



Board of Commissioners

Agenda and Materials

January 26, 2018

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
FRIDAY, JANUARY 26, 2018
MICHAEL FRANCK BUILDING
LANSING, MI
9:30 A.M.
AGENDA

State Bar of Michigan Statement of Purpose

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

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

Finance Committee Meeting.....	Room 1
Professional Standards Committee Meeting.....	Hudson Room
Communications and Member Services Meeting No Meeting Scheduled	Room 3
Public Policy Meeting.....	Room 2

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

CONSENT AGENDA

- II. **Minutes**
- A. November 17, 2017 Board of Commissioners*
 - B. November 8, 2017 Executive Committee meeting*
 - C. December 12, 2017 Executive Committee meeting*
- III. **President’s Activities**.....Donald G. Rockwell, President
- A. Recent Activities*
- IV. **Executive Director’s Activities**.....Janet K. Welch, Executive Director
- A. Recent Activities*
- V. **Finance**.....Dana M. Warnez, Chairperson
- A. FY 2017 Audited Financial Report**
 - B. FY 2018 Financial reports through December 2017*
- VI. **Section Bylaw Amendments**.....Darin Day, Director of Outreach and Constituent Development
- A. Judicial Section Bylaw Amendment*

COMMISSIONER COMMITTEES

- VII. **Finance**.....Dana M. Warnez, Chairperson
- A. FY 2018 Financial and Investment Update
- VIII. **Audit Committee Update**.....Dana M. Warnez, Chairperson
- A. FY 2017 SBM Annual Financial Report**
 - B. Report on the FY 2017 Audit from Auditing Firm – Andrews Hooper Pavlik PLC

- IX. **Professional Standards** Robert J. Buchanan, Chairperson
 - A. Payee Notification System*
- X. **Communications and Member Services**Dennis M. Barnes, Chairperson
- XI. **Public Policy**.....Jennifer M. Grieco, Chairperson
 - A. Court Rules**
 - B. Legislation**
 - C. Model Jury Instructions**
 - D. MIDC Standard**

SBM STRATEGIC PLAN - STEERING COMMITTEES

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

LEADERSHIP REPORTS

- XIII. **President’s Report**.....Donald G. Rockwell, President
- XIV. **Executive Director’s Report**Janet K. Welch, Executive Director
 - A. SBM Year in Review
 - B. Lawyer Referral Services Update
 - C. Florida Bar Association Request
 - D. SBM Building Closure Update
 - E. Economics of Law Practice
- XV. **Representative Assembly Report**Joseph P. McGill, Chairperson
 - A. April 21, 2018 meeting

OTHER REPORTS

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

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

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

***Materials included with agenda**

**** Materials delivered or to be delivered under separate cover or handed out**

#Materials that can be found on the confidential SBM Board Webpage

President Rockwell called the meeting to order at 9:40 a.m. on November 17, 2017 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson

David C. Anderson

Dennis M. Barnes, Vice-President

Joseph J. Baumann

Robert J. Buchanan, Secretary

Hon. Clinton Canady III

B.D. "Chris" Christenson

Richard L. Cunningham

Syeda F. Davidson

Shauna L. Dunning

Andrew F. Fink III

Robert C. Gardella

Jennifer M. Grieco, President Elect

Edward L. Haroutunian

Krista L. Haroutunian

Michael S. Hohaus

Kara R. Hart-Negrich

James W. Heath

E. Thomas McCarthy Jr.

Joseph P. McGill

Hon. Maureen M. McGinnis

Hon. David A. Perkins

Victoria A. Radke

Hon. Michael J. Riordan

Donald G. Rockwell, President

Gregory L. Ulrich

Dana M. Warnez, Treasurer

Erane C. Washington

Commissioners absent and excused:

Aaron V. Burrell

Shenique A. Moss

Jules B. Olsman

Daniel D. Quick

Brian D. Shekell

State Bar Staff present:

Janet Welch, Executive Director

Marge Bossenbery, Executive Coordinator

Gregory Conyers, Director, Diversity

Candace Crowley, Assistant Executive Director and Director, External Development

Peter Cunningham, Assistant Executive Director and Director, Governmental Relations

Darin Day, Director, Outreach and Constituent Development

Cliff Flood, General Counsel

Danon Goodrum-Garland, Director, Professional Services Division

Kathryn Hennessey, Public Policy Counsel

Nkrumah Johnson-Wynn, Assistant General Counsel

James Horsch, Director, Finance and Administration Division

Robert Mathis, Pro Bono Service Counsel

Samantha Meinke, Communications Manager

Laurin' Roberts Thomas, Assistant Counsel, LRS/UPL

Alecia Ruswinckel, Assistant Counsel, CPF/Ethics

Anne Vrooman, Director, Research and Development

Guests

Jennifer Bentley, Executive Director, Michigan State Bar Foundation
David Watson, Executive Director, Institute for Continuing Legal Education

Consent Agenda

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

The Board received the minutes from the September 27, 2017 Board of Commissioners meetings.
The Board received the minutes from the September 12 and October 12, 2017 Executive Committee meetings.

The Board received the recent activities of the President.

The Board received the recent activities of the Executive Director.

The Board received the FY 2017 Draft Financial Reports through September 30, 2017.

The Board received the Financial Safety Margin Calculation.

The Board received the District Character & Fitness Committee Appointments.

The Board received the Client Protection Fund Claims.

The Board received the Unauthorized Practice of Law Claims.

The Board received Bylaw Amendments from the Environmental Law and Marijuana Law Sections.

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

Recognition of Outgoing Commissioner Pero

Commissioner Riordan recognized Ms. Collen Pero for her time on the Board of Commissioners.

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez informed the Board that the Audit Committee had completed their audit and that the SBM Audit Committee met with the auditors to review their findings. She reported that the auditors will attend the January Board meeting and present the results to the entire Board.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez introduced Mr. Horsch to review the FY 2017 financial results with the Board. Mr. Horsch provided a PowerPoint presentation of the 2017 financial results and trends.

Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes provided the Board with a summary of the 2017 SBM NEXT Conference. Attendance was excellent, with the highest attendance the annual meeting has seen in 17 years, up over 20 percent.

Professional Standards, Robert J. Buchanan, Chairperson

A motion was offered and supported to appoint Mr. Thomas Rombach as a State Bar delegate to the ABA House of Delegates due to a mid-year vacancy. The motion was approved.

Public Policy, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

Court Rules

ADM File No. 2002-37 – Proposed Rules Related to E-Filing and Electronic Records

The amendments in this proposal are intended to begin moving trial courts toward a statewide uniform e-Filing process. The rules are required to be in place to enable SCAO's e-Filing vendor to begin programming the statewide solution. In addition, the proposal would move existing language into MCR 1.109 as a way to, for the first time, include most filing requirements in one single rule, instead of scattered in various rules. The proposal largely mirrors the administrative orders that most e-Filing pilot projects have operated under, but contains some significant new provisions. For example, courts would be required to maintain documents in an electronic document management system, and the electronic record would be the official court record.

A motion was offered and supported to support this proposed court rules related to e-filing and electronic records with the amendments provided by the committees and sections; staff is to prepare a chart for inclusion in the letter to the Court. The motion was approved.

ADM File No. 2014-29 – Proposed Alternative Amendments of MCR 2.602

The proposed amendments of MCR 2.602(B) would provide procedural rules regarding entry of consent judgments. Alternative A was submitted by the Representative Assembly of the State Bar of Michigan and was previously published for comment. Alternative B was developed by the Michigan District Judges Association and the Michigan Creditors Bar Association as an alternative to the published version.

A motion was offered and supported to instruct the staff to work with the proponents of the original court rule amendment (Alternative A) to draft a new Alternative C that encompasses elements of both Alternative A and B. The motion was approved.

Proposed Amendments to Local Rules 5.3 Civil Material Filed Under Seal

A motion was offered and supported to support this proposed court rule amendment with the amendments from the US Courts Committee. The motion was approved.

Legislation

HB 4754 (Barrett) Courts; jurisdiction; inter-circuit concurrent jurisdiction plan; authorize. Amends secs. 401, 405, 841 & 8304 of 1961 PA 236 (MCL 600.401 et seq.) & adds sec. 403.

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

A motion was offered and supported to support this bill with an amendment addressing the training needs for specialty courts. The motion was approved.

HB 4797 (Gay-Dagnogo) Courts; juries; jury pool selection; provide for municipality wide jury pool under certain circumstances. Amends sec. 1301b of 1961 PA 236 (MCL 600.1301b).

A motion was offered and supported that this legislation is Keller permissible because it relates to the improvement in the functioning of the courts. The motion was approved.

A motion was offered and supported to take no position on this legislation, but to allow staff to work with the bill's sponsor with the possibility of forming a task force to look into the issue of obtaining a more representative jury pool.

HB 5073 (Kesto) Civil procedure; alternate dispute resolution; procedures for mediation and case evaluation of civil actions; revise. Amends heading of ch. 49 & secs. 4901, 4903, 4905, 4907, 4909, 4911, 4913, 4915, 4917, 4919, 4921 & 4923 of 1961 PA 236 (MCL 600.4901 et seq.); adds sec. 4902 & repeals ch. 49A of 1961 PA 236 (MCL 600.4951 - 600.4969).

A motion was offered and supported that this legislation is Keller permissible because it relates to the improvement in the functioning of the courts and the availability of legal service to society. The motion was approved.

A motion was offered and supported to oppose this bill because the subject matter should be addressed in court rule, not legislation. The motion was approved.

Model Criminal Jury Instructions

M Crim 12.2, 12.3, 12.5, 12.6, and 12.4a

The Committee proposes amending several controlled substances instructions, M Crim JI 12.2, 12.3, 12.5 and 12.6, and adding a new instruction, M Crim JI 12.4a, to accommodate a change in the law announced in *People v Robar*, ___ Mich App ___ (2017), holding that the burden of burden of persuasion was on a defendant to prove an exemption to the Controlled Substances Act. Deletions from the current instructions are struck-through; additional language is underlined. This matter was tabled.

M Crim JI 12.9

The Committee proposes a new jury instruction, M Crim JI 12.9, for a "§ 8 defense" to possession of marijuana charges in MCL 333.26428, pursuant to *People v Hartwick*, 498 Mich 192 (2015). The instruction is entirely new. This matter was tabled.

M Crim 13.1, 13.2, and 13.5

The Committee proposes amending the resisting arrest instructions, M Crim JI 13.1, 13.2, and 13.5, to accommodate changes in the law announced in *People v Moreno*, 491 Mich 38 (2012), *People v Quinn*, 305 Mich App 484 (2014), and *People v Vanderberg*, 307 Mich App 57 (2014), regarding resistance to unlawful police conduct, and to improve the instructions' readability. Deletions from the current instructions are struck-through; additional language is underlined. A motion was offered and supported to support this proposed criminal jury instruction. The motion was approved.

M Crim 15.23, 15.24, and 15.25

The Committee proposes new instructions, M Crim JI 15.23, 15.24, and 15.25, for violations of MCL 257.904(2) and (7), permitting another person to drive the defendant's car while the other person's license was suspended (and causing serious injury or death). A motion was offered and supported to support this criminal jury instructions. The motion was approved.

