.0%)</u>	<u>1,775,841</u>
Total Labor-related Operating Expenses	6,867,200	7,064,448	(197,248)	(2.8%)	6,595,607
- Non-labor Operating Expenses					
Executive Offices	808,350	802,850	5,500	0.4%	723,555
Finance & Administration	1,320,425	1,333,125	(12,700)	(1.6%)	1,179,734
Member & Communication Services	1,567,953	1,848,625	(280,672)	(15.2%)	1,608,750
Professional Standards	<u>135,471</u>	<u>164,335</u>	<u>(28,864)</u>	<u>(17.6%)</u>	<u>145,435</u>
Total Non-labor Operating Expenses	3,832,199	4,148,935	(316,736)	(7.6%)	3,657,474
Total Operating Expenses	10,699,399	11,213,383	(513,984)	(4.6%)	10,253,081
Operating Income (Loss)	(1,435,664)	(1,871,986)	436,322	N/A	(888,429)
Nonoperating Revenue (Expenses)					
Investment Income	250,000	175,000	75,000	42.9%	179,640
Investment Income - Ret HC Trust	0	0	0	N/A	202,417
Loss on Disposal of Capital Assets	<u>0</u>	<u>0</u>	<u>0</u>	<u>N/A</u>	<u>(34,963)</u>
Net Nonoperating Revenue (Expenses)	250,000	175,000	75,000	42.9%	347,094
Increase (Decrease) in Net Position	<u>(1,185,664)</u>	<u>(1,696,986)</u>	<u>511,322</u>	<u>N/A</u>	<u>(541,335)</u>

Operating Revenue forecast

- Under primarily in Annual Meeting (\$95k), Member and Endorsed Svcs (\$13k), Print Center (\$9k) Bar Journal Directory (\$8k) and other, net of higher C&F Fees (\$20k), ProHac Vice fees (\$18k) and Diversity program donation (\$10k)

Labor forecast:

- Salaries - vacancies and sick leave
- Benefits - under in health care (\$77k), other benefits/payroll taxes (\$36k), and (\$40k) retiree health care due to accounting change

Nonlabor forecast:

- Executive Offices - over budget by \$5,500
- Finance & Administration - under budget by \$12,700 due to higher credit card fees net of lower facilities expenses
- Member Services & Communications - under budget by \$280,672 primarily due to Annual Meeting, and also Bar Journal, Website, Member & Endorsed Svcs, LRS, and all other, partially offset by higher IT.
- Professional Standards - under budget by \$28,864 primarily due to C&F, and all other departments

Non-Operating Income forecast:

- Investment Income - will be better than budget due to higher interest rates than planned and 2018 updated investment policy

Other forecast issues not reflected in the forecast:

- Potential additional savings in other operating expenses not reflected

State Bar of Michigan
Administrative Fund
FY 2019 Capital Expenditures vs Budget
For the ten months ending July 30, 2019

	YTD Actual	YTD Budget	YTD Variance	Variance Explanations	Total		
					Approved FY 2019 Budget	FY 2019 Year-End Forecast	Projected Year-End Variance
<u>Building and Equipment</u>							
Electrical panel upgrade	0	0	0	4th quarter planned expenditure Panel only - installation deferred	35,000	16,500	(18,500)
Replacement of carpet (2nd, 3rd, 4th)	0	0	0	Will be deferred and used toward additional elevator upgrades	65,000	0	(65,000)
Elevator upgrade	0	0	0	Portion of work-in-progress and make-ready work	50,000	80,000	30,000
Replacement of floor copiers	0	0	0	Will be deferred to FY 2020	35,000	0	(35,000)
Meeting room technology upgrades	0	0	0	4th quarter planned expenditure	25,000	25,000	0
<u>Information Technology</u>							
e-commerce portal updates	50,000	0	50,000	Unplanned work on e-commerce site	0	50,000	50,000
Windows server OS 2016	0	0	0	4th quarter planned expenditure	22,000	22,000	0
Update/redesign Pro Hac Vice site ph 3	10,000	10,000	0		10,000	10,000	0
Web services tool for courts	0	0	0	No longer needed	10,000	0	(10,000)
C&F Board of Law Examiners portal	35,425	35,000	425		45,000	45,000	0
Firm administration application	0	0	0	Will be deferred to FY 2020	10,000	0	(10,000)
e-service application for court e-filing (e-mail addresses)	0	0	0	Janet is communicating with Court to confirm need	20,000	20,000	0
Firm billing/invoices for dues	0	0	0	Will be deferred to FY 2020	10,000	0	(10,000)
Lawyer referral consumer portal	36,950	37,000	(50)	Remaining project deferred to FY 2020	45,000	37,000	(8,000)
LRS Illinois build	2,500	0	2,500	New project in FY 2019	0	15,000	15,000
Application for soliciting volunteers for committees & work groups phase 2	9,950	10,000	(50)		9,950	10,000	50
Client Protection Fund portal	0	0	0	Will be deferred to FY 2020	20,000	0	(20,000)
Total	\$144,825	\$92,000	\$52,825		\$411,950	\$330,500	(\$81,450)

**STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
July 31, 2019**

FY 2019

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

State Bar of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Months Ending June 30, 2019 and July 31, 2019
FY 2019

	June 30, 2019	July 31, 2019	Increase (Decrease)	%	Beginning of FY 2019 October 1, 2018
Assets					
Cash	258,752	260,656	1,904	0.7%	288,570
Investments (CD's & CDARS)	1,553,412	1,553,412	0	0.0%	1,556,307
Accounts Receivable (Recoveries)	161,752	167,638	5,886	3.6%	175,001
Due from (to) Administrative Fund	56,682	40,543	(16,139)	(28.5%)	(15,354)
Accrued Interest Receivable	18,005	20,046	2,041	11.3%	9,610
Total Assets	\$ 2,048,603	\$ 2,042,295	\$ (6,308)	(0.3%)	\$ 2,014,134
Liabilities					
Accounts Payable	0	0	0	N/A	0
Unearned Revenue	165,104	111,939	(53,165)	(32.2%)	4,380
Total Liabilities	\$ 165,104	\$ 111,939	\$ (53,165)	(32.2%)	\$ 4,380
Net Position					
Net Position at Beginning of Year	2,009,754	2,009,754	0	0.0%	2,009,754
Increase (Decrease) in Net Position	(126,255)	(79,399)	46,856	N/A	0
Total Net Position	1,883,499	1,930,355	46,856	2.5%	2,009,754
Total Liabilities and Net Position	\$ 2,048,603	\$ 2,042,294	\$ (6,309)	(0.3%)	\$ 2,014,134

* Note: In addition, there are authorized but unpaid claims totaling \$29,275 awaiting signatures of subrogation agreements.

State Bar of Michigan
Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets
For the ten months ending July 31, 2019
FY 2019