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson

Mr. Barnes reported that the next steering committee meeting will be on February 7. He provided an update on the activities of the committees and workgroups.

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

Ms. Warnez reported that the committee has met a few times since September and that efforts are moving along as expected. She reported on the activities of the committee and workgroups and informed the board that the next steering committee meeting will take place in January.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson

Mr. Buchanan reported that the committee met in October, will meet again in March, and reported on the activities of some of the committees and work groups. He reported that there was good discussion by the committee and helpful suggestions.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the steering committee met in October and formed three sub groups to make recommendations on improvements in how the Bar handles public policy. She informed the board that the subgroups are: Timely & Responsive Public Policy Positions, Communicating Public Policy Issues to Members, and Proactive Public Policy. She reported that all three sub groups met in November and have follow-up meetings planned in December and January.

President's Report, Donald G. Rockwell, President

Upper Peninsula Meetings

Mr. Rockwell reported that the meetings that he attend with bar associations in the Upper Peninsula were well received. He stated that Ms. Radke attended the meetings with him and said that it is apparent that she is well respected among the attorneys in the UP.

Great Rivers Bar Leaders Conference

Mr. Rockwell reported that he, Ms. Grieco, and Ms. Welch attended the Great Rivers Bar Leaders Conference in Santa Fe and that the information provided by the other states is always useful and enlightening.

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

IILACE Conference

Ms. Welch reported on her participation in the International Institute of Law Association Chief Executives (IILACE) annual conference in London.

Lawyer Referral Service

Ms. Welch informed the Board that the Lawyer Referral Steering Committee will meet this afternoon after the Board meeting. The focus of the agenda will be the Modest Means Program that will be implemented early in the new year. Ms. Welch asked Ms. Vrooman to provide the Board with an update of the steering committee's work. Ms. Vrooman reported that the committee is continuing to progress with the build of the Lawyer Referral Services platform, developing the administrative tools for tracking, monitoring, automated notices, and reports. She and Ms. Laurin Thomas attended the ABA Lawyer Referral Services Conference in Portland, Oregon. She reported that it very worthwhile as they had the opportunity to learn how other bar associations are making changes to their programs as technology changes.

Access to Justice (ATJ) Update

Ms. Welch introduced Ms. Bentley who provided the Board with information regarding the decline in fundraising for the Access to Justice Campaign compared to other states. She reported that Michigan is well below the national average for fundraising for legal aid, and outlined strategies for improvement. She informed the Board that the new ATJ Coordinator, funded in part by SBM, would begin in January.

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

Mr. McGill reported that the RA is implementing a review of the civil discovery rule proposal developed by an SBM task force, in preparation for the proposal's consideration at the April meeting. Commissioners Dunning and Warnez have been recruited and agreed to serve on RA committees. The RA's goal is to be more representative and more involved throughout the year in order for the RA to better achieve its mission.

American Bar Association (ABA) Report

Mr. Ulrich provided the report, including observations about changes being considered by the ABA in response to financial pressures, including the possible elimination of the midyear meeting.

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

Ms. Davidson updated the Board on the activities of the YLS.

Comments from Commissioners

There were none.

Adjournment

The meeting was adjourned at 12:45 p.m.

State Bar of Michigan
Executive Committee Conference Call
Wednesday, November 8, 2017
3:30 p.m.

Call to Order: President Rockwell called the meeting to order at 3:33 p.m.

Members Present: President Donald G. Rockwell, President-Elect Jennifer M. Grieco, Treasurer Dana M. Warnez, Representative Assembly Chair Joseph P. McGill, Representative Assembly Vice-Chair Richard L. Cunningham, and Commissioners Shauna L. Dunnings, James W. Heath, and E. Thomas McCarthy Jr.

Members Absent: Vice President Dennis M. Barnes and Secretary Robert J. Buchanan.

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

Approval of October 12, 2017 meeting minutes

A motion was made and seconded to approve the October 12, 2017 Executive Committee meeting minutes. The motion passed.

President's Report

President Rockwell reported on his recent and upcoming visits and activities, and noted his attendance at the Lapeer County Bar Association meeting, Justice Wilder's investiture, a board orientation planning meeting, the Oakland County Bar Association meeting where Ms. Grieco received an award, and a brief report on the Great Rivers bar leader conference. He also noted his planned attendance at tonight's mid-Michigan Women Lawyers of Michigan meeting where Ms. Welch will be receiving an award, the President's reception for past SBM president Nolan that will be held on November 9, and the BOC orientation session that will be held on November 16.

Board Orientation

A proposed orientation agenda and speaker were discussed and agreed upon. Ms. Cheryl Ronk, CEO of the Michigan Society of Association Executives will be speaking on the roles of the BOC and staff, and related topics.

Representative Assembly Chair's Report

Representative Assembly Chair McGill reported on significant activity and thanked staff for assisting with plans for the RA's consideration of the work product of the Civil Discovery Court Rule Review Special Committee.

The RA committee structure will handle the civil discovery rules and a third meeting of the Representative Assembly will not be used for this purpose. He also reported on a teleconference with the RA chairs and a teleconference with the nominating chair. Open seats are being filled quickly. He is still working on forming a special outreach committee. The charge to RA chairs and committee members is to agree upon goals and milestones for the year.

Executive Director's Report

Ms. Welch reported on two conferences she recently attended: the Great Rivers bar leader conference and the International Institute of Law Association Chief Executives (IILACE) held at the Inns of Court in London. Highlights from the Great Rivers conference included discussion of a substantial declining membership trend in voluntary bars, how state bars can move from simply sharing good ideas to actual collaboration, how governing bodies operate within bars, and the hearing before the Wisconsin Supreme Court that would potentially change the mandatory Wisconsin Bar's funding. Highlights from the IILACE meeting focused on how and to what extent bar associations and regulatory bodies should voice support on matters affecting the rule of law, and on the changing role of bar associations given changes in the practice of law in the 21st century.

Mr. Horsch reported on the dues activity so far this year and provided a FY 2017 financial results update. The SBM is slightly ahead in dues collections compared to last year and significantly more members are paying dues on-line compared to last year. About 94% of members impacted by the online dues payment problem in September have paid, and we are following up with the remainder. We finished the year ahead of budget and the auditors are on-site for the annual audit.

Mr. Conyers reported on attending the Michigan Muslim Bar Association scholarship meeting on October 25th in Dearborn with Ms. Warnez. The SBM received a recognition award from the Muslim Bar. He also reported on the second annual Face of Justice program held on October 30 at the Hall of Justice in Lansing. Lansing high school students were introduced to potential careers in the legal system. Ms. Dunnings participated as a mentor. The conference was well attended.

Strategic Plan Update

Steering committee chairs provided a brief update:

Communications and Member Services Steering Committee – Mr. Barnes was not present to report.

Implementation and Innovation Steering Committee - Ms. Warnez reported on committee meetings held, including the conference call on October 30. The committee has identified 8 projects for high priority.

Professional Standards Steering Committee - Mr. Buchanan was not present to report

Public Policy Steering Committee - Ms. Grieco reported that three subgroups are looking at three separate issues. A conference call was held on October 30, and conference calls are scheduled for November 13, November 16, and December 4.

November 17, 2017 Board of Commissioners Meeting Agenda

The EC reviewed the proposed agenda. Ms. Welch discussed recent changes to the agenda and a proposal to add a strategic plan update item that would be reported on by each steering committee chair (similar to the EC agenda item). This new item would elevate the importance of the strategic plan and provide a structured approach to reporting on strategic plan updates. The group discussed the placement of this item on the agenda. Mr. Rockwell explained that it is important to have the strategic plan in front of the BOC at each meeting. The group agreed it was a great idea and Ms. Welch suggested that staff provide a mock-up of the proposal for input

A motion was made and seconded to approve the agenda as presented with authorization to include a strategic plan update item on the agenda. The motion passed.

Other

Nothing to report.

Adjournment

There being no further business for the Executive Committee, President Rockwell adjourned the meeting at 4:24 PM.

Submitted by James C. Horsch
December 6, 2017

State Bar of Michigan
Executive Committee Conference Call
Tuesday, December 12, 2017
3:30 p.m.

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

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

Members Absent: None

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

Approval of November 8, 2017 meeting minutes

A motion was made and seconded to approve the November 8, 2017 Executive Committee meeting minutes. A correction to a name was noted. The motion passed. President Rockwell clarified that there is no requirement for excused absences for Executive Committee meetings.

President's Report

President Rockwell reported on his recent and upcoming visits and activities, and congratulated President-Elect Grieco for being recognized as a most Notable Woman Lawyer in Michigan for 2017 by Crain's Detroit.

Representative Assembly Chair's Report

Representative Assembly Chair McGill reported that the civil discovery rules proposal is in the process of final review and will be submitted by the January 1, 2018 RA submission deadline. Mr. McGill and Ms. Welch discussed a plan for RA and BOC leaders to meet in January to further refine and clarify roles, mission, and authority. He also noted that the Nominations Subcommittee will be holding a special election to fill vacancies in the 3rd and 6th circuits because there are more nominees than seats.

Executive Director's Report

Ms. Welch reported on the ADR section's response to the position adopted by the Board at its November meeting on HB 5073, which the section supported. As a result of the Board's action, the section is no longer able to advocate in support of the bill. The section questioned the process and reasoning that led to the Board action. Two EC members, as well as Ms. Welch, had discussions with the section chair on this matter.

Mr. Horsch reported on the dues statistics and the progress of the annual financial audit. A total of 92.2% have paid their dues and 63.8% have paid on-line. There have been no audit issues raised thus far.

Ms. Welch reported that a law school deans meeting is being organized in January and noted there is money available from the Michael Franck Fund established within the Michigan State Bar Foundation upon Michael Franck's death, to be used for purposes that would honor his legacy. This fund has not been used since it was established. She suggested that the fund could be used to conduct a high-level national ethics symposium biennially, hosting of which could be rotated among interested Michigan law schools. A promising topic would be a recent amendment to the ABA model rules of professional conduct addressing discriminatory behavior. (SBM's Ethics Committee has been discussing the model rule change.) Mr. Rockwell supported the symposium concept and asked Ms. Welch to come up with a proposal to discuss with the law school deans. Please note: Contrary to information transmitted at this meeting, the fund resides with the MSBF, and has not been transferred to the Michigan Supreme Court Historical Society.

Ms. Welch also reported on the impending State Bar building closure between the Christmas and New Year's Eve holidays and how emergency calls would be handled.

Strategic Plan Update

Steering committee chairs provided a brief update:

Communications and Member Services Steering Committee – Mr. Barnes reported that the next steering committee meeting will be on February 7. He provided an update on the activities of all of the committees and workgroups.

Implementation and Innovation Steering Committee - Ms. Warnez reported that efforts are moving along as expected. She provided an update on the activities of all the committees and workgroups. The next steering committee meeting will be on January 23, 2018.

Professional Standards Steering Committee - Mr. Buchanan reported that steering committee meetings are scheduled for March 8, 2018 and April 4, 2018. He provided an update on the activities of several workgroups.

Public Policy Steering Committee - Ms. Grieco reported on the activities of the public policy workgroups.

YLS Federal Bar Association's New Lawyers' Seminar Sponsorship

Mr. Flood explained the rationale for the \$500 sponsorship proposed from the YLS for the second annual New Lawyers' Seminar to be held on December 5 and 6, 2017, in partnership with the U.S. District Court for the Eastern District of Michigan and the Federal Bar Association. After discussion, a motion was made and seconded to approve the sponsorship. The motion passed.

Public Policy

- **ADM File No. 2014-29 – Proposed Amendments to MCR 2.602**

Ms. Grieco reviewed the background of the proposed amendments. She reported that at the last BOC meeting, the Board had directed SBM staff to work with the original proponents of the proposal to craft an "Alternative C" that combined Alternatives A & B. Staff worked with Dan Quick and Karen Safran of the Civil Procedure and Courts committee to develop Alternative C. A motion was made and seconded to approve Alternative C of the proposal, after correction of a typo. After discussion, the motion passed.

- **ADM File No. 2002-37 – Proposed Rules Related to E-filing and Electronic Records**

Ms. Grieco reviewed the background of the proposed amendments. She reported that after the Board had adopted a position on the ADM File at the November BOC meeting, the Appellate Practice Section submitted a position. A motion was made and seconded to add the Appellate Practice position to the SBM position. After discussion, the motion passed.

- **M Crim JI 12.2, 12.3, 12.5, 12.6, and 12.4a**

Ms. Grieco reviewed the background of the proposal. A motion was made and seconded to adopt the Criminal Jurisprudence and Practice Committee recommendation. After discussion, the motion passed.

- **M Crim JI 12.9**

Ms. Grieco reviewed the background of the proposal. A motion was made to adopt the Criminal Jurisprudence and Practice Committee recommendation. After discussion, the motion passed.

Other

Mr. Conyers requested approval of funding for up to \$1,500 for the Co-chair of the Diversity and Inclusion Committee, Judge Stephens, to attend the mid-year meeting of the National Consortium on Racial & Ethnic Fairness in the Courts during January 12 and 13, 2018, in Miami, Florida. A motion was made and seconded to approve the request. The motion passed.

Adjournment

The next Executive Committee conference call will be on Tuesday, January 9, 2018 at 3:30 p.m. President Rockwell wished everyone happy holidays. There being no further business for the Executive Committee, President Rockwell adjourned the meeting at 4:38 p.m.

Submitted by James C. Horsch
January 5, 2018

III. President's Activities

**President Donald G. Rockwell
Calendar of Events
November 18, 2017 through January 26, 2018**

Date	Event	Location
December 6	Downriver Bar Association Holiday Party	Detroit
December 6	Eastern District – Federal Bar Association Holiday Party	Detroit
December 7	Oakland County Bar Association Holiday Gala	Birmingham
December 9	Italian American Bar Association Holiday Party	Troy
December 15	Black Women Lawyers Association of Michigan Annual Holiday Sip	Detroit
December 21	D. Augustus Straker/Wolverine Bar Associations Holiday Party	Detroit
January 11	Annual Flint Citywide Martin Luther King Tribute Dinner	Flint
January 16	MSU Law School Class Presentation	East Lansing
January 19	Wayne State University Law School Professionalism in Action Program	Detroit
January 25	Policy and Governance Retreat	Lansing
January 26	SBM Board of Commissioners meeting	Lansing

**IV. Executive Director's
Activities**

**Executive Director Janet K. Welch
Calendar of Events
November 17, 2017 through January 26, 2018**

Date	Event	Location
November 27	Meeting with Cloud Law Representatives	Lansing
November 30	Conference call with Andrea Sinner, Director ABA Commission of the Future of Legal Education	Lansing
November 30	Conference call with Jennifer Lewin, Director Division for Bar Services, American Bar Association	Lansing
December 1	Meeting with Judge Michelle Rick	Lansing
December 4	Capitol Club	East Lansing
December 5	Conference call with Angela Tripp Michigan Poverty Law Program	Lansing
December 6	Conference call with Alan Gershel Grievance Administrator, Attorney Grievance Commission	Lansing
December 7	Meeting with Jennifer Grieco SBM President-Elect	Birmingham
December 7	Oakland County Bar Association Holiday Gala	Birmingham
December 12	Conference call with Jennifer Grieco, Public Policy Steering Committee Chair	Lansing
December 13	Conference Call with David Watson Executive Director, ICLE	Lansing
December 13	Conference call International Institute of Law Association Chief Executives (IILACE) 2018 program committee	Lansing
December 13	Conference call with Elizabeth Parker State Bar of California	Lansing
December 14	Conference Call with Legal Talk Network on launch of SBM Podcast "On Balance"	Lansing
December 14	SBM Staff Holiday Luncheon	Lansing
December 15	Meeting with Rob Buchanan SBM Secretary	Grand Rapids
December 18	Presentation to Trial Court Funding Commission	Lansing

Date	Event	Location
December 19	Meeting with Dean Phyllis Crocker University of Detroit Mercy Law School	Detroit
December 19	Meeting with Dennis Barnes SBM Vice President	Detroit
December 20	Integrated Tech Committee meeting	Lansing
December 22 –January 1	On call for SBM calls during building closure	East Lansing
January 2	Cloud Law conference call	Lansing
January 4	Meeting with Bob Gillett, Executive Director Michigan Advocacy Program	Ann Arbor
January 8	Capitol Club	East Lansing
January 9	2018 Committee Liaisons meeting	Lansing
January 10	Meeting with Bruce Neckers, former SBM President	Lowell
January 11	Conference call Cloud Law annual business meeting	Lansing
January 15	Conference call International Institute of Law Association Chief Executives (IILACE) 2018 program committee	Lansing
January 16	2018 SBM Committee Appointment meeting	Lansing
January 18	Meeting with Chief Justice Stephen Markman	Lansing
January 18	Delivery of Legal Services for All Committee meeting	Lansing
January 19	Judicial Council meeting	Lansing
January 19	Michigan Probate Judges Association meeting	Lansing
January 22	Capitol Club	East Lansing
January 23	MI Supreme Court Public Administrative Hearing	Lansing
January 23	Meeting with Justice Brian Zahra	Lansing
January 23	I & I Steering Committee meeting	Lansing
January 25	Policy and Governance Retreat	Lansing
January 26	State Bar of Michigan Board of Commissioners Board Meeting	Lansing

FY 2018 Financial Dashboard

Results as of the three months ended December 31, 2017

	FY 2018		FY 2018 Budget		Last Year		Actual vs last yr		Comments
	Year-to-Date	YTD Budget	YTD Variance	YTD Actual	YTD Actual	Variance	Variance		
<u>Administrative Fund</u>									
Operating Revenue	\$2,326,247	\$2,377,825	(\$51,578)	\$2,311,440	\$2,311,440	\$14,807	Better than budget and higher than last year		
Operating Expense	\$2,670,140	\$2,777,045	(\$106,905)	\$2,504,624	\$2,504,624	\$165,516	Better than budget and higher than last year		
Investment Income	\$39,935	\$32,500	\$7,435	\$26,754	\$26,754	\$13,181	Better than budget and higher than last year		
Change in Net Position	(\$303,958)	(\$366,720)	\$62,762	(\$166,430)	(\$166,430)	(\$137,528)	Better than budget and lower than last year		
Net Position	\$11,973,917	\$11,911,155	\$62,762	\$12,430,344	\$12,430,344	(\$456,427)	Better than budget; lower than last year		
Cash & Investments (Excluding Sections and CPF)	\$13,154,959	N/A	N/A	\$13,265,931	\$13,265,931	(\$110,972)	Decrease from last year		
Investment Rate of Return	1.21%	N/A	N/A	0.63%	0.63%	0.78%	Better than last year - higher rates and fund mgt		
<u>Client Protection Fund</u>									
Change in Net Position	(\$258,657)	N/A	N/A	(\$134,000)	(\$134,000)	(\$124,657)	Lower than last year - higher claims		
Net Position	\$1,980,925	N/A	N/A	\$2,290,701	\$2,290,701	(\$309,776)	Decrease from last year - higher claims		
<u>SBM Retiree Health Care Trust</u>									
Change in Net Position	\$114,788	N/A	N/A	\$65,285	\$65,285	\$49,503	Increase over last year		
Net Position	\$2,885,966	N/A	N/A	\$2,509,780	\$2,509,780	\$376,186	Increase over last year		
<u>Membership</u>									
Members in Good Standing									
- Active	42,362	N/A	N/A	42,126	42,126	236	0.6% Active Member growth		
- Inactive	1,242	N/A	N/A	1,316	1,316	(74)	(0.6%) Inactive Member growth		
- Emeritus	2,141	N/A	N/A	1,939	1,939	202	10.4% Emeritus Member growth		
- Total	45,745	N/A	N/A	45,381	45,381	364	0.8% Total Member growth		
Active members as a percent of total	92.6%	N/A	N/A	92.8%	92.8%	-0.2%	Decrease from last year		
New Members	511	N/A	N/A	489	489	22	Increase over last year		

State Bar of Michigan Financial Results Summary

3 Months Ended December 31, 2017

Fiscal Year 2018

Administrative Fund

Summary of YTD December 31, 2017 Actual Results

For the three months ended December 31, 2017, the State Bar had an Operating Loss of \$343,893 and Non-Operating Income of \$39,935, for a decrease in Net Position of \$303,958 so far in FY 2018. Net Position as of December 31, 2017 totaled \$11,973,917.

YTD Variance from Budget Summary:

YTD Operating Revenue - \$51,578 unfavorable to YTD budget, or 2.2%

YTD Operating Expense - \$106,905 favorable to YTD budget, or 3.8%

YTD Non-Operating Income - \$7,435 favorable to YTD budget, or 22.9%

YTD Change in Net Position - \$62,762 favorable to YTD budget

YTD Key Budget Variances:

YTD Operating Revenue variance - \$51,578 unfavorable to budget:

- Operating revenue was unfavorable to budget in Member & Communication Services by \$24,430, or 13.4%, due primarily to Bar Journal advertising and to a lesser extent, Print Center, Internet advertising, Endorsed Services revenue, and other; in Professional Standards by \$29,997, or 23.1%, due primarily to C&F fees (due to timing of the C&F fee increase) and LRS fees; partially offset by a favorable variance in Dues & Related and Other Revenue totaling \$2,849, or 0.1%.

YTD Operating Expense variance - \$106,905 favorable to budget:

- Salaries and Employee Benefits/ Payroll Taxes - \$38,986 favorable - (2.4%)
 - Underage due to vacancies and in benefits and payroll taxes. Benefits under primarily due to health care expense.
- Non-Labor Operating Expenses - \$67,919 favorable - (6.0%)
 - Exec Offices - \$24,046 favorable - (8.7%) - Primarily Executive Office, R&D, JI programs, Outreach, HR, and General Counsel – some timing.
 - Finance & Admin - \$16,306 unfavorable - (4.1%) – Primarily Financial Services due to credit card fees with higher online dues payments, partially offset by Facilities Services and to a lesser extent Administration – some timing.