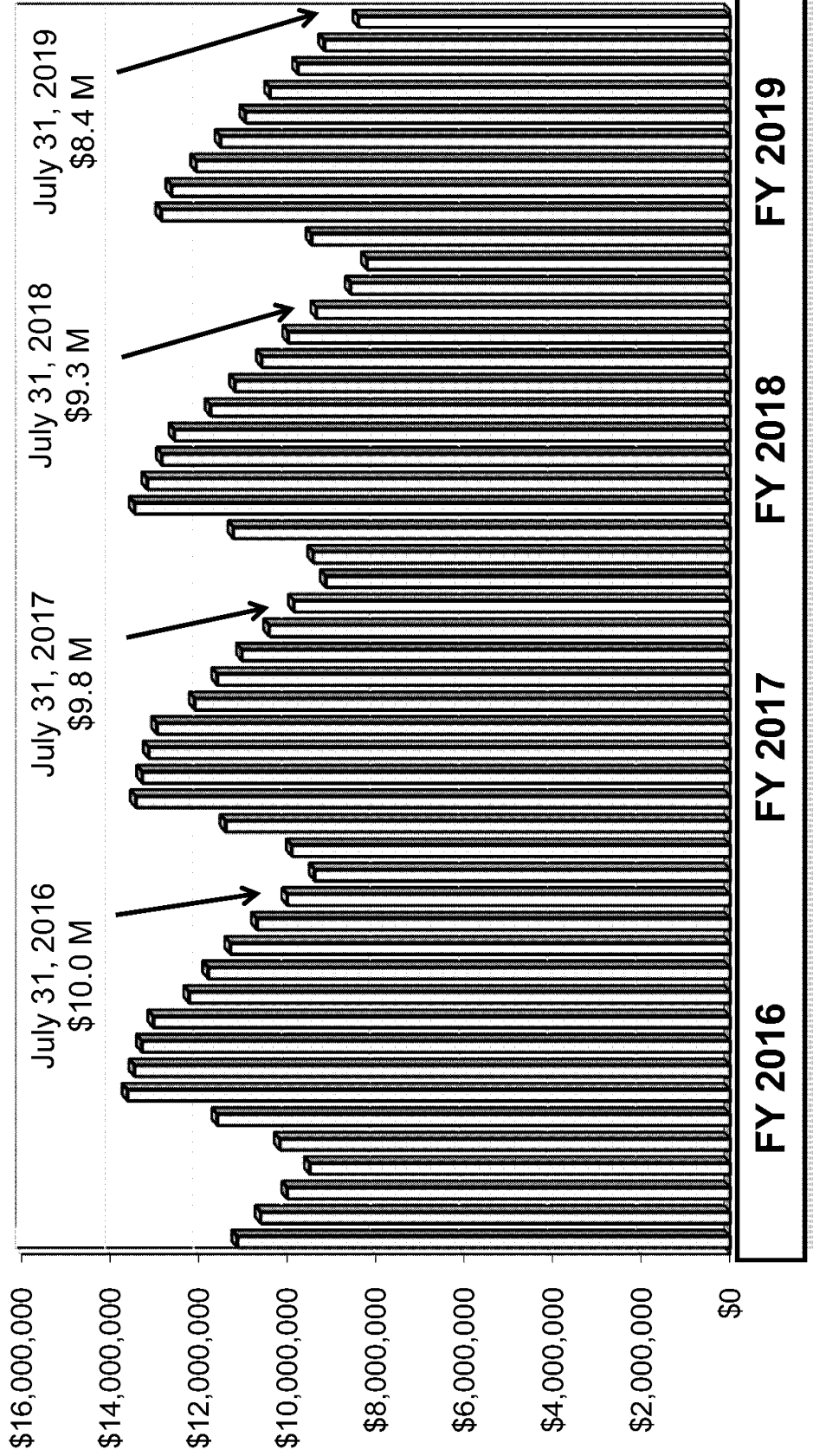
	<u>FY 2019</u> YTD	<u>Last Year</u> FY 2018 YTD
Revenue		
Contributions Received	30,630	18,280
Member Fee Assessment	536,350	537,810
Pro Hac Vice Fees	11,190	9,570
Claims Recovery	15,120	25,597
Miscellaneous Income	<u>0</u>	<u>0</u>
Total Revenue	593,290	591,257
Expense		
Claims Payments *(See note below)	516,965	596,873
Administrative Fee	176,667	166,950
Litigation and Miscellaneous Expense	<u>0</u>	<u>0</u>
Total Expense	693,632	763,823
Operating Income (Loss)	(100,342)	(172,566)
Investment Income	20,943	14,855
Increase (Decrease) in Net Position	<u><u>(79,399)</u></u>	<u><u>(157,711)</u></u>
Net Position - Beginning of the Year	<u>2,009,754</u>	
Net Position - End of the Period	<u><u>1,930,355</u></u>	

* Note: In addition, there are authorized but unpaid claims totaling \$29,275 awaiting signatures of subrogation agreements.

SBM Cash & Investment Balances

SBM Cash & Investment Balances

**Excluding Sections, Client Protection Fund & Retiree Health Care Trust
July 31, 2019 - \$8.4 M**



Note: The State Bar has no bank debt outstanding.

Summary of Cash and Investment Balances by Financial Institution
7/31/2019

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary
		SBM Chase Checking \$ 518,473.68		Client Protection Fund \$ 1,814,068.46
		SBM Chase Credit Card \$ 7,115.00		State Bar Admin Fund (including Sections) \$ 10,984,505.31
		SBM Chase E Checking \$ -		Attorney Discipline System \$ 3,707,312.26
		SBM Chase Payroll \$ (221.29)	0.18%	SBM Retiree Health Care Trust \$ 3,458,439.35
		SBM Chase Savings \$ 35,996.29		ADB Retiree Health Care Trust \$ 956,188.36
		ADS Chase Checking \$ 43,886.53		AGC Retiree Health Care Trust \$ 3,382,136.36
		CPF Chase Checking \$ 25,860.07	0.18%	Total \$ 24,302,650.10
\$2.14 Trillion	4 stars	CPF Chase Savings \$ 46,240.94		
		Chase Totals \$ 677,351.22		
		ADS Bank of America Petty Cash \$ 1,137.50	0.00%	
	4 stars	Bank of America Totals \$ 1,137.50		
		SBM Fifth Third Commercial Now \$ 2,562.90	0.00% ***	
\$140 Billion	5 stars	Fifth Third Totals \$ 2,562.90		
		Grand River Bank Money Market \$ 11,350.51	1.00%	
\$223 Million	4 stars	Grand River Bank Totals \$ 11,350.51		
		Grand River Bank Total w/CD \$ 509,878.20		
		First Community Bank \$ 13,879.58	1.40%	
\$288 Million	5 stars	First Community Bank Total \$ 13,879.58		
		First Community Bank Total w/CD \$ 258,879.58		
		Sterling Bank \$ 2,323.36	0.40%	
\$2.96 Billion	5 stars	Sterling Bank Total \$ 2,323.36		
		Sterling Bank Total w/CD \$ 977,323.36		
		Citizens Bank Checking \$ 100,100.00		
\$122 Billion	4 stars	Citizens Bank Money Market \$ 1,589,777.27	2.25%	
		CPF Citizens Bank CD \$ 500,000.00	2.50%	
		Citizens Bank Totals \$ 2,189,877.27		
		Mercantile Bank \$ 15,446.59	1.25%	
\$3.27 Billion	5 stars	Mercantile Bank Total \$ 15,446.59		
		Main Street Bank \$ 13,588.19	1.24%	
\$227.5 Million	4 stars	Main Street Bank \$ 13,588.19		
		MSU Credit Union \$ 8.92	0.10%	
\$3.85 Billion	5 stars	MSU Credit Union Total \$ 8.92		
		MSU Credit Union Total w/CD \$ 1,900,008.92		
		SBM Flagstar Savings Account \$ 2,062.56	0.90%	
		ADS Flagstar Savings Account \$ 1,270,802.29	1.25%	
		ADS Flagstar CDARS -13 Week \$ 500,000.00	0.95%	
		ADS Flagstar CDARS -12 Month \$ 810,000.00	1.35%	
		ADS Flagstar CDARS -12 Month \$ 1,000,000.00	1.35%	
		CPF Flagstar Savings \$ 188,555.24	0.90%	
		CPF Flagstar CDARS - 12 Month \$ 250,000.00	1.35%	
		CPF Flagstar CDARS - 24 Month \$ 453,412.21	0.75%	
		CPF Flagstar CDARS - 12 month \$ 350,000.00	1.35%	
\$16.8 Billion	4 stars	Flagstar Bank Totals \$ 4,824,832.30		
		SBM - CD Chemical Bank ** \$ 235,000.00	1.75%	
\$19.2 Billion	4 stars	SBM - CD Chemical Bank \$ 250,000.00	2.40%	
		SBM - CD Chemical Bank \$ 250,000.00	2.40%	
		SBM - CD Chemical Bank \$ 250,000.00	2.40%	
		SBM - CD Chemical Bank \$ 250,000.00	2.40%	
	4 stars	SBM- CD First Community Bank \$ 245,000.00	2.22%	
	4 stars	SBM - Grand River Bank \$ 253,527.69	2.50%	
		SBM - Grand River Bank \$ 245,000.00	2.75%	
\$3.9 Billion	4 stars	SBM-CD Horizon Bank \$ 240,000.00	1.00%	
		SBM-CD Horizon Bank \$ 245,000.00	2.81%	
		SBM-CD Horizon Bank \$ 245,000.00	2.81%	
		SBM-CD Horizon Bank \$ 250,000.00	2.66%	
		SBM-CD Horizon Bank \$ 250,000.00	2.66%	
		SBM-CD Horizon Bank \$ 250,000.00	2.48%	
		SBM-CD Horizon Bank \$ 250,000.00	2.48%	
\$1.36 Billion	4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.60%	
		SBM-CD First National Bank of America \$ 245,000.00	2.60%	
		SBM-CD First National Bank of America \$ 240,000.00	1.85%	
		SBM-CD First National Bank of America \$ 240,000.00	1.85%	
\$184.1 Million	2 stars	SBM-CD Community Shores Bank \$ 240,000.00	1.25%	
\$192.4 Million	4 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.10%	
	5 stars	SBM-CD Sterling Bank \$ 245,000.00	2.50%	
		SBM-CD Sterling Bank \$ 245,000.00	2.50%	
		SBM-CD Sterling Bank \$ 245,000.00	2.50%	
		SBM-CD Sterling Bank \$ 240,000.00	2.50%	
\$397 Million	4 stars	SBM-CD The Dart Bank \$ 240,000.00	2.42%	
		SBM-CD The Dart Bank \$ 245,000.00	2.42%	
		SBM-CD The Dart Bank \$ 245,000.00	2.42%	
		SBM-CD The Dart Bank \$ 245,000.00	2.42%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
	5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 240,000.00	2.61%	
		SBM-CD MSU Credit Union \$ 240,000.00	2.61%	
		SBM-CD MSU Credit Union \$ 240,000.00	2.61%	
		SBM-CD MSU Credit Union \$ 240,000.00	2.61%	
		Bank CD Totals \$ 8,753,527.69		
		Total Cash & Investments (excluding Schwab) \$ 16,505,886.03		
		SBM - Charles Schwab (Ret HC Trust) \$ 3,458,439.35		Mutual Funds
		ADB - Charles Schwab (Ret HC Trust) \$ 956,188.36		Mutual Funds
		AGC - Charles Schwab (Ret HC Trust) \$ 3,382,136.36		Mutual Funds
		Charles Schwab Totals \$ 7,796,764.07		
		Grand Total (including Schwab) \$ 24,302,650.10		
		Total amount of cash and investments (excluding Schwab) not FDIC insured \$ 9,879,738.64		59.86%