- Member & Communication Services - \$51,846 favorable - (12.4%) - Primarily IT, Internet, and Bar Journal; and to a lesser extent Member & Endorsed Services, Print Center, and e-Journal – some timing.
- Professional Standards - \$8,333 favorable - (18.9%) - Primarily C&F and other – some timing.

YTD Non-Operating Revenue Budget Variance - \$7,435 favorable to budget

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

Cash and Investment Balance – Admin Fund

As of December 31, 2017, the cash and investment balance in the State Bar Admin Fund (net of “*due to Sections and Client Protection Fund*”) was \$13,154,959.

Capital Budget – Admin Fund

Through December 31, 2017, YTD capital expenditures totaled \$46,270 which is \$230 or 0.5% under the YTD capital budget. We are forecasting at fiscal year-end to be on budget at this time.

Administrative Fund FY 2018 Year-End Financial Forecast

Based on our January 17, 2018 year-end financial forecast, we are projecting to meet the FY 2018 budget due primarily to expense savings net of decreased non-dues revenue. However the timing of the C&F fee increase is an uncertainty. A detailed forecast will be provided at the BOC meeting.

Client Protection Fund

The Net Position of the Client Protection Fund as of December 31, 2017 totaled \$1,980,925, a decrease of \$258,657 since the beginning of the fiscal year. There are authorized but unpaid claims totaling \$106,935 awaiting signatures for subrogation agreements that will reduce the fund to \$1,873,990 once the funds are disbursed.

Through December 31, 2017, claims payments of \$383,593 and administration expenses of \$50,085 were disbursed from the Client Protection Fund; offset by member dues assessments of \$161,343 (earned equally throughout the year) and other revenue of \$13,678.

SBM Retiree Health Care Trust

As of December 31, 2017, the SBM Retiree Health Care Trust had a fund balance of \$2,885,966 which is an increase of \$114,788 so far in FY 2018, due primarily to investment earnings.

SBM Membership

As of December 31, 2017, the total active, inactive and emeritus membership in good standing totaled 45,745 attorney members, for a net increase of 429 members so far in FY 2018. A total of 511 new members have joined the SBM so far during FY 2018.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
December 31, 2017**

FY 2018

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

State Bar of Michigan
Administrative Fund
Statement of Net Position
For the Months Ending September 30, 2017 and December 31, 2017

	Oct 1, 2017	Dec 31, 2017	Increase (Decrease)	%
ASSETS AND DEFERRED OUTFLOWS				
Assets				
Cash	3,001,328	6,332,738	3,331,410	111.0%
Investments (CDARS and CD's)	8,821,684	10,155,000	1,333,316	15.1%
Accounts Receivable	241,174	166,083	(75,091)	(31.1%)
Due from (to) CPF	(216,426)	(57,565)	158,861	73.4%
Due from (to) Sections	(2,205,771)	(3,275,213)	(1,069,442)	(48.5%)
Inventory	27,238	21,638	(5,600)	(20.6%)
Prepaid Expenses	361,665	215,700	(145,966)	(40.4%)
Retiree Health Care Trust Asset	170,221	170,221	0	0.0%
Capital Assets, net	4,229,195	4,156,615	(72,580)	(1.7%)
Total Assets	\$14,430,308	\$17,885,215	\$3,454,907	23.9%
Deferred Outflows of Resources	43,353	43,353	0	0.0%
TOTAL ASSETS AND DEFERRED OUTFLOWS	\$14,473,661	\$17,928,568	\$3,454,907	23.9%
LIABILITIES, DEFERRED INFLOWS AND NET POSITION				
Liabilities				
Accounts Payable	372,435	30,906	(341,529)	(91.7%)
Accrued Expenses	473,998	499,577	25,579	5.4%
Unearned Revenue	1,080,045	5,154,860	4,074,815	377.3%
Net Pension Liability	269,288	269,288	0	0.0%
Total Liabilities	\$2,195,765	\$5,954,630	\$3,758,865	171.2%
Deferred Inflows of Resources	20	20	0	N/A
Total Liabilities and Deferred Inflows	\$2,195,785	\$5,954,650	\$3,758,865	171.2%
Net Position				
Invested in capital assets, net of related debt	4,229,195	4,156,615	(72,580)	(1.7%)
Unrestricted	8,048,681	7,817,302	(231,378)	(2.9%)
Total Net Position	\$12,277,875	\$11,973,917	(303,958)	(2.5%)
TOTAL LIABILITIES, DEFERRED INFLOWS AND NET POSITION	\$14,473,661	\$17,928,568	\$3,454,907	23.9%

NOTE: Cash and investments actually available to the State Bar Administrative Fund, after deduction of the "Due to Sections" and "Due to CPF" is \$13,154,959 (See below):

CASH AND INVESTMENT BALANCES	12/31/2017
Cash	6,332,738
Investments	10,155,000
Total Available Cash and Investments	\$16,487,738
Less:	
Due to Sections	3,275,213
Due to CPF	57,565
Due to Sections and CPF	\$3,332,778
Net Administrative Fund Cash and Investment Balance	\$13,154,959

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
For the three months ending December 31, 2017
YTD FY 2018 Revenue

Revenue	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Variance</u>	<u>Percentage</u>
Revenue				
Finance & Administration				
Dues & Related	1,970,805	1,967,090	3,715	0.2%
Investment Income	39,935	32,500	7,435	22.9%
Other Revenue	97,180	98,046	(866)	(0.9%)
Finance & Administration Total	<u>2,107,920</u>	<u>2,097,636</u>	<u>10,284</u>	<u>0.5%</u>
Member & Communication Services				
Bar Journal Directory	13,468	9,600	3,868	40.3%
Bar Journal 11 issues	64,987	79,612	(14,625)	(18.4%)
Print Center	12,733	18,490	(5,757)	(31.1%)
e-Journal and Internet	21,319	25,750	(4,431)	(17.2%)
BCBSM Insurance Program	25,000	25,000	0	0.0%
Credit Card Program	999	1,000	(1)	(0.1%)
Annual Meeting	(451)		(451)	N/A
Labels	254	1,000	(746)	(74.6%)
Upper Michigan Legal Institute	0	0	0	N/A
Bar Leadership Forum	0	0	0	N/A
Practice Management Resource Center	10	775	(765)	(98.7%)
Other Member & Endorsed Revenue	19,927	21,449	(1,522)	(7.1%)
Member & Communication Services Total	<u>158,246</u>	<u>182,676</u>	<u>(24,430)</u>	<u>(13.4%)</u>
Professional Standards				
Ethics	4,350	4,000	350	8.8%
Character & Fitness	57,735	77,863	(20,128)	(25.9%)
Lawyer Referral Service	26,026	35,650	(9,624)	(27.0%)
Lawyers and Judges Assistance Program	11,905	12,500	(595)	(4.8%)
Professional Standards Total	<u>100,016</u>	<u>130,013</u>	<u>(29,997)</u>	<u>(23.1%)</u>
Total Revenue	2,366,182	2,410,325	(44,143)	(1.8%)
Less: Investment Income	<u>39,935</u>	<u>32,500</u>	<u>7,435</u>	<u>22.9%</u>
Total Operating Revenue	2,326,247	2,377,825	(51,578)	(2.2%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the three months ending December 31, 2017
YTD FY 2018 Expenses

Expenses	YTD Actual	YTD Budget	Variance	Percentage
Executive Offices				
Executive Office	9,146	15,387	(6,241)	(40.6%)
Representative Assembly	3,811	3,600	211	5.9%
Board of Commissioners	23,338	23,475	(137)	(0.6%)
General Counsel	1,264	4,700	(3,436)	(73.1%)
Governmental Relations	16,910	16,722	188	1.1%
Human Resources (incl. empl benefits)	484,568	526,699	(42,131)	(8.0%)
Outreach, Local Bar & Section Support	105,089	109,613	(4,524)	(4.1%)
Research and Development	2,471	4,700	(2,229)	(47.4%)
Standing Committee on Justice Initiatives	641	2,425	(1,784)	(73.6%)
Resource Development Initiative	75,999	75,375	624	0.8%
Pro Bono Initiative	1,269	3,200	(1,931)	(60.3%)
Justice Policy Initiative	47	75	(28)	(37.3%)
Equal Access Initiative	1,501	2,100	(599)	(28.5%)
Criminal Issues Initiative	9	620	(611)	(98.5%)
Salaries	371,304	358,650	12,654	3.5%
Executive Offices Total	1,097,367	1,147,341	(49,974)	(4.4%)
Finance & Administration				
Administration	7,521	9,627	(2,106)	(21.9%)
Facilities Services	81,155	102,358	(21,203)	(20.7%)
Financial Services	326,179	286,564	39,615	13.8%
Salaries	103,876	107,363	(3,487)	(3.2%)
Finance & Administration Total	518,731	505,912	12,819	2.5%
Member & Communication Services				
Bar Journal Directory	1,789	650	1,139	175.2%
Bar Journal 11 Issues	127,785	137,926	(10,141)	(7.4%)
Print Center	11,041	15,001	(3,960)	(26.4%)
Internet Department	55,493	70,525	(15,032)	(21.3%)
e-Journal	7,639	11,338	(3,699)	(32.6%)
Media Relations	7,919	7,550	369	4.9%
Member & Endorsed Services	52,510	57,305	(4,795)	(8.4%)
Annual Meeting	1,105	0	1,105	N/A
Bar Leadership Forum	0	0	0	N/A
Practice Mgt Resource Center (PMRC)	1,428	1,838	(410)	(22.3%)
UMLI	0	0	0	N/A
Information Technology Services	100,795	117,217	(16,422)	(14.0%)
Salaries	395,734	401,091	(5,357)	(1.3%)
Member & Communication Services Total	763,238	820,441	(57,203)	(7.0%)
Professional Standards				
Character & Fitness (C&F)	7,289	15,225	(7,936)	(52.1%)
Client Protection Fund Dept	2,332	2,125	207	9.7%
Ethics	3,830	4,513	(683)	(15.1%)
Unauthorized Practice of Law (UPL)	4,214	5,775	(1,561)	(27.0%)
Lawyer Referral Service	5,489	4,323	1,166	27.0%
Lawyer & Judges Assistance Program	12,649	12,175	474	3.9%
Salaries	255,001	259,215	(4,214)	(1.6%)
Professional Standards Total	290,804	303,351	(12,547)	(4.1%)
Total Expense	2,670,140	2,777,045	(106,905)	(3.8%)
Human Resources Detail				
Payroll Taxes	79,337	85,548	(6,211)	(7.3%)
Benefits	394,614	426,985	(32,371)	(7.6%)
Other Expenses	10,617	14,166	(3,549)	(25.1%)
Total Human Resources	484,568	526,699	(42,131)	(8.0%)
Financial Services Detail				
Depreciation	118,850	118,850	0	0.0%
Other Expenses	207,329	167,714	39,615	23.6%
Total Financial Services	326,179	286,564	39,615	13.8%
Salaries				
Executive Offices	371,304	358,650	12,654	3.5%
Finance & Administration	103,876	107,363	(3,487)	(3.2%)
Member Services & Communications	395,734	401,091	(5,357)	(1.3%)
Professional Standards	255,001	259,215	(4,214)	(1.6%)
Total Salaries Expense	1,125,915	1,126,319	(404)	(0.0%)
NonLabor Summary				
Executive Offices	252,112	276,158	(24,046)	(8.7%)
Finance & Administration	414,855	398,549	16,306	4.1%
Member Services & Communications	367,504	419,350	(51,846)	(12.4%)
Professional Standards	35,803	44,136	(8,333)	(18.9%)
Total NonLabor Expense	1,070,274	1,138,193	(67,919)	(6.0%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the three months ending December 31, 2017
YTD FY 2018 Increase (Decrease) in Net Position Summary

	Actual YTD	Budget YTD	Variance	Percentage	Last Year Actual YTD
Operating Revenue					
- Dues and Related	1,970,805	1,967,090	3,715	0.2%	1,962,976
- All Other Op Revenue	355,442	410,735	(55,293)	(13.5%)	348,464
Total Operating Revenue	2,326,247	2,377,825	(51,578)	(2.2%)	2,311,440
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	1,125,915	1,126,319	(404)	(0.0%)	1,064,066
Benefits and PR Taxes	473,951	512,533	(38,582)	(7.5%)	458,371
Total Labor-related Operating Expenses	1,599,866	1,638,852	(38,986)	(2.4%)	1,522,437
- Non-labor Operating Expenses					
Executive Offices	252,112	276,158	(24,046)	(8.7%)	191,106
Finance & Administration	414,855	398,549	16,306	4.1%	356,829
Member & Communication Services	367,504	419,350	(51,846)	(12.4%)	407,481
Professional Standards	35,803	44,136	(8,333)	(18.9%)	26,771
Total Non-labor Operating Expenses	1,070,274	1,138,193	(67,919)	(6.0%)	982,187
Total Operating Expenses	2,670,140	2,777,045	(106,905)	(3.8%)	2,504,624
Operating Income (Loss)	(343,893)	(399,220)	55,327	N/A	(193,184)
Nonoperating Revenue (Expenses)					
Investment Income	39,935	32,500	7,435	22.9%	26,754
Net Nonoperating revenue (expenses)	39,935	32,500	7,435	22.9%	26,754
Increase (Decrease) in Net Position	(303,958)	(366,720)	62,762	N/A	(166,430)
Net Position - Beginning the Year	12,277,875	12,277,875	0	0.0%	12,596,774
Net Position - Year-to-Date	\$11,973,917	\$11,911,155	\$62,762	0.5%	\$12,430,344

State Bar of Michigan
Administrative Fund
Capital Expenditures vs Budget
For the three months ending December 31, 2017

	YTD Actual	YTD Budget	YTD Variance	Variance Explanations	Total Approved FY 2018 Budget	FY 2018 Year-End Forecast	Projected Year-end Variance
Building security enhancements	0	0	0		10,000	10,000	0
Security audit appliance (PCI)	0	0	0		20,000	20,000	0
Update /redesign of pro hac vice site	0	0	0		20,000	20,000	0
E-commerce upgrades	12,019	12,500	(481)		20,000	20,000	0
Web services tool for courts	0	0	0		10,000	10,000	0
Investigations/C&F software	875	0	875		0	0	0
Bar applicant online form to replace NCBE server transition	8,006	8,000	6		25,000	25,000	0
e-service application for court e-filing (e-mail addresses)	0	0	0		20,000	20,000	0
Dues billing enhancements for firms	0	0	0		10,000	10,000	0
Lawyer referral portal	12,887	13,000	(113)		20,000	20,000	0
Database application for soliciting volunteers for committees and work groups	0	0	0		10,000	10,000	0
SBM website functionality enhancements	12,483	13,000	(517)		40,000	40,000	0
Meeting Room Technology Upgrades	0	0	0		23,000	23,000	0
Total	\$46,270	\$46,500	(230)		\$228,000	\$228,000	\$0

**STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
December 31, 2017**

FY 2018

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

State Bar of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Months Ending September 30, 2017 and December 31, 2017
FY 2018

	<u>Oct 1, 2017</u>	<u>Dec 31, 2017</u>	<u>Increase (Decrease)</u>	<u>%</u>
Assets				
Cash	895,592	1,160,189	264,597	29.5%
Investments (CD's & CDARS)	1,191,633	1,206,307	14,674	1.2%
Accounts Receivable	0	0	0	N/A
Due from (to) Administrative Fund	216,426	57,565	(158,861)	(73.4%)
Accrued Interest Receivable	3,761	1,611	(2,150)	(57.2%)
Total Assets	<u>\$ 2,307,412</u>	<u>\$ 2,425,672</u>	<u>\$118,260</u>	<u>5.1%</u>
Liabilities				
Accounts Payable	0	0	0	N/A
Unearned Revenue	67,830	444,747	376,917	555.7%
Total Liabilities	<u>\$ 67,830</u>	<u>\$ 444,747</u>	<u>\$376,917</u>	<u>555.7%</u>
Net Position				
Net Position at Beginning of Year	2,239,582	2,239,582	0	0.0%
Increase (Decrease) in Net Position	0	(258,657)	(258,657)	#DIV/0!
Total Net Position	<u>2,239,582</u>	<u>1,980,925</u>	<u>(258,657)</u>	<u>(11.6%)</u>
Total Liabilities and Net Position	<u>\$ 2,307,412</u>	<u>\$ 2,425,672</u>	<u>\$118,260</u>	<u>5.1%</u>

* Note: In addition, there are authorized but unpaid claims totaling \$106,935 awaiting signatures of subrogation agreements.

State Bar of Michigan
Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets
For the three months ending December 31, 2017
FY 2018

	YTD	
Revenue		
Contributions Received	0	
Membership Dues Assessment	161,343	
Pro Hac Vice Fees	2,940	
Claims Recovery	7,340	
Miscellaneous Income	0	
Total Revenue	171,623	
Expense		
Claims Payments	383,593	* See Note Below
Administrative Fee	50,085	
Litigation and Miscellaneous Expense	0	
Total Expense	433,678	
Operating Income (Loss)	(262,055)	
Investment Income	3,398	
Increase (Decrease) in Net Position	(258,657)	
Net Position - Beginning of the Year	2,239,582	
Net Position - End of the Period	1,980,925	

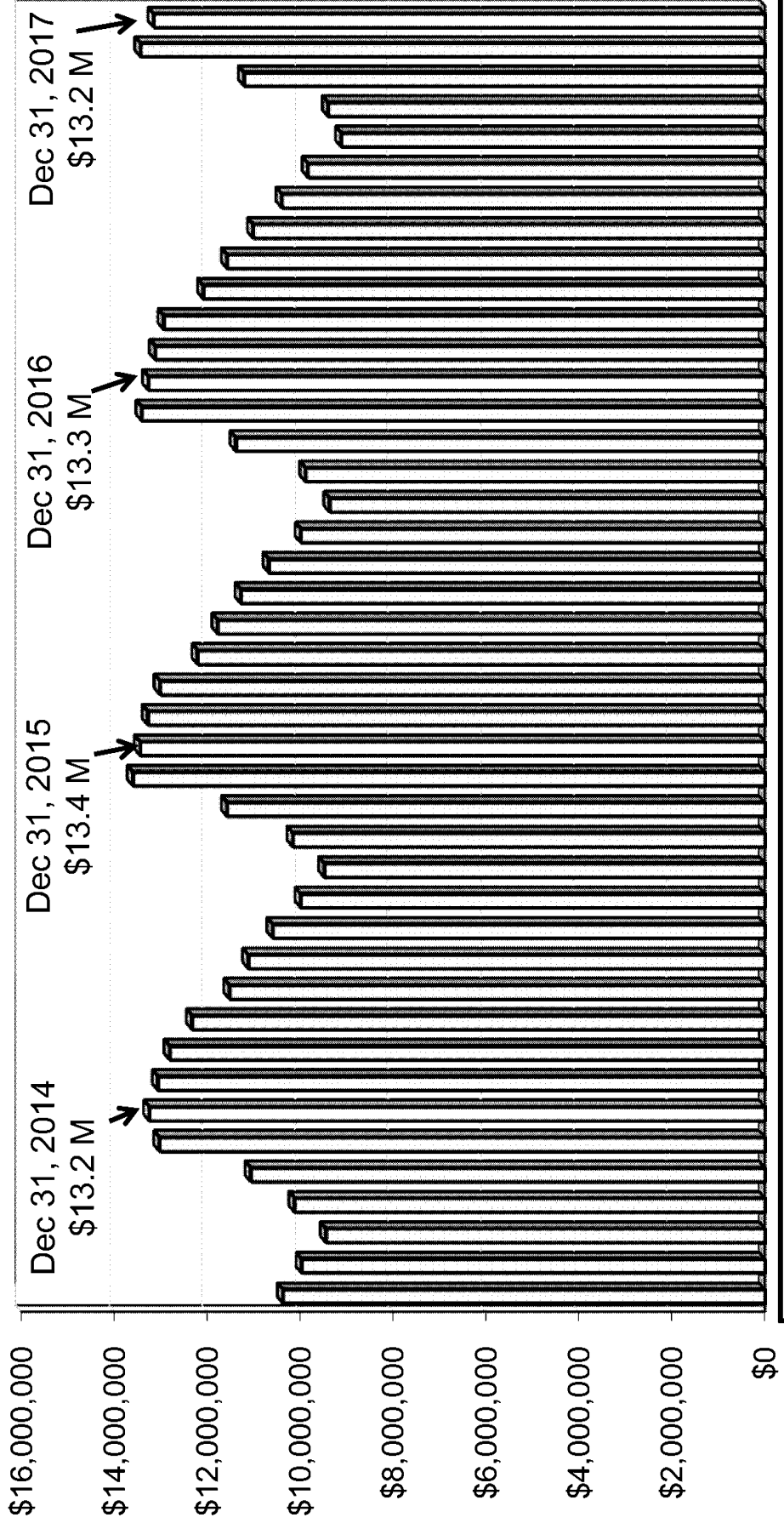
* Note: In addition, there are authorized but unpaid claims totaling \$106,935 awaiting signatures of subrogation agreements.