State Bar Admin Fund Summary

Cash and Investments	\$ 10,984,505.31
Less:	
Due (to)/from Sections	(2,664,571.30)
Due (to)/from CPF	(40,542.85)
Due to Sections and CPF	\$ (2,605,114.16)
Net Administrative Fund	\$ <u>8,379,391.15</u>

SBM Average Weighted Yield:	2.15%
ADS Average Weighted Yield:	1.22%
CPF Average Weighted Yield:	1.16%

Note: average weighted yields exclude retiree health care trusts

Notes:
- All amounts are based on reconciled book balance and interest rates as of 07/31/2019
- CDARS are invested in multiple banks up to the FDIC limit for each bank
- Funds held in bank accounts are FDIC insured up to \$250,000 per bank
- The SBM funds held with Charles Schwab in the Retiree Health Care Trusts are invested in 80% equity and 20% fixed income mutual funds
- As of 07/31/2019, the funds held by SBM attributable to ADS was \$81,485.94
* Flagstar Bank reserves the right to mature these CDARS at 12 months.
** Formerly Talmer West Bank
***Balance offsets lockbox fees by 0.35%.
****Actual unreconciled Chase balance per statements was \$707,971.86

Monthly SBM Member Report - July 31, 2019

FY 2019

	September 30					Current Fiscal Year		
	2013	2014	2015	2016	2017	2018	2019	FY Increase (Decrease)
Attorney Members and Affiliates in Good Standing								
Active	40,475	41,093	41,608	41,921	42,100	42,342	42,541	199
Less than 50 yrs serv	39,335	40,036	40,490	40,725	40,833	40,973	41,066	93
50 yrs or greater	1,140	1,057	1,118	1,196	1,267	1,369	1,475	106
Voluntary Inactive	1,263	1,211	1,218	1,250	1,243	1,169	1,133	(36)
Less than 50 yrs serv	1,231	1,184	1,195	1,230	1,217	1,142	1,099	(43)
50 yrs or greater	32	27	23	20	26	27	34	7
Emeritus	1,391	1,552	1,678	1,841	1,973	2,204	2,415	211
Total Attorneys in Good Standing	43,129	43,856	44,504	45,012	45,316	45,715	46,089	374
Dues Paying Members (Active & Inactive less than 50 yrs of Serv)	40,566	41,220	41,685	41,955	42,050	42,115	42,165	50
Affiliates								
Legal Administrators	19	14	13	13	13	10	11	1
Legal Assistants	433	413	425	405	400	401	443	42
Total Affiliates in Good Standing	452	427	438	418	413	411	454	43
Total Attorney Members and Former Members in the Database								
State Bar of Michigan Member Type								
Attorney Members in Good Standing:								
ATA (Active)	40,475	41,093	41,608	41,921	42,100	42,342	42,541	199
ATVI (Voluntary Inactive)	1,263	1,211	1,218	1,250	1,243	1,169	1,133	(36)
ATE (Emeritus)	1,391	1,552	1,678	1,841	1,973	2,204	2,415	211
Total Members in Good Standing	43,129	43,856	44,504	45,012	45,316	45,715	46,089	374
Attorney Members Not in Good Standing:								
ATN (Suspended for Non-Payment of Dues)	5,248	5,427	5,578	5,743	5,888	6,072	6,271	199
ATDS (Discipline Suspension - Active)	400	407	415	418	430	439	441	2
ATDI (Discipline Suspension - Inactive)	10	12	11	18	19	19	23	4
ATDC (Discipline Suspension - Non-Payment of Court Costs)	1	1	3	3	16	15	17	2
ATNS (Discipline Suspension - Non-Payment of Other Costs)	76	83	82	98	94	85	98	3
ATS (Attorney Suspension - Other)*	1	1	1	1	0	1	1	0
ATR (Revoked)	519	521	517	534	562	583	593	10
ATU (Status Unknown - Last known status was inactive)**	2,174	2,088	2,076	2,074	2,070	2,070	2,070	0
Total Members Not in Good Standing	8,429	8,540	8,693	8,890	9,079	9,294	9,514	220
Other:								
ATSC (Former special certificate)	134	136	140	145	152	155	157	2
ATW (Resigned)	1,354	1,429	1,483	1,539	1,612	1,689	1,779	90
ATX (Deceased)	7,797	8,127	8,445	8,720	9,042	9,287	9,490	203
Total Other	9,285	9,692	10,068	10,404	10,806	11,131	11,426	295
Total Attorney Members in Database	60,843	62,088	63,265	64,306	65,201	66,140	67,029	889

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

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

N/R - not reported

Notes: Through July 31, 2019, a total of 889 new members joined the SBM in FY 2019. A total of 438 Active and 55 Inactive members were suspended in February for non-payment of dues



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

=====
The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by October 1, 2019. Comments may be sent in writing to Samuel R. Smith, 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 new verdict form, M Crim JI 3.33, for use where “open murder” has been charged by the prosecutor and the degree of murder is left for the jury to determine, and proposes to eliminate M Crim JI 16.24 as unnecessary in light of the composite instructions, such as M Crim JI 3.17, and possibly confusing in many contexts.

[NEW] M Crim JI 3.33 Verdict Form (Open Murder)

Defendant: _____

Count No. ___ Charging open murder involving the death of [*name decedent*]

POSSIBLE VERDICTS:

You may return only one verdict on this count. Mark only one line on this sheet.

[*Select from the options provided to the jury*]

___ Not guilty

___ Guilty of first-degree premeditated murder

___ Guilty of first-degree felony murder

- ___ Guilty of first-degree premeditated murder and first-degree felony murder
- ___ Guilty of the lesser offense of second-degree murder
- ___ Guilty of the lesser offense of [manslaughter / voluntary manslaughter / involuntary manslaughter]

~~M Crim JI 16.24 Degrees of Murder~~

~~If you find the defendant guilty of murder, you must state in your verdict whether it is murder in the first degree or murder in the second degree.~~

Public Policy Position
M Crim JI 3.33

Explanation

The committee supports the model criminal jury instructions as drafted.

Position Vote:

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

Contact Persons:

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

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by December 1, 2019. Comments may be sent in writing to Samuel R. Smith, 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 .

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PROPOSED

The Committee proposes a new jury instruction, M Crim JI 7.17, for defense of habitation per *Pond v People*, 8 Mich 150 (1860).

[NEW] M Crim JI 7.17 Use of Deadly Force in Defense of the Home

(1) The defendant claims that [he / she] acted in lawful defense of [his / her] home. A person has the right to use force or even take a life to defend [his / her] home under certain circumstances. If a person acts in lawful defense of [his / her] home, that person's actions are justified and [he / she] is not guilty of [*state crime*].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful defense of [his/ her] home. Remember to judge the defendant's conduct according to how the circumstances appeared to the defendant at the time [he / she] acted.

(3) A person may use deadly force to defend [his / her] home where both of the following conditions exist:

(a) First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that the person whom [he / she] killed or injured used force to enter the defendant's home or was forcibly attempting to enter the defendant's home, and had no right to enter [his / her] home. The use of any force may be sufficient, including opening a door or raising a window.

(b) Second, at the time [he / she] acted, the defendant must have honestly and reasonably believed that the person whom [he / she] killed or injured intended to steal property from the home or do bodily injury to the defendant or someone else who was lawfully in the home, or intended to commit a sexual assault against the defendant or someone else who was lawfully in the home.

If the defendant honestly and reasonably believed that both of those conditions existed, [he / she] could act immediately to defend [his / her] home even if it turned out later that [he / she] was wrong about those conditions. In deciding if the defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time.

(4) At the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is necessary at the time to defend [his / her] home. When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of defending [his / her] home, but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Where the defendant contends that [he / she] used deadly force to defend [his / her] home, the prosecutor must prove beyond a reasonable doubt that the defendant was not acting in defense of [his / her] home because [he / she] did not have a reasonable belief that [*name person killed or injured by defendant*] was forcibly entering the home and was going to steal or harm someone inside.

(6) When you decide whether the prosecutor proved that the defendant did not have a reasonable belief that [*name person killed or injured by defendant*] was forcibly entering the home and was going to steal or harm someone inside, you should consider all of the circumstances: [the condition of the people involved, including their relative strength / whether (*name person killed or injured by defendant*) was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of any attack or threat by (*name person killed or injured by defendant*) / whether the defendant knew (*name person killed or injured by defendant*) and about any previous violent acts by (him / her) or threats (he / she) made / (*cite any other circumstance that may apply*)].¹

Use Note

The Committee has prepared this instruction concerning the common-law defense of habitation, see *Pond v People*, 8 Mich 150, 176 (1860), but would note there exists a substantial question whether that defense survives the promulgation of the Presumption Regarding Self-Defense Act and the Self-Defense Act, particularly MCL 780.951. See also M Crim JI 7.16a. Resolution of that question is beyond the scope of the charge of the Committee.