SBM Cash & Investment Balances

SBM Cash & Investment Balances

Excluding Sections, Client Protection Fund & Fiduciary Funds

December 31, 2017 - \$13.2 M



FY 2015 FY 2016 FY 2017 FY 2018

Note: The State Bar has no bank debt outstanding

Summary of Cash and Investment Balances by Financial Institution
12/31/2017

Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary
	SBM Chase Checking \$ 284,670.59		Client Protection Fund \$ 2,366,496.17
	SBM Chase Credit Card \$ 60,775.00		
	SBM Chase Payroll \$ (2,220.42)		State Bar Admin Fund \$ 16,487,737.69
	SBM Chase Savings \$ 705,748.85	0.18%	(including Sections)
	ADS Chase Checking \$ 17,242.71		Attorney Discipline System \$ 6,125,768.81
	CPF Chase Checking \$ 12,999.48		
	CPF Chase Savings \$ 379,082.64	0.18%	SBM Retiree Health Care Trust \$ 2,885,965.67
4 stars	Chase Totals \$ 1,458,298.85		
	Chase Total w/CD \$ 3,158,298.85 ****		ADB Retiree Health Care Trust \$ 820,295.65
	ADS Bank of America Petty Cash \$ 2,823.35	0.00%	AGC Retiree Health Care Trust \$ 2,908,181.04
4 stars	Bank of America Totals \$ 2,823.35		
	SBM Fifth Third Commercial Now \$ 132,030.45	0.00% ***	Total \$ 31,594,445.03
4 stars	Fifth Third Totals \$ 132,030.45		
	Grand River Bank Money Market \$ 741,998.16	1.00%	
4 stars	Grand River Bank Totals \$ 741,998.16		State Bar Admin Fund Summary
	Grand River Bank Total w/CD \$ 986,998.16		Cash and Investments \$ 16,487,737.69
	Community Shores Bank Savings \$ 751,947.42	0.60%	Less:
3 stars	Community Shores Bank Savings Total \$ 751,947.42		Due (to)/from Sections (3,275,213.33)
	Community Shores Bank Savings Total w/CD \$ 991,947.42		Due (to)/from CPF (57,565.03)
	First Community Bank \$ 732,044.47	0.60%	
5 stars	First Community Bank Total \$ 732,044.47		Due to Sections and CPF \$ (3,332,778.41)
	First Community Bank Total w/CD \$ 977,044.47		Net Administrative Fund \$ 13,154,959.28
5 stars	Sterling Bank \$ 2,309.50	0.40%	
	Sterling Bank Total \$ 2,309.50		
	Sterling Bank Total w/CD \$ 977,309.50		
4 stars	Citizens Bank Checking \$ 100.00		SBM Average Weighted Yield: 1.21%
	Citizens Bank Money Market \$ 1,968,932.11	1.00%	ADS Average Weighted Yield: 0.44%
	Citizens Bank Totals \$ 1,969,032.11		CPF Average Weighted Yield: 0.66%
5 stars	Mercantile Bank \$ 1,003,345.96	1.25%	Note: average weighted yields exclude retiree health care trusts
	Mercantile Bank Total \$ 1,003,345.96		
4 stars	Main Street Bank \$ 992,120.36	1.25%	
	Main Street Bank \$ 992,120.36		
5 stars	MSU Credit Union \$ 6.29	0.10%	
	MSU Credit Union Total \$ 6.29		
	MSU Credit Union Total w/CD \$ 940,006.29		
	SBM Flagstar Savings Account \$ 1,242,569.94	0.95%	Maturity
	SBM Flagstar CDAR - 12 month \$ 1,000,000.00	0.70%	11/15/18
	ADS Flagstar Checking Account \$ 2,061.76	0.25%	
	ADS Flagstar CDARS -13 week \$ 500,000.00	0.40%	03/22/18
	ADS Flagstar CDARS -12 Month \$ 1,510,000.00	0.55%	03/01/18
	ADS Flagstar CDARS -12 Month \$ 810,000.00	0.70%	11/15/18
	ADS Flagstar CDARS -12 Month \$ 1,000,000.00	0.70%	11/15/18
	CPF Flagstar Checking \$ 768,107.42	0.95%	
	CPF Flagstar CDARS -36 Month \$ 256,269.78	0.55%	5/16/19*
	CPF Flagstar CDARS -24 Month \$ 450,036.85	0.75%	12/26/19*
	CPF Flagstar CDARS -12 month \$ 500,000.00	0.55%	05/31/18
4 stars	Flagstar Bank Totals \$ 8,039,045.75		
	SBM - CD Chemical Bank ** \$ 235,000.00	1.75%	Maturity
4 stars	SBM - CD Chemical Bank \$ 240,000.00	1.75%	10/28/19
4 stars	SBM - CD Chemical Bank \$ 240,000.00	1.75%	04/17/19
4 stars	SBM - CD Chemical Bank \$ 240,000.00	1.75%	04/17/19
4 stars	SBM - CD Chemical Bank \$ 240,000.00	1.75%	04/17/19
4 stars	SBM- CD First Community Bank \$ 245,000.00	1.00%	12/12/18
4 stars	SBM - Grand River Bank \$ 245,000.00	1.15%	05/11/18
4 stars	SBM-CD Horizon Bank \$ 240,000.00	1.00%	10/12/19
4 stars	SBM-CD Horizon Bank \$ 245,000.00	1.30%	03/14/19
4 stars	SBM-CD Horizon Bank \$ 245,000.00	1.30%	03/14/19
4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.60%	10/12/19
4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.60%	10/16/18
4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.85%	10/16/20
4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.85%	10/16/20
3 stars	SBM-CD Community Shores Bank \$ 240,000.00	1.25%	10/15/19
5 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.10%	10/12/19
5 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	04/25/19
5 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	04/25/19
5 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	04/25/19
3 stars	SBM-CD First National Bank of St. Ignace \$ 245,000.00	1.25%	10/12/18
5 stars	SBM-CD Sterling Bank \$ 245,000.00	1.55%	03/30/19
5 stars	SBM-CD Sterling Bank \$ 245,000.00	1.55%	03/30/19
5 stars	SBM-CD Sterling Bank \$ 245,000.00	1.55%	03/30/19
5 stars	SBM-CD Sterling Bank \$ 240,000.00	1.55%	03/30/19
	SBM-CD Chase \$ 1,700,000.00	0.80%	04/16/18
4 stars	SBM-CD The Dart Bank \$ 240,000.00	1.25%	12/05/18
4 stars	SBM-CD The Dart Bank \$ 240,000.00	1.25%	12/05/18
4 stars	SBM-CD The Dart Bank \$ 240,000.00	1.25%	12/05/18
4 stars	SBM-CD The Dart Bank \$ 240,000.00	1.25%	12/05/18
5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	10/25/20
5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	10/25/20
5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	10/25/20
5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	10/25/20
	Bank CD Totals \$ 9,155,000.00		
	Total Cash & Investments (excluding Schwab) \$ 24,980,002.67		
	SBM - Charles Schwab (Ret HC Trust) \$ 2,885,965.67		Mutual Funds
	ADB - Charles Schwab (Ret HC Trust) \$ 820,295.65		Mutual Funds
	AGC - Charles Schwab (Ret HC Trust) \$ 2,908,181.04		Mutual Funds
	Charles Schwab Totals \$ 6,614,442.36		
	Grand Total (including Schwab) \$ 31,594,445.03		
	Total amount of cash and investments (excluding Schwab) not FDIC insured \$ 14,823,842.24		59.34%

State Bar of Michigan Retiree Health Care Trust
Balance Sheet
For the Three Months Ending December 31, 2017

Assets	
Investment	<u>\$2,885,966</u>
Total Assets	<u><u>\$2,885,966</u></u>
Fund Balance	
Fund Balance at Beginning of Year	2,771,178
Net Income (Expense) Year to Date	<u>114,788</u>
Total Fund Balance	<u>2,885,966</u>
Total Liabilities and Fund Balance	<u><u>\$2,885,966</u></u>

State Bar of Michigan Retiree Health Care Trust
Income Statement
For the Three Months Ending December 31, 2017

	December 2017	CURRENT YTD
Income:		
5-7-00-000-0921 Change In Market Value	(65,968)	(10,068)
5-7-00-000-1005 Investment Contributions	14,333	14,333
5-7-00-000-1920 Interest and Dividends	98,620	110,523
Total Income	<u>46,985</u>	<u>114,788</u>
 Net Fund Income (Expense)	 <u>46,985</u>	 <u>114,788</u>

Monthly SBM Member Report - December 31, 2017
FY 2018

	Current Fiscal Year						FY Increase (Decrease)
	September 30 2012	September 30 2013	September 30 2014	September 30 2015	September 30 2016	September 30 2017	
Attorney Members and Affiliates in Good Standing							
Active	39,935	40,475	41,093	41,608	41,921	42,100	262
Less than 50 yrs serv	38,829	39,335	40,036	40,490	40,725	40,910	77
50 yrs or greater	1,106	1,140	1,057	1,118	1,196	1,267	185
Voluntary Inactive	1,276	1,263	1,211	1,218	1,250	1,243	(1)
Less than 50 yrs serv	1,256	1,231	1,184	1,195	1,230	1,217	(5)
50 yrs or greater	20	32	27	23	20	26	4
Emeritus	1,279	1,391	1,552	1,678	1,841	1,973	168
Total Attorneys in Good Standing	42,490	43,129	43,856	44,504	45,012	45,316	429
Affiliates							
Legal Administrators	22	19	14	13	13	13	(3)
Legal Assistants	446	433	413	425	405	400	(49)
Total Affiliates in Good Standing	468	452	427	438	418	413	(52)
Total Attorney Members and Former Members in the Database							
State Bar of Michigan Member Type							
	September 30 2012	September 30 2013	September 30 2014	September 30 2015	September 30 2016	September 30 2017	Current Fiscal Year FY Increase (Decrease)
Attorney Members in Good Standing:							
ATA (Active)	39,935	40,475	41,093	41,608	41,921	42,100	262
ATVI (Voluntary Inactive)	1,276	1,263	1,211	1,218	1,250	1,243	(1)
ATE (Emeritus)	1,279	1,391	1,552	1,678	1,841	1,973	168
Total Members in Good Standing	42,490	43,129	43,856	44,504	45,012	45,316	429
Attorney Members Not in Good Standing:							
ATN (Suspended for Non-Payment of Dues)	5,144	5,248	5,427	5,578	5,743	5,888	(41)
ATDS (Discipline Suspension - Active)	384	400	407	415	418	430	8
ATDI (Discipline Suspension - Inactive)	7	10	12	11	18	19	0
ATDC (Discipline Suspension - Non-Payment of Court Costs)	0	1	1	3	3	16	(3)
ATNS (Discipline Suspension - Non-Payment of Other Costs)	66	76	83	92	99	94	(1)
ATS (Attorney Suspension - Other)*	1	1	1	1	1	0	0
ATR (Revoked)	492	519	521	517	534	562	6
ATU (Status Unknown - Last known status was inactive)**	2,214	2,174	2,088	2,076	2,074	2,071	1
Total Members Not in Good Standing	8,308	8,429	8,540	8,693	8,890	9,079	(30)
Other:							
ATSC (Former special certificate)	132	134	136	140	145	152	1
ATW (Resigned)	1,272	1,354	1,429	1,483	1,539	1,612	47
ATX (Deceased)	7,503	7,797	8,127	8,445	8,720	9,042	64
Total Other	8,907	9,285	9,692	10,068	10,404	10,806	112
Total Attorney Members in Database	59,705	60,843	62,088	63,265	64,306	65,201	511

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

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

N/R - not reported

Note: Through December 31, 2017, a total of 511 new members joined the SBM so far in FY 2018

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Memorandum

To: SBM Board of Commissioners

From: Darin Day
SBM Director of Outreach

Date: January 26, 2018

Re: Proposed Bylaws Amendment for the Judicial Section –
Staff Recommendation for BOC Approval

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

The Judicial Section has taken all necessary steps to approve changes to its bylaws in compliance with the amendment provision set forth in the section’s current bylaws. The following is the amendment duly approved by the section at its annual meeting held September 29, 2017:

Add the language set forth below to bylaws Article III, Section 3 –

At the discretion of the Chair, the Chair may appoint no more than 3 sitting Judges of Tribal Courts, which are Courts of Record, to hold an ex officio position on the Judicial Council.