1. The court may provide all of the circumstances listed, or eliminate those that are not pertinent according to the evidence.

Public Policy Position
M Crim JI 7.17

Explanation

The committee supports the model criminal jury instructions as drafted.

Position Vote:

Voted for position: 10

Voted against position: 1

Abstained from vote: 0

Did not vote (absent): 7

Contact Persons:

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

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2019. Comments may be sent in writing to Samuel R. Smith, 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 .

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PROPOSED

The Committee proposes a new set of jury instructions, M Crim JI 13.21, 13.22, 13.23, 13.24 and 13.25, where the prosecutor has charged offenses found in MCL 801.262 and 801.263 that involve bringing weapons or alcohol or drugs into jail, or possession of weapons or alcohol or drugs by prisoners. The instructions are entirely new.

[NEW] M Crim JI 13.21 Bringing a Weapon into Jail

(1) The defendant is charged with bringing a weapon into jail for a prisoner of the jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed a weapon¹ or an item that could be used to injure another person, or used to assist an escape from a jail.

(3) Second, that the defendant brought the weapon or item into [*identify facility*] jail. This includes secondary buildings associated with the jail and the grounds around the jail that are used for jail purposes.

(4) Third, that the defendant brought the weapon into the jail for the use or benefit of a prisoner in the jail. It does not matter whether a prisoner actually obtained the weapon.

Use Note

1. If necessary, the jury could be provided an instruction on the definition of a weapon found in M Crim JI 11.19.

Reference

MCL 801.262(1)(a)

[NEW] M Crim JI 13.22 Furnishing a Weapon to a Prisoner

(1) The defendant is charged with providing a weapon to a prisoner or disposing of a weapon so that a prisoner could have access to it. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed a weapon¹ or an item that could be used to injure another person, or used to assist an escape from a jail.

(3) Second, that the defendant sold or gave the weapon or item to [*identify prisoner*] when [he / she] was a prisoner in a jail, or the defendant disposed of the weapon or item in manner that allowed a prisoner to have access to the weapon or item.

Use Note

1. If necessary, the jury could be provided an instruction on the definition of a weapon found in M Crim JI 11.19.

Reference

MCL 801.262(1)(b)

[NEW] M Crim JI 13.23 Possession of a Weapon by a Prisoner

(1) The defendant is charged with possessing a weapon while a prisoner in jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a prisoner in the [*identify facility*] jail.

(3) Second, that the defendant knowingly possessed a weapon¹ or an item that could be used to injure another person, or used to assist an escape from a jail.

Use Note

1. If necessary, the jury could be provided an instruction on the definition of a weapon found in M Crim JI 11.19.

Reference

MCL 801.262(2)

[NEW] M Crim JI 13.24 Bringing Alcohol or a Controlled Substance into Jail

(1) The defendant is charged with bringing [alcohol / a controlled substance] into jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly possessed [alcohol¹ / (*identify controlled substance*)], which is a controlled substance under Michigan law].

(3) Second, that the defendant brought the [alcohol / (*identify controlled substance*)] into [*identify facility*] jail, or provided the [alcohol / (*identify controlled substance*)] to [*identify prisoner*] when [he / she] was a prisoner in a jail, or the defendant disposed of the [alcohol / controlled substance] in manner that allowed a prisoner to have access to the [alcohol / controlled substance]. The jail includes secondary buildings associated with the jail and the grounds around the jail that are used for jail purposes.

Use Note

MCL 801.263 uses the term “alcoholic liquor.” That term is defined in MCL 801.261 as “any spiritous, vinous, malt, or fermented liquor, liquid, or compound whether or not medicated, containing 1/2 of 1% or more of alcohol by volume and which is or readily can be made suitable as a beverage.”

Reference

MCL 801.263(1).

[NEW] M Crim JI 13.25 Possession of Alcohol or a Controlled Substance by a Prisoner

(1) The defendant is charged with possessing [alcohol / a controlled substance] while a prisoner in jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a prisoner in the [*identify facility*] jail.

(3) Second, that the defendant knowingly possessed [alcohol¹ / (*identify controlled substance*)], which is a controlled substance under Michigan law].

Use Note

MCL 801.263 uses the term “alcoholic liquor.” That term is defined in MCL 801.261 as “any spiritous, vinous, malt, or fermented liquor, liquid, or compound

whether or not medicated, containing 1/2 of 1% or more of alcohol by volume and which is or readily can be made suitable as a beverage.”

Reference

MCL 801.263(2).

Public Policy Position
M Crim JI 13.21, 13.22, 13.23, 13.24, and 13.25

Explanation

The committee supports the model criminal jury instructions as drafted.

Position Vote:

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

Contact Persons:

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

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by October 1, 2019. Comments may be sent in writing to Samuel R. Smith, 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 new jury instruction, M Crim JI 35.11, where the prosecutor has charged an offense found in MCL 750.411w involving the possession or use of devices or programs for “skimming” or for deleting or altering financial transactions. The instruction is entirely new.

[NEW] M Crim JI 35.11 Sale, Purchase, Installation, Transfer, or Possession of Automated Sales Suppression Device or Zapper, Phantom-Ware, or Skimming Device

- (1) The defendant is charged with the crime of selling, purchasing, installing, transferring, or possessing* [an automated sales suppression device or zapper / phantom-ware / a skimming device]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant sold, purchased, installed, transferred, or possessed* [an automated sales suppression device or zapper / phantom-ware / a skimming device].

[Select from the following:]

- (a) An “automated sales suppression device” or “zapper”¹ is a software program carried on a memory stick or removable compact disc, accessed through an Internet link or any other way, that falsifies the electronic records of electronic cash registers² and other point-of-sale systems,

including falsifying information such as transaction data³ and transaction reports.⁴

(b) “Phantom-ware”⁵ is a hidden programming option embedded in the operating system of an electronic cash register² or hardwired into an electronic cash register that can be used to create a virtual second till or that could eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the record of transactions in the electronic cash register.

(c) A “skimming device”⁶ is any combination of devices or methods that are designed or adapted to be placed on the physical property of another person and to obtain another person’s personal information or personal identifying information,⁷ or to obtain any other information that allows access to a person’s financial accounts, from a financial transaction device⁸ without the permission of the owner of the financial transaction device.

(3) Second, that the defendant knew that the device or program that [he / she] sold, purchased, installed, transferred, or possessed* was [an automated sales suppression device or zapper / phantom-ware / a skimming device].

Use Notes

* The Court may select the appropriate acts according to the charges and evidence rather than reciting all five acts.

1. “Automated sales suppression device” or “zapper” is defined in MCL 750.411w(5)(a).
2. “Electronic cash register” is defined in MCL 750.411w(5)(b).
3. “Transaction data” is defined in MCL 750.411w(5)(g).
4. “Transaction report” is defined in MCL 750.411w(5)(h).
5. “Phantom-ware” is defined in MCL 750.411w(5)(e).
6. “Skimming device” is defined in MCL 750.411w(5)(f).
7. “Personal identifying information” and “personal information” are defined in MCL 445.63(q) and (r).
8. “Financial transaction device” is defined in MCL 750.157m.

Public Policy Position
M Crim JI 35.11

Explanation

The committee supports the model criminal jury instructions as drafted.

Position Vote:

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

Contact Persons:

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**VIII. A. Health Care
Law Section
Bylaw Amendment**



MEMORANDUM

To: SBM Board of Commissioners
From: Darin Day
SBM Director of Outreach
Date: September 13, 2019
Re: Proposed Section Bylaws Amendments:
Health Care Law Section

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

Upon review of documents submitted by the **Health Care Law Section**, staff confirms that the section has taken all steps necessary to propose bylaws amendments in compliance with the amendment procedures set forth in the section’s current bylaws. The only remaining step is for this body to approve the proposed amendments.

Please see the attached excerpts from the section’s current bylaws, redlined to highlight the proposed amendments.

No proposed amendment is inconsistent with Supreme Court Rules or the State Bar of Michigan bylaws. Accordingly, it is recommended that the proposal be APPROVED.

**BYLAWS OF THE HEALTH CARE LAW SECTION
OF THE STATE BAR OF MICHIGAN**

ARTICLE IV COUNCIL

SECTION 1. **COUNCIL.** There shall be a Council of the Section consisting of thirteen to nineteen members, including the Officers of the Section, to be elected or appointed as provided in these Bylaws.

All Council members must be Active Members of the Section. The Chair-Elect shall remain as a member of the Council the year following his/her services as Chair-Elect in order to serve as the Chair of the Section notwithstanding the term limitation provisions of these Bylaws. The Immediate Past Chair shall remain as a member of the Council the year following her/his service as Chair of the Section notwithstanding term limitation provisions of these Bylaws. The Immediate Past Chair shall be included in determining whether a quorum is present at any meeting of the Council and shall have the right to vote on matters brought before the Council.

SECTION 4. **TERM LIMITATIONS.** No Council member shall be eligible for re-election to the Council if he/she has served without interruption for two (2) consecutive three-year terms immediately preceding the term for which the election is held. However, the term limitation shall not permanently bar a Council member from re-election to the Council. A Council member shall be eligible for re-election if at least ~~three~~ one years have passed between the end of the Council member's two consecutive three-year terms on the Council and the term for which an election is held.

SECTION 5. **ABSENCES.** Any member of the Council who ~~is absent from~~ three (3) consecutive meetings of the Council ~~may~~ shall be deemed to have resigned from the Council.

ARTICLE IX AMENDMENTS

SECTION 1. **PROPOSED AMENDMENT.** Any proposed amendment to these Bylaws shall be submitted in writing to the Council in the form of a petition by at least ten (10) Active Members of the Section or in the form of a resolution at a duly convened Council meeting. If the Council approves the proposed amendment, the Council shall publish a complete and accurate text of the proposed amendment in the Michigan Bar Journal or on the official Section webpage at least thirty (30) days prior to the meeting of the Section at which it is to be considered.

**XV. A. Proposed
Amendments –
CPF and SB Rules**

MEMORANDUM

TO: Board of Commissioners

FROM: Professional Standards Committee

MEETING DATE: September 25, 2019 Board of Commissioners Meeting

SUBJECT: Proposed Amendments to Client Protection Fund Rules and Proposed Rule 20 of the Rules Concerning the State Bar

The Professional Standards Committee¹ recommends approval of the proposed amendments to the Client Protection Fund (CPF) Rules detailed below and proposed Rule 20 of the Rules Concerning the State Bar (SBR). Redlined copies of proposed SBR 20 (Exhibit 1) and the CPF Rules (Exhibit 2) are attached.

1. REVISIONS TO PROPOSED SBR 20 – BINDING SBM MEMBERS TO THE CPF RULES, MODIFICATION TO THE SUBPOENA ISSUANCE PROVISION, AND MINOR GRAMMATICAL CHANGES

Background. To provide context and background for the review process, please note that proposed SBR 20 was approved by the Board of Commissioners several years ago but has not yet been the subject of a referral to the Michigan Supreme Court. In conjunction with review of the CPF Rules, a review of proposed SBR 20 was undertaken to: (1) clarify that all State Bar members are subject to its provisions, (2) streamline the provisions pertaining to issuance and service of subpoenas regarding the Fund, and (3) make minor grammatical enhancements.

Key code for redlining. To facilitate review of the proposed amendments of SBR 20, the original text of the proposed rule previously approved by the BOC is underlined, the text recommended for deletion has been shaded with a strike-through, and the proposed new text has a double underline. See Exhibit 1.

Revisions to the Rule. There are no provisions within the court rules requiring SBM members to comply with the CPF Rules. Adding a provision to proposed SBR 20, specifically new Section 2, is

¹ Client Protection Fund Jurisdiction. Advise the Board of Commissioners on the operation of the Client Protection Fund program pursuant to the Client Protection Rules adopted by the Board of Commissioner by:

- Making recommendations on the reimbursement of claims authorized by the Board of Commissioners
- Proposing or advising on revisions to rules and policies concerning the Client Protection Fund
- Recommending subrogation actions to recoup monies paid from the Client Protection Fund
- Reviewing and recommending loss prevention measures to minimize claims and public loss
- Determining how the committee's work might interact with and support the work of the Professional Ethics, Judicial Ethics, Lawyers and Judges Assistance, and Character and Fitness committees, including through conferring and coordinating regularly with them on trends, data, insights, and metrics
- Being aware of and discussing metrics measuring the effectiveness of national and state efforts to reduce lawyer misappropriation of funds and to reimburse victimized clients

proposed to obligate SBM members to comply with the CPF Rules. This revision would also assist the State Bar when defending against a respondent's argument during subrogation enforcement litigation premised on the assertion of no responsibility to repay the Fund. The language of proposed new Section 2 is provided below. See also, Exhibit 1.

Sec 2. "Lawyers admitted and licensed to practice law," as the term is defined in CPF Rule 1(B), are bound by the Client Protection Fund Rules.

The prior language of proposed SBR 20 regarding the grant of subpoena power provides a cumbersome procedure for issuing subpoenas as it would require the chairperson of the CPF Standing Committee to authorize issuance of a subpoena. Since the CPF chairperson is not involved in the daily investigative process, this approach would place an additional, unnecessary responsibility on the chairperson. Deleting a sentence from the previously approved language (see text below and Exhibit 1) regarding the grant of subpoena power would permit SBM staff counsel to issue subpoenas consistent with the SBM's internal processes as used in other matters. The Professional Standards Committee recommends deletion of the shaded sentence with the strike-through to streamline the subpoena issuance process when used to investigate and administer CPF claims.

~~Sec. 32. The State Bar of Michigan has the power to issue subpoenas to require the appearance of a witness or the production of documents or other tangible things concerning its administration and investigation of Client Protection Fund claims; Subpoenas may be prepared by staff of the State Bar of Michigan and served after approval of the Chairperson of the Standing Committee for the Client Protection Fund. The subpoena may be served by certified mail, return receipt requested, and delivery restricted to the addressee or via hand delivery. The subpoena may also be served by e-mail or other electronic form, if the person to be served agrees.~~

In addition to renumbering the sections of the proposed Rule in order to include a new section 2, a minor grammatical change, deletion of "and" is proposed to paragraph 1 of section 1. See text below and Exhibit 1.

~~Sec. 1. The State Bar of Michigan, through its Board of Commissioners, is authorized and empowered to administer and investigate Client Protection Fund claims and to supervise the Client Protection Fund, which shall include, but not be limited to, receiving, holding, managing, and disbursing monies from, and recouping monies paid by the Client Protection Fund.~~

2. PROPOSED AMENDMENTS TO CPF RULES

A. CPF Rule 9(B) – Requiring a Claimant to File a Police Report in Some Circumstances

Staff experience with the CPF claims administration process shows that in several instances, claimants make allegations of misappropriation, but are unwilling to file a police report. Reasons include: (1) unwillingness of a claimant's attorney to report another lawyer; (2) fear of retaliation or inability to prove a theft case; (3) concerns about disinterest of law enforcement agencies regarding these cases; (4) lack of documentation to prove misappropriation, and (5) fear of being accused of filing a false police report if the law enforcement agents believe the accused lawyer.

A reason favoring an amendment of the CPF Rules to require a claimant to file a police report is to optimize recoupment to the Fund via the criminal justice system through payments on restitution orders after criminal convictions.

Potential downsides to requiring claimants to file police reports are concerns about false reports, failure or refusal to investigate due to lack of resources, and refusal to by some law enforcement agencies to accept the report, leaving the claimant with no recourse.

Considering the pros and cons, the Professional Standards Committee recommends adding a provision requiring claimants with losses over \$20,000 to file a police report or when requested by the State Bar of Michigan to do so.

**RECOMMENDATION
AMEND CPF RULE 9(B)**

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

B. Proposed Deletion of CPF Rule 9(D)(9) – Payment Made by Third Party for Legal Services

Often payment for legal services is made by a third party. The Board of Commissioners (BOC) regularly approves reimbursements of payments made by a third party to the respondent for legal services to be provided to a client. CPF Rule 9(D)(9) specifically excludes such reimbursement for such losses unless proof of payment or other facts override this exclusion. The Committee recommends CPF Rule 9(D)(9) be deleted as redundant as other provisions within the CPF Rules require proof of payment and prohibits payment that would cause unjust enrichment.

**RECOMMENDATION
DELETE CPF RULE 9(D)(9)**

~~9. Losses incurred by a claimant who is not the client but is merely a payor of the attorney fees are excluded unless the claimant provides proof of payment and the totality of the facts warrant payment to the claimant/payor.~~

C. Proposed Amendment CPF Rule 10(B)(6) and CPF Rule 11(I) – Evidence of Payment by Claimant

CPF Rule 10(B)(6) requires a claimant to provide documentary evidence of payment to a respondent and CPF Rule 11(I) requires a claimant to provide evidence to support a claim. Often there is no

documentation of payments remitted by the claimant because the respondent provides no receipt or other evidence to the claimant. In those circumstances, evidence is sought through other sources such as an admission by the attorney, sworn testimony during an attorney discipline board hearing, or copies of the attorney's records provided to Fund staff by other sources such as the Attorney Grievance Commission (AGC) or a bank. Technically, the CPF Rules require the claimant to provide the documentary evidence. So, when documentary evidence is obtained from other sources the BOC is requested to exercise its discretion to accept evidence from other sources to support reimbursement of a claim. To rectify these anomalies, the Professional Standards Committee recommends amendment of CPF Rule 10(B)(6) to require satisfactory evidence of payment without limitation on the source and CPF Rule 11(I) to provide that other sources may provide evidence to support a CPF claim.