This proposed amendment is not inconsistent with Supreme Court Rules nor the State Bar of Michigan bylaws. Therefore, it is recommended to the Board of Commissioners that the proposed changes be APPROVED.

**IX.-A. Payee Notification
System**

MEMORANDUM

TO: State Bar of Michigan Board of Commissioners
FROM: SBM Professional Standards Committee
DATE: January 26, 2018
RE: Recommendation to Advocate for Adoption of Payee Notification Legislation

Update on Progress to Date

As initially requested by the Professional Standards Committee, Client Protection Fund (CPF) staff facilitated a workgroup to study the potential impact of a payee notification program on claims submitted to the Fund managed by the State Bar to pay CPF claims. The State Bar also embraced payee notification as a recommendation of the SBM's 21st Century Practice Task Force¹ and under Goal 3 of the SBM 2017-2020 Strategic Plan, which includes development and adoption of a payee notification program in Michigan to support the goal of maintaining "the highest conduct among its members."²

Payee notification requires the insurer to notify the claimant when the insurer remits settlement proceeds to the claimant's attorney of record. Payee notification programs have been enacted in 15 states through legislation or regulation issued by an insurance commission. The State Bar workgroup determined that legislation is the most effective and efficient manner in which to implement payee notification in Michigan.

During the BOC's July 21, 2017 Meeting, Commissioner Dennis Barnes, then Chair of the Professional Standards Committee, provided an update regarding payee notification and advised of the Professional Standards Committee recommendation that key SBM Sections (Negligence Law, Insurance & Indemnity Law, and Probate & Estate Planning Sections) be contacted for their preliminary reaction regarding the possibility of implementing a payee notification program in Michigan. The Board embraced that recommendation.³

Since that meeting, workgroup member Thomas Howlett presented information regarding payee notification to the Negligence Law Section Council during its November 29, 2017, meeting. A motion was approved "to support the SBM advancing the legislation that supports the concept as presented by Tom Howlett."⁴

Commissioner Barnes presented information regarding payee notification to the Insurance & Indemnity Law Section Council. Commissioner Barnes is unaware of any negative feedback, but continues to request confirmation from the Council.

¹ The Task Force Report recommended payee notification to support the implementation of "proactive or preventative measures that help lawyers avoid ethical missteps and serve a consumer protection function . . ." Mark A. Armitage, Task Force; Regulatory Committee, https://www.michbar.org/file/future/21c_WorkProduct.pdf.

² SBM Strategic Plan 2017-2020, Adopted by the Board of Commissioners January 20, 2017, and approved by the Representative Assembly on April 22, 2017.

³ See attached memorandum to the Board of Commissioners dated July 12, 2017, entitled Payee Notification Update.

⁴ See attached excerpt of minutes of Negligence Law Council meeting. Mr. Howlett provided the Council with a copy of the July 12, 2017 Memo to the BOC (see Note 3 above) and it was included as an attachment to the Council's minutes.

Staff member Alecia Ruswinckel contacted Marlaine Teahan, Chair of the Probate & Estate Planning Section who forwarded the proposal to their Ethics Committee. Ms. Ruswinckel is unaware of any negative feedback, but continues to request confirmation from the Section Chair.

Updated Client Protection Fund Information

In July of 2017, a significant number of claims which might have been prevented by payee notification were outstanding. Most of those claims were paid last fiscal year. Claims approved since 2003, involving attorney theft that might have been prevented by payee notification total \$3,061,632.39.⁵ Due to reimbursement caps, the Fund paid only \$1,216,620.18, resulting in clients suffering \$1,845,012.21 in unrecovered losses. Additionally, there are pending claims based upon misappropriation of settlement proceeds of a little more than \$10,000.

Workgroup Recommendations Embraced by the BOC

The Payee Notification Workgroup recommends that a proposed statute implementing payee notification include these key components:

- A minimum payment amount to trigger the payee notification requirement. In most states, the minimum is \$5,000.
- A provision ensuring that the method of notification is reasonably calculated to be received by the payee and the payee's attorneys, considering electronic communication.
- A method to help ensure that the insurer has current contact information for the payee.
- A requirement that the notification includes provisions from the payee notification statute and the Michigan Rules of Professional Conduct regarding an attorney's duty to promptly deliver funds to a client or third party.

Recommendation to the BOC

The Professional Standards Committee recommends that the BOC authorize the SBM to advocate for legislation to enact payee notification in Michigan with the key components as indicated above.

⁵ The total losses due to attorney theft is far greater as these numbers do not include victims not requesting reimbursement from the Fund or victims reimbursed by other sources such as banks for accepting fraudulent endorsements, malpractice insurance carriers, or bonding agencies.

MEMORANDUM

TO: Professional Standards Committee
FROM: Payee Notification Workgroup
DATE: July 12, 2017
RE: Recommendation to Advocate for Adoption of Payee Notification Legislation

Recommendation

In the past decade, some clients have suffered millions of dollars in losses due to theft by their attorneys. These thefts often occur when an insurance company remits a settlement check to the attorney and then the attorney misappropriates the funds. The State Bar of Michigan's Client Protection Fund (Fund) was created to reimburse clients for losses they incur based on the dishonest conduct of their attorneys. However, the Fund has limited resources and cannot fully reimburse victims for their losses.

The fiduciary obligations of managing the Fund include advocating and implementing "studies and programs for client protection and prevention of dishonest conduct by lawyers."¹ To help prevent the harm caused by lawyers who misappropriate their client's settlement funds, the Payee Notification Workgroup² recommends that the State Bar of Michigan advocate for legislation implementing payee notification in Michigan.

Background

Payee notification was first enacted in New York in 1988.³ Since then, 13 other states have adopted payee notification.⁴ After enacting payee notification, each jurisdiction experienced a decline in the number of claims attributable to lawyer theft of settlement proceeds. Payee notification programs help foster greater client trust in the legal profession, minimize the likelihood that a dishonest lawyer will settle a claim without the knowledge and consent of the client, reduce the potential that a dishonest lawyer will fraudulently endorse a settlement check and misappropriate the funds, and enable quicker discovery of dishonest lawyer conduct should it occur to preclude continuing misappropriation and minimize the number of client victims before discovery.

Typically, when settling a liability claim, an insurer remits the settlement check made payable to the claimant and the claimant's attorney to the claimant's attorney without notification to the claimant. Payee notification requires the insurer to notify the claimant when the insurer remits settlement

¹ Client Protection Fund (CPF) Rule 7A(7).

² The SBM Standing Committee on Client Protection, with support from the Board of Commissioners Professional Standards Committee, created a workgroup to review and make recommendations regarding implementation of a payee notification program. The workgroup membership included members of the Standing Committee on Client Protection Fund, the Executive Director of the Attorney Discipline Board, the Grievance Administrator and an Attorney Grievance Commission Staff Counsel, and interested attorneys as follows: Mark A. Armitage, Julie H. Pfitzenmaier Cotant, Thomas H. Howlett, Diane Hutcherson, Starr M. Hewitt Kincaid, John J. Lynch, III, Peter M. Neu, Rhonda Spencer Pozehl, Robert H. Roether, and Mark L. Teicher. [See Attachment 1.]

³ 11 NYCRR 216.9 (A) & (B).

⁴ Nine states have implemented statutes: California, Connecticut, Georgia, Maryland, Nevada, New York, Pennsylvania, Rhode Island, and Virginia. Five have enacted insurance or business regulations or administrative codes requiring notification: Delaware, Hawaii, Massachusetts, Nebraska, and New Jersey. A statute requiring payee notification would apply to a broader array of insurable losses, increasing the effectiveness of the program.

proceeds to the claimant's attorney of record. Payee notification serves both the preventive and maintenance purposes of a client protection program by improving transparency and accountability when an insurer remits a check to resolve a liability claim.

The ABA Standing Committee on Client Protection recommends adoption of six Client Protection Programs: Trust Account Overdraft Notification (TAON), Random Audit of Trust Accounts, Payee Notification, Disclosure of Insurance, Fee Arbitration, and Mediation of Non-Fee Disputes. Michigan has adopted TAON, fee arbitration via the Attorney Grievance Commission, and mandatory disclosure to the SBM of malpractice insurance.⁵ After Hawaii and Delaware enacted all programs, each experienced a reduction in claims, including years in which no claims were filed.

The ABA Standing Committee on Client Protection set forth the Model Rules of Lawyers' Funds for Client Protection and the National Client Protection Organization, Inc. promulgated the Standards for Evaluating Lawyers' Funds for Client Protection, which the Conference of Chief Justices encouraged its members to adopt.⁶ Both establish that it is the goal of every fund to fully reimburse claimants. Enacting a payee notification will bring Michigan closer to that goal.

Victims of attorney theft have limited avenues for recovery, as the lawyer rarely has the funds or assets available to repay the client. If the lawyer forged the client's signature on a check, the client may recover from the bank or the client may receive funds from a malpractice insurer or bonding company claim. The claimant may obtain a civil judgment or be included in a criminal restitution order, but recovery requires that the lawyer have funds or assets with which to pay the client. As a last resort, the Fund will reimburse claimants for some of their losses. Reimbursement by the Fund is capped at \$150,000 per claimant and \$375,000 per lawyer.⁷

Since 2003, the Fund has approved claims involving attorney theft that may have been prevented by payee notification totaling \$2,390,075.96. [See Attachment 2.] The Fund, however, only paid \$913,836.32 on these losses, resulting in \$1,476,239.64 in unrecovered losses. It should be noted that there are more than \$1,500,000 in pending claims based on misappropriation of settlement proceeds. [See Attachment 3.] The total losses due to attorney theft is far greater as these numbers do not include victims not requesting reimbursement from the Fund or victims reimbursed by other sources such as banks for accepting fraudulent endorsements, malpractice insurance carriers, or bonding agencies.⁸ Payee notification may have helped prevent these losses.

Over the last five years, while the number of claims has remained consistent, the Fund has experienced a notable increase in the monetary value of the claims. Without increasing the Fund payment caps, which would require an increase in SBM members' annual Fund assessment,⁹ victims of attorney theft are forced to shoulder higher unreimbursed losses.

Payee notification requirements can help prevent client losses caused by attorney theft and limit the need to increase Fund assessments for SBM members. Payee notification was recommended by the

⁵ The ABA Rule requires public disclosure, so more work is needed to meet this standard.

⁶ Conference of Chief Judges, Resolution 2, July 31, 2013.

⁷ CPF Rule 12(B) & (C).