RECOMMENDATION AMEND CPF RULE 10(B)(6) AND CPF 11(I)

Rule 10

~~(B)(6) Copies of any checks, money orders, receipts or other proof~~
Satisfactory evidence of payment;

RULE 11

~~(I) Rules of evidence, procedures, and witnesses do not apply to any claim proceedings. All relevant evidence Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim. Evidence of a claim may be provided by other sources such as the Attorney Grievance Commission, law enforcement, or court proceedings.~~

D. Proposed Amendment to CPF Rule 10(D) – Attorney's Fees Paid by Claimants for assistance with CPF Applications

Staff is aware of claimants who have paid attorneys up to one-third of the reimbursement for assisting with the CPF application. A CPF claim is an administrative process designed to permit a claimant to pursue a claim without legal representation. During the claim administration process, staff investigates to ensure the best facts are provided during the three-tier review process.

Staff has observed on several occasions that attorneys who assist with preparation and submission of the CPF application do not continue to represent the claimant throughout the claim administration process. For example, they may not respond to staff's requests for additional information. Sometimes, claims are administratively closed for failure to respond to administrative requests for additional information or documentation which may result in an additional victimization of the claimant. A clarification regarding attorney's fees could further protect claimants.

Under MRPC 1.5 and as opined by the SBM Standing Committee on Professional Ethics in Informal Ethics Opinion RI-359,² a lawyer must consider the “time involved, the simplicity of the matter, and degree of risk of not obtaining a positive result” before establishing a contingent fee. CPF applicants are required to complete the application and compile the required supporting documentation. During the claim administration process, staff investigates and requests additional documentation or information from the claimant or third parties to support reimbursement of a claim. Since the claims administration and investigation are done by staff, there is little or no risk to a lawyer for representing a CPF claimant, so a 33% contingent fee may be excessive.

Rule 19 of the ABA Model Rules for Lawyer’s Funds for Client Protection³ includes a prohibition to preclude a lawyer from accepting a fee for assisting a CPF claimant in prosecuting a claim subject to Board approval, as does our sister Midwest jurisdiction of Ohio.⁴

The Professional Standards Committee recommends amendment of CPF Rule 10(D) to limit the maximum fee that a lawyer may charge for services rendered to assist a claimant in submitting a CPF claim application to the SBM or during the claims administration. The Professional Standards Committee recommends that a \$250 maximum flat fee for such services by a lawyer unless the BOC authorizes a greater fee. The proposed amendment is presented below and includes in Exhibit 2.

RECOMMENDATION AMEND CPF RULE 10(D)

Rule 10

- (D) No attorney shall be compensated for submitting an application or a claim except for an amount up to \$250 or as otherwise authorized by the Board.

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

² A copy of the opinion can be found at https://www.michbar.org/opinions/ethics/numbered_opinions/RI-359.

³ RULE 19 COMPENSATION FOR REPRESENTING CLAIMANTS. “No lawyer shall accept any payment for assisting a claimant with prosecuting a claim, unless such payment has been approved by the Board.” Rule 19 Comment. “Proceedings to determine claims are not necessarily adversarial in nature, and Fund employees should be available to assist claimants in understanding and preparing claims forms. The Bar should be encouraged to assist claimants as a particularly appropriate form of *pro bono* service, and appreciation for such work ought to be expressed.”

⁴ “No attorney fees may be paid from the proceeds of an award made to a claimant under authority of this rule. The Board may allow an award of attorney fees to be paid out of the fund if it determines that the attorney’s services were necessary to prosecute a claim under this rule and upon other conditions as the Board may direct.” Gov Bar R VIII, § 6(B), Lawyers’ Fund for Client Protection of the Supreme Court of Ohio found at <http://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf#Rule8>.

E. Proposed Amendments of the CPF Rules to Comport with Current Practices of the Claims Administration Procedure and Improve Clarity

The CPF Committee undertook a wholesale review of the CPF Rules when it was requested by the Professional Standards to consider recommendations to the Rules that would have the potential of strengthening enforcement of subrogation agreements against respondents, expanding reimbursements to claimants to cover incidental and consequential damages, and otherwise enhancing reimbursements to claimants. Except as provided above, all other recommendations to modify the CPF Rules, as shown in Exhibit 2, are proposed to update them to comport with current practices utilized in the claims administration procedure and to improve the clarity of the Rules. These amendments do not impact or modify the substance of the Rules regarding reimbursable losses to claimants.

3. PROPOSED AMENDMENT OF CPF POLICY

Over the years, the BOC has approved CPF policies to assist staff in applying principles to the facts of a claim to help ensure consistency in the recommendations made on claims. The *CPF Loss Policy on Interest, Penalties, and Incidental or Consequential Damages* was adopted for this purpose to work in conjunction with CPF Rule 9(D)(7) that excludes reimbursement of a claimant’s consequential or incidental damages. The Professional Standards Committee recommends tweaking the language of the CPF Loss policy to address claims involving misappropriation of settlement funds and estate or trust assets to ensure determination of a claimant’s loss consistent with a reimbursable loss as defined under the CPF Rules. The Fund’s primary objective remains the full reimbursement of all claimants. Once achieved, the Professional Standards Committee believes it would be appropriate to reconsider the prohibition of reimbursing losses incurred by a claimant for interest, incidental and consequential damages. Based on this reasoning, the Professional Standards Committee recommends changing the phrase in the CPF Loss policy of “actual amount paid” to the “actual loss amount allowed under CPF rules” to address claims involving the misappropriation of settlement funds and estate or trust assets.

**RECOMMENDATION
AMEND CPF LOSS POLICY**

Reimburse the ~~actual amount paid~~ actual loss amount allowed under CPF rules; interest, penalties, and other incidental expenses or other consequential losses are not paid by the Fund

EXHIBIT 1

STATE BAR RULE 20

RULE 20. CLIENT PROTECTION FUND

Sec. 1. The State Bar of Michigan, through its Board of Commissioners, is authorized and empowered to administer and investigate Client Protection Fund claims and to supervise the Client Protection Fund, which shall include, but not be limited to, receiving, holding, managing, and disbursing monies from, and recouping monies paid by the Client Protection Fund.

The **Client Protection Fund** is a program established to reimburse clients who have been victimized by lawyers who violate the profession's ethical standards and misappropriate funds entrusted to them.

Sec 2. Lawyers admitted and licensed to practice law," as the term is defined in CPF Rule 1(B), are bound by the Client Protection Fund Rules.

Sec. 3~~2~~. The State Bar of Michigan has the power to issue subpoenas to require the appearance of a witness or the production of documents or other tangible things concerning its administration and investigation of Client Protection Fund claims. ~~Subpoenas may be prepared by staff of the State Bar of Michigan and served after approval of the Chairperson of the Standing Committee for the Client Protection Fund.~~ The subpoena may be served by certified mail, return receipt requested, and delivery restricted to the addressee or via hand delivery. The subpoena may also be served by e-mail or other electronic form, if the person to be served agrees.

A person who without just cause, after being commanded by a subpoena, fails or refuses to appear or produce documents or tangible things, after being ordered to do so is in contempt. The State Bar of Michigan may initiate a contempt proceeding under MCR 3.606 in the circuit court for the county where the act or refusal to act occurred.

A subpoena issued pursuant to this rule shall be sufficient authorization for seeking the production of documents or other tangible things outside the State of Michigan. If the deponent or the person possessing the subpoenaed information will not comply voluntarily, the proponent of the subpoena may utilize MCR 2.305(D) or any similar provision in a statute or court rule of Michigan or of the state, territory, or country where the deponent or possessor resides or is present.

Sec. 4~~3~~. A person is absolutely immune from suit for statements and communications transmitted solely to State Bar staff and their agents, the Standing Committee on the Client Protection Fund or the State Bar of Michigan Board of Commissioners or given in the course of an investigation of a Client Protection Fund claim. State Bar staff and their agents, the Standing Committee on the Client Protection Fund, and the State Bar of Michigan Board of Commissioners are absolutely immune from suit for conduct arising out of the performance of their duties and responsibilities regarding the Client Protection Fund.

Sec. 5~~4~~. Notwithstanding the confidentiality provisions of SBR 19, the State Bar of Michigan may disclose information concerning Client Protection Fund claims and information obtained during the investigation of Client Protection Fund claims to persons and entities authorized and empowered to investigate and administer Client Protection Fund claims in other states.

EXHIBIT 2

RULE 1—PURPOSE AND SCOPE

- A. The purpose of the Michigan Client Protection Fund [Fund] is to promote public confidence in the administration of justice and integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in Michigan. Reimbursable losses must have occurred in the course of the lawyer-client or other fiduciary relationship between the lawyer and claimant, and must have a significant contact with Michigan.
- B. For purposes of these Rules, the term “lawyers admitted and licensed to practice law” includes lawyers admitted *pro hac vice* and lawyers recently suspended or disbarred whom clients reasonably believed to be licensed or admitted to practice at the time the dishonest conduct occurred. If the lawyer was under an order of interim suspension, suspension or revocation issued at least six months prior to the dishonest conduct, it may be presumed that the client was unreasonable in believing that the lawyer was licensed or admitted to practice law at the time of the dishonest conduct.

RULE 2—ESTABLISHMENT

- A. The Fund is established to reimburse claimants for losses that arise out of dishonest conduct that has a significant contact with Michigan committed by lawyers admitted to practice in Michigan.
- B. The Fund is under the supervision of the Board of Commissioners of the State Bar of Michigan, which shall receive, hold, manage and disburse from the Fund the monies the Fund receives through per lawyer assessments, voluntary contributions, unused judicial campaign funds and otherwise.
- C. These Rules shall be effective for claims filed with the Fund on or after January 1, 2004.

RULE 3—FUNDING AND MANAGEMENT

- A. The Supreme Court has provided for the financing of the Fund through imposition of an annual, per lawyer assessment of all Michigan lawyers, beginning with the 2003-2004 fiscal year.
- B. The Fund also receives unused judicial campaign contributions pursuant to Canon Seven (B) of the Michigan Code of Judicial Conduct, voluntary contributions and other miscellaneous contributions as appropriate.
- C. The Board of Commissioners shall:
 - 1. Take all appropriate and available measures to ensure that the Fund is financed at an amount adequate to provide for the proper payment of claims and costs of administering the Fund.
 - 2. Prudently invest such monies of the Fund that may not be needed currently to pay losses and to maintain sufficient reserves as appropriate.
 - 3. Employ adequate staff to assure the effective and efficient performance of the Fund functions and purposes.
 - 4. Retain and compensate consultants, administrative staff, investigators, actuaries, agents, legal counsel and other persons as necessary.

5. Prosecute claims for restitution to which the Fund is entitled.

RULE 4—FUNDS

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

RULE 5—THE CLIENT PROTECTION FUND COMMITTEE

A Standing Committee [Committee] of at least seven members of the State Bar of Michigan shall administer the Fund. The appointment and tenure of Committee members shall be in accordance with Article VI, Section 2 of the Bylaws of the State Bar of Michigan unless the Board of Commissioners specifically authorizes otherwise.

RULE 6—COMMITTEE MEETINGS

- A. The Committee shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.
- B. The chairperson may call a meeting at any reasonable time and shall call a meeting upon the request of at least two members.
- C. A majority of the members of the Committee shall constitute a quorum for the transaction of its business.
- D. Minutes of the meetings shall be taken and maintained.
- E. ~~Attendance at Standing Committee meetings shall normally be in person. Votes regarding claims will not be valid, if cast by telephone, letter or electronic transmission unless otherwise directed by the chairperson of the Standing Committee.~~ Any Committee member missing three consecutive meetings without an excused absence from the Chairperson shall be deemed to have resigned from the Committee and the member's seat on the Committee shall be open to appointment.

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

RULE 7—DUTIES AND RESPONSIBILITIES OF THE COMMITTEE

- A. The Committee shall have the following duties and responsibilities to:
 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—CONFLICT OF INTEREST

- A. A Committee member or Commissioner who has or has had a lawyer-client relationship or financial 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.
- B. A Committee member or Commissioner with a past or present relationship, other than as provided in Paragraph A, with a claimant or the lawyer whose alleged conduct is the subject of the claim, or who has other potential conflicts of interest, shall disclose such relationship to the Committee and the Board of Commissioners and, if the Committee and Board of Commissioners deems appropriate, that Committee member or Commissioner shall not participate in any proceeding relating to such claim.

RULE 9—ELIGIBLE CLAIMS

- A. The loss must be caused by dishonest conduct that has a significant contact with the State of Michigan and shall have arisen out of and by reason of a lawyer-client relationship or other fiduciary relationship between the lawyer and the claimant where the lawyer was admitted or licensed to practice law in Michigan at the time of the dishonest conduct or the lawyer was suspended or disbarred but whom the client reasonably believed to be licensed or admitted when the dishonest conduct occurred. If the lawyer was under an order of interim suspension, suspension, or revocation issued at least six months prior to the dishonest conduct, it may be presumed that the client was unreasonable in believing that the lawyer was licensed or admitted to practice law at the time of the dishonest conduct.
- B. The dishonest conduct upon which the claim is predicated must have been reported to either the Attorney Grievance Commission, or a law enforcement authority, or the claimant must have filed a claim in any court or tribunal having jurisdiction within two years after the dishonest act, or, if the dishonest act could not then have reasonably been discovered, within six months after the claimant did or reasonably should have discovered the dishonest conduct upon which the claim is predicated, whichever is later. A claim for reimbursable losses must be reported to a law enforcement authority by the claimant when in excess of \$20,000 or requested by Client Protection Fund staff.

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

- C. As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer ~~in~~ the nature of like theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value, including, but not limited to:
 1. Failure to refund unearned fees ~~received in advance~~ as required by Rule 1.16 of the Michigan Rules of Professional Conduct.
 2. ~~The borrowing of~~ Borrowing money from a client without ~~intention~~ the intent to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.
 3. Settling a case without the authorization and knowledge of the client, and misappropriating the settlement proceeds. In such instances the Committee may, in its

discretion, presume that the lawyer settled the case for less than full value and waives the right or is estopped from receiving a credit for the attorney's fees.

4. Receiving funds or property from a claimant client to invest ~~for purposes of investing~~ the funds or property where:
 - a. The lawyer knew the claimant client(s) had funds to invest because of information acquired through ~~an attorney-a lawyer~~ a lawyer-client relationship regardless of whether there was an on-going or existing attorney-client relationship at the time of the investment, and
 - b. The attorney possessed a higher degree of sophistication and knowledge than the claimant client or where there is a historical relationship of trust and reliance on the ~~attorney-lawyer~~ by the client, and
 - c. The investment vehicle or project:
 1. Did not exist, or
 2. The actual nature and characteristics of the investment vehicle or project differed substantially from the representations made to the claimant client regarding the investment vehicle or project, or
 3. 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.

D. Except as provided by section F of this Rule, the following losses shall not be reimbursable:

1. Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates, employers, and employees of lawyer(s) causing the losses;
2. Losses covered by any bond, surety agreement, or insurance contract to the extent covered ~~thereby~~, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;
3. Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
4. Losses incurred by any business entity controlled by the lawyer, or any person or entity described in section D(1), (2), or (3) hereof;
5. Losses incurred by any governmental entity or agency;
6. Loss of money or property paid to a lawyer for services rendered or to be rendered unless there was a failure to refund unearned legal fees or the fee was unreasonable in light of the work performed under the factors set forth in Michigan Rule of Professional Conduct 1.5 and the State Bar of Michigan Ethics Opinions regarding attorney's fees;
7. Consequential or incidental damages such as lost interest or attorney's fees or other costs incurred in seeking recovery of a loss; or
8. Losses arising from the inadequate, insufficient, or negligent rendition of services. ~~or~~

9. ~~Losses incurred by a claimant who is not the client but is merely a payor of the attorney fees are excluded unless the claimant provides proof of payment and the totality of the facts warrant payment to the claimant/payor.~~
- E. Claims are excluded if the dishonest conduct ~~acts from which they arise~~ occurred during a period when the lawyer was under an order of interim suspension, suspension, or revocation issued at least six months prior to the dishonest conduct and the client was unreasonable in believing that the lawyer was licensed or admitted to practice law at the time of the dishonest conduct.
- F. In cases of extreme hardship or special and unusual circumstances, the Committee may recommend and the Board may, in its discretion, authorize payment of a claim that would otherwise be excluded under these Rules.
- G. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

RULE 10—PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS

- A. The Committee shall prepare and approve an application form for claiming reimbursement.
- B. The form shall include at least the following information provided by the claimant under penalty of perjury:
1. The name and address of claimant, home and business telephone, occupation, and social security number;
 2. The name, address and telephone number of the lawyer alleged to have dishonestly taken the claimant's money or property, and any family or business relationship of the claimant to the lawyer;
 3. The legal or other fiduciary services the lawyer was to perform for the claimant;
 4. The amount paid to the lawyer;
 5. A copy of any written agreement pertaining to the claim;
 6. ~~Copies of any checks, money orders, receipts or other proof~~ Satisfactory evidence of payment;
 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 person, if any, to whom 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. ~~The circumstances under which the claimant has been, or will be,~~ 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); ~~along with and~~ a statement that the claimant agrees to notify the Fund of any reimbursements ~~the claimant~~ received during the pendency of the claim;
 14. ~~The existence of~~ 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, ~~together and with~~ 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.
- C. The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.
- D. No attorney shall be compensated for submitting an application or a claim except for an amount up to \$250 or as otherwise authorized by the Board.
- All members of the State Bar of Michigan are urged to give assistance to any claimant in presenting claims to the Fund without fee. Claimants are advised that, except in unusual circumstances, the assistance of any attorney may not be necessary in filing a claim since the Committee has available staff, which will investigate the underlying facts. The foregoing subparagraph shall appear prominently on the application form.
- E. The claim shall be filed with the State Bar of Michigan in the manner and place designated.