⁸ The Fund has over \$1.5 million in claims pending against a lawyer who advised his clients he had not received settlement proceeds from the insurance companies and then misappropriated the proceeds. The Fund will only reimburse \$375,000, which will be prorated amongst the claimants.

⁹ The Fund receives its funding from lawyers as part of their annual dues. Currently all active members are assessed \$15, with inactive members being assessed \$7.50.

SBM's 21st Century Practice Task Force.¹⁰ It has also been recommend by the American Bar Association Center for Professional Responsibility. Goal 3 of the SBM 2017-2020 Strategic Plan includes development and adoption of a payee notification program in Michigan to support the goal of maintaining “the highest conduct among its members.”¹¹

The Payee Notification Workgroup recommends that a proposed statute implementing payee notification include these key components:

- A minimum payment amount to trigger the payee notification requirement. In most states, the minimum is \$5,000.
- A provision ensuring that the method of notification is reasonably calculated to be received by the payee and the payee's attorneys, considering electronic communication.
- A method to help ensure that the insurer has current contact information for the payee.
- A requirement that the notification includes provisions from the payee notification statute and the Michigan Rules of Professional Conduct regarding an attorney's duty to promptly deliver funds to a client or third party.

¹⁰ The Task Force Report recommended payee notification to support the implementation of “proactive or preventative measures that help lawyers avoid ethical missteps and serve a consumer protection function . . .” Mark A. Armitage, Task Force; Regulatory Committee, https://www.michbar.org/file/future/21c_WorkProduct.pdf.

¹¹ *SBM Strategic Plan 2017-2020*, Adopted by the Board of Commissioners January 20, 2017, and approved by the Representative Assembly on April 22, 2017.

Attachment One
Payee Notification Workgroup Members

Mark A. Armitage

- Executive Director, Michigan Attorney Discipline Board
- Actively involved in proactive management-based regulation
- Served on the SBM 21st Century Practice Task Force

Julie H. Pfitzenmaier Cotant

- Attorney, Wright Beamer, PLC
- Client Protection Fund Committee Member since 2015

Thomas H. Howlett

- Attorney, The Googasian Firm PC (represents clients in serious injury cases and class action suits)
- Client Protection Fund Committee Member since 2016

Diane Hutcherson

- Attorney, Hom Killeen Arene & Bachrach (represents AAA Insurance)
- Client Protection Fund Committee Member since 2013
- Incoming Client Protection Fund Committee Co-Chair, 2017-2018

Starr M. Hewitt Kincaid

- Attorney, Michigan Municipal Risk Management Authority (represents self-insured public entities)
- Client Protection Fund Committee Member since 2009
- Client Protection Fund Committee Co-Chair, 2014-2017

John J. Lynch, III

- Attorney, Vandever Garzia
- Client Protection Fund Committee Member since 2016

Peter M. Neu

- Labor Representative/Counsel, Michigan Association of Governmental Employees
- Client Protection Fund Committee Member since 2011
- Client Protection Fund Committee Co-Chair, 2015-2017

Rhonda Spencer Pozehl

- Senior Associate Counsel, Michigan Attorney Grievance Commission
- Primary responsibility for investigation and prosecution of Trust Account Overdraft Notifications to the Grievance Administrator, presenter for the Trust Account seminar three times per year, and primary responsibility for the Grievance Administrators' Receivership Program

Robert H. Roether, Attorney at Law

- Principal, Robert H. Roether Attorney at Law
- Regularly handles actions against banks involving fraudulent endorsement

Mark L. Teicher, Client Protection Fund Committee Member

- Principal, Law Office of Mark L. Teicher
- Client Protection Fund Committee Member since 2006
- Incoming Client Protection Fund Committee Co-Chair, 2017-2018

**Attachment Two
Fiscal Implications**

Claims attributable to attorney theft of settlement proceeds from 2003-2016 totaled \$2,390,075.96. The State Bar of Michigan Client Protection Fund paid \$913,836.32 to these victims in accordance with reimbursement caps. Consequently, the victims' unreimbursed losses are over \$1,476,239.64.¹ These losses may have been prevented by payee notification. The total paid by the Fund, due to all forms of dishonest conduct during this time-frame was \$6,053,113.78; total losses exceeded \$11,286,006.61.

Between Oct 2015 and Nov 2016, the Fund paid \$876,655.27, but losses suffered by claimants totaled \$2,429,633.53, leaving \$1,552,978.26 in unreimbursed losses. To fully reimburse all claimants, the annual assessment would need to be increased to \$46.11 for all active members and \$23.06 for inactive members.

Claims History and Fund Balance

Fiscal Year	Total CPF Approved Claims and Total Amount	Fiscal Year End Fund Balance
2007	39 CPF claims totaling \$211,260	\$1,992,437
2008	45 CPF claims totaling \$601,276	\$2,075,883
2009	49 CPF claims totaling \$339,069	\$2,077,622
2010	31 CPF claims totaling \$447,552	\$2,147,401
2011	68 CPF claims totaling \$354,473	\$2,168,624
2012	63 CPF claim totaling \$337,888	\$2,337,719
2013	61 CPF claim totaling \$450,065	\$2,419,173
2014	46 CPF claim totaling \$620,779	\$2,508,917
2015	36 CPF claims totaling \$161,997*	\$2,516,915
2016	67 CPF claims totaling \$912,566.06	\$2,424,698

*During the 2014-2015 claim year, the final meeting was adjourned and held in the following fiscal year. Therefore, the number is not an adequate representation of the claims approved.

¹ Client Protection Fund Rule 12(B) provides that "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." CPF Rule 12(C) provides that "[t]he 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."

Attachment Three Representative Respondents

The Client Protection Fund (CPF) is processing seven claims against one attorney, which allege misappropriation of over \$1.5 million dollars. Additional information and court documents show that there are other victims who did not file claims with the Fund. The attorney was a prominent personal injury attorney and had cases that settled for over one-million dollars. The attorney received checks within days after execution of the settlement agreement, signed his client's names under a power of attorney granted in his standard fee agreement, and deposited the funds into his client trust account. Initially, the attorney told his clients that he only received a small percentage of the settlement proceeds and would remit some funds to the clients to appease them without disclosing that he had received the entire settlement amount. Later, the attorney signed the checks under a power of attorney or fraudulently endorsed them. He did not inform clients that he had received the entire amount of the settlement. The attorney has been criminally convicted.

The CPF is processing 11 claims against one attorney, who allegedly misappropriated over \$241,000; however, the total amount is much higher. This attorney had a small personal injury firm. When settlement checks issued, the attorney forged his client's signature or signed with a power of attorney, deposited the funds into his client trust account, and did not remit them to his clients. The clients were unaware that their attorney had received the settlement checks. Some of the victims received partial recovery from the banks due to the forged documents. The prosecuting attorney's office declined to prosecute this attorney.

Between 2007 and 2009, the CPF received 16 claims against one attorney alleging misappropriation of over \$500,000. Additional information and court documents identified other victims who did not file claims with the Fund. This solo-practitioner was a well-known personal injury lawyer. In the last few years of practice, the attorney routinely settled personal injury matters without the knowledge or consent of his client, forged the client's signature on the settlement agreement and check, and misappropriated the settlement proceeds. The clients were unaware that their attorney had received the settlement proceeds. The attorney was criminally convicted for settling one of his client's cases without the client's authority and failing to disclose and remit any portion of the settlement proceeds to his client. Shortly after the conviction, the attorney took his own life.

In 2005 and 2007, the CPF received 13 claims against one attorney, of which, 9 were approved for reimbursement with a total loss to claimants of approximately \$722,000. In each claim, the attorney was appointed guardian and/or conservator of an estate by the probate court. Respondent systematically misappropriated funds from the estates, including settlement funds from an automobile accident. The attorney was criminally convicted.

Between 2001 and 2003, the CPF received 27 claims for over \$940,000 against one attorney. This general practitioner embezzled funds from estates, personal injury proceeds, personal loss proceeds, and life insurance benefits. In most matters, the attorney under-reported the number of checks issued by the insurance company, forged the payee's signature on the check, and misappropriated the funds for his own use. The extent of the embezzlement was discovered after Respondent unsuccessfully attempted to take his own life. The attorney was criminally convicted.

Council Meeting
Minutes
Wednesday, October 25, 2017
Morton's Steak House
Troy, MI
5:30 p.m.

Special Guests:

Tom Howlett -- Discussing Payee Notification
State Representative Klint Kesto

Present: (D = Defense; P = Plaintiff)

D Michael J. Sullivan, Chair, Collins Einhorn & Farrell, PC
P Chad D. Engelhardt, Goethel Engelhardt PLLC
D James R. Bradley, Secrest Wardle
P Robert M. Raitt, Secretary, Gursten Koltonow Gursten Christensen & Raitt PC
P Wolfgang Mueller, Mueller Law Firm
D Megan K. Cavanagh, Garan Lucow PC
P Thomas R. Behm, Treasurer, Gruel, Mills, Nims & Pylman, LLP
P Todd J. Stearn, Law Offices of Todd J. Stearn, PLC

Executive Director - Present

Madelyne Lawry, Shared Resources Inc.

Legislative Consultant – Present

Todd Tennis, Capitol Services Inc.

Absent:

P Mark R. Granzotto, Mark Granzotto PC
D Jennifer M. Grieco, Neuman Anderson, PC
P Ven Johnson, Immediate Past Chair Johnson Law PLC
D Timothy A. Diemer, Jacobs & Diemer, PC
D Phillip C. Korovesis, Butzel Long
P Donna M. MacKenzie, Olsman MacKenzie & Wallace PC
D Robert F. Riley, Riley & Hurley PC

Commissioner Liaison – Not Present

Robert J. Buchanan, Buchanan & Buchanan PLC

State Representative Klint Kesto attended the meeting to provide all with updates on the legislative process.

1. Call to order

Eight voting council members were present for a quorum

2. Motion to approve meeting Minutes

MOTION: A motion was presented, seconded and supported to approve the council meeting minutes from June 28, 2017 **MOTION CARRIED**

MOTION A motion was presented, seconded and supported to approve the September 28, 2017 Annual Meeting Minutes as presented. **MOTION CARRIED.**

3. Chairperson's Report

The council meeting guest history was shared with all.

Megan Cavanagh volunteered to co-chair the Annual Meeting with Todd Stearn.

Tom Howlett was present to discuss the Payee Notification issue. See attached report. After the presentation, the council did not have any objections to the professional standards recommendations.

MOTION: A motion was presented, seconded and supported to support the SBM advancing the legislation that supports the concept as presented by Tom Howlett and reflected in the attached report. **MOTION CARRIED.**

Motions between Meetings:

10/16/17

9/16/17 - House Bill 5073 - New Mediation/ Case Evaluation

10 voted to oppose to the bill – 3 did not vote

4. Treasurer's Report

Fiscal Year -- October 1 – September 30.

June/July/Aug 2017 Statements

September 2017 Year – End Statements

Behm reported a few expenses had to be removed from the year-end reports that belonged to another section

MOTION: A motion was presented, seconded and supported to accept all the financial reports presented. **MOTION CARRIED.**

SBM

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