RULE 11—PROCESSING CLAIMS

- A. ~~Whenever~~ it appears that a claim is not eligible for reimbursement ~~under pursuant to~~ Rule 9, the claimant shall be notified ~~of the reasons~~ why the claim is not eligible for reimbursement, and, if appropriate, that unless additional facts to support eligibility are submitted to the Fund, the file will be closed, and that the claimant may submit a request for review of this decision ~~to by~~ the Board of Commissioners in writing within 30 days of the date of notice.
- B. An order disciplining respondent for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be conclusive evidence that the respondent committed ~~such the~~ dishonest act or conduct.
- C. The Fund will promptly notify the Attorney Grievance Commission ~~shall be promptly notified~~ of the claim and requested to furnish a report of information related to its investigation on the matter ~~to the Committee~~. The Fund will promptly notify the Attorney

Discipline Board shall be promptly notified of payment of any claim and requested to that any order include language in its orders requiring that restitution first be made directly to the Fund until the Fund is paid in full.

- D. The Committee may conduct its own investigation when it deems it appropriate.
- E. A copy of the claim shall be served by in a manner set forth in the Michigan Court Rules for service of a civil complaint ~~certified mail~~ upon the respondent at the respondent's address on file with the State Bar of Michigan, or last known address, or the respondent's representative. The respondent or representative shall have 30 days ~~in which~~ to respond or such further time as permitted by staff. If served by the certified mail and is returned "unclaimed" or "refused", ~~then~~ all future documents may be sent to respondent via first class mail. If documents are returned as undeliverable and no forwarding address can be obtained, then the Fund is exempt from mailing a copy of the claim to respondent until ~~such time as~~ a current address can be obtained or a final determination has been mailed to Claimant. If the respondent fails to ~~respond or~~ timely respond to the notice of claim, the respondent shall not be given further opportunity to respond or otherwise defend the claim, including a request for review, unless good cause is shown.
- F. The Committee may request that testimony be presented to complete the record. Upon request, the claimant or respondent, or their representatives, may be given an opportunity to be heard, the decision being within the discretion of the Committee or the Board of Commissioners.
- G. The Committee may make a finding of dishonest conduct premised upon a preponderance of evidence to determine for purposes of determining whether a claim should be approved or denied. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.
- H. When the record is complete, the claim shall be determined based upon ~~on the basis of~~ all available evidence, ~~and notice shall be given to the claimant and the respondent of the Committee's determination and the reasons therefore,~~ and the claimant and the respondent notified of the Committee's determination and its reasoning. The approval or denial of a claim ~~shall~~ requires the affirmative vote of the majority of attending Committee members, provided there is a quorum for the meeting.
- I. Rules of evidence, procedures, and witnesses do not apply to any claim proceeding. All relevant evidence ~~Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in court proceedings.~~ The claimant shall have the duty to supply relevant evidence to support the claim. Evidence of a claim may be provided by other sources such as the Attorney Grievance Commission, law enforcement, or court proceedings.
- J. The Committee may require the claimant to seek reimbursement from any other source that may be legally responsible for the loss.
- K. ~~The Committee shall determine the order and manner of payment of claims approved by the Board of Commissioners.~~ Unless the totality of the circumstances warrants otherwise, no

claim should be approved during the pendency of a disciplinary proceeding involving the same conduct alleged in the complaint.

- L. Both the claimant and the respondent shall be advised of the Committee's findings, recommendation, and reasons as soon as practicable and shall be informed of the final determination by the Board of Commissioners and the opportunity to submit a request for review.
- M. The claimant or respondent may submit a request for review in writing within 30 days of the notice of denial or determination of the amount of a claim by the Committee. Only the record established for review by the Committee may be considered in a request for review, except the Board of Commissioners, in its discretion, may consider newly discovered evidence in a request for review which by due diligence could not be reasonably discovered in time for review and determination by the Committee. If the claimant or respondent fails to make a request, the decision of the Committee is final if the Board of Commissioners fully accepts the Committee's determination as the final determination.

A timely request for review of the Committee's decision shall be submitted to the Board of Commissioners for review and a final determination. ~~The Board of Commissioners, in its discretion, may consider newly discovered evidence in a request for review which by due diligence could not be reasonably discovered in time for review and determination by the Committee.~~

A de novo standard of review shall apply to a request for review. The requestor must show by a preponderance of the evidence that the decision was incorrect.

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

RULE 12—PAYMENT OF REIMBURSEMENT

- A. The Board of Commissioners may ~~from time to time fix~~ establish a maximum amount of reimbursement that is payable by the Fund.
- B. The maximum amount payable by the Fund due to any incident or series of incidents constituting the execution of a coordinated plan or system of fraud against a single claimant; and the maximum payable to any claimant because of the dishonesty of a single lawyer or group of lawyers acting in collusion, shall be \$150,000. A "Claimant" for this purpose may be taken to mean any group of persons who shall have a mutual or common interest in the relationship with the lawyer, even though each member of such group may separately sustain a loss, as with corporations, partnerships, associations, estates of decedents, and persons having mutual, common or joint interests in property.
- C. The aggregate maximum amount for which the Fund shall reimburse losses as the result of the dishonesty of a single lawyer or group of lawyers acting in collusion is \$375,000. Whenever it appears to the Fund that claims may exceed this limit, additional claims against the lawyer or lawyers shall not be paid for two years following the filing of the initial claim

against the lawyer or lawyers. The claims that have been processed and those approved by the Committee and not yet paid are, if necessary, apportioned on a pro-rata basis so that the total payments do not exceed \$375,000 using the following calculation:

Individual claim amount loss = % of maximum limit to be paid on claim
Total amount lost

However, the maximum amount payable to a single claimant may not exceed \$150,000.00, if so, the percentage awarded to that claimant is set at 40% or \$150,000.00 and the remainder of the funds are pro-rated between the remaining claimants.

- D. If a claimant is a minor or an incompetent, the reimbursement may be paid to any person or entity authorized to receive the reimbursement for the benefit of the claimant.
- E. The Board of Commissioners may approve payment of a claim at an amount that exceeds the maximum limits where the totality of the circumstances, in light of the purposes and policies of the Fund, warrants doing so.
- F. Payments shall be made in such amounts and at such times as the Committee or staff recommends and the Board of Commissioners deems appropriate, and may be paid in lump sum or installment payments.

RULE 13—REIMBURSEMENT FROM FUND IS A MATTER OF GRACE

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

RULE 14—REIMBURSEMENT, RESTITUTION AND SUBROGATION

- A. A lawyer whose dishonest conduct results in reimbursement to a claimant may be liable to the Fund for restitution and the ~~Board of Commissioners may authorize the initiation of State Bar of Michigan may initiate~~ an action seeking reimbursement.
- B. A lawyer whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund including interest and the expense incurred by the Fund in collection reimbursement. A lawyer's failure to make satisfactory arrangement for restitution may be cause for suspension, disbarment, or denial of an application for reinstatement.
- C. As a condition of reimbursement, and to the extent of the reimbursement provided by the Fund, a claimant shall be required to provide the Fund with a transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss, unless the Board of Commissioners decides otherwise.
- D. To the extent the claimant has sustained a loss in excess of the amount of reimbursement received from the Fund, the claimant shall be entitled to participate in any action commenced by the State Bar of Michigan pursuant to the subrogation rights received by the Fund's reimbursement to the claimant. Upon commencement of an action by the State Bar of Michigan as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.
- ~~E. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the Fund of such action.~~

- F. The claimant shall be required to agree to cooperate in all efforts that the State Bar of Michigan undertakes to achieve restitution for the Fund, and to repay the Fund if claimant is subsequently reimbursed from another source in an amount that exceeds the difference between the amount of total loss identified by the Fund and the Fund award. Such repayment shall not exceed the amount of the Fund award, unless the Board of Commissioners decides otherwise.
- G. The Fund may undertake all reasonable efforts to pursue subrogation rights assigned to the Fund. The Fund is authorized to obtain necessary services to pursue such subrogation rights including legal services, and to pay reasonable fees for those services. The normal legal and equitable principles regarding subrogation actions shall apply to the State Bar of Michigan's efforts to recoup the amount paid to the claimant.
- H. While all fees and costs, including attorney fees, incident to prosecution of subrogation rights shall be paid by the Fund, any recovery obtained by the Fund shall first be used to reimburse the Fund for such fees and costs, including attorney fees and second, to reimburse the Fund for the amount paid to claimant. The remainder of any recovery received by the Fund shall be paid to the claimant unless the Fund has unreimbursed claims from other claimants that involve the same attorney. In such an instance, the distribution and division of the excess recovery between the State Bar of Michigan and claimant shall be subject to negotiation between the parties, and subject to Board of Commissioners approval.
- I. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the State Bar of Michigan of such action.
- J. The Committee or staff may make a recommendation to the Board of Commissioners that subrogation not be pursued or, pursued in a fashion that deviates from these rules when the totality of the circumstances warrant.

RULE 15—CONFIDENTIALITY

- A. Claims, proceedings, and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement ~~to the claimant~~, except as provided below or unless provided otherwise by law. After payment of the reimbursement, the Fund may publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer, ~~if convicted or disciplined for the same matter~~. The name and address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant. A protective order will be sought to preserve confidences of the claimant where appropriate.
- B. This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of ~~the lawyer or the~~ parties or the use of such information is necessary to pursue the Fund's subrogation rights.

RULE 16—AMENDMENTS TO THE RULES

- The Committee may, by majority vote, recommend to the Board of Commissioners amendments to these Rules and the Board may amend these Rules at any time.

SBM

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