

Excerpts from State Bar of Michigan Audited Financial Statements

and Other Supplementary Information, Year Ended September 30, 2016



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Full report available at

<http://viewer.zmags.com/publication/982195eb#/982195eb/1>

December 8, 2016

Honorable Robert P. Young, Jr.
Chief Justice
Supreme Court of Michigan
Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

**RE: STATE BAR OF MICHIGAN
ANNUAL FINANCIAL REPORT—FY 2016**

With this letter, please accept the FY 2016 Annual Financial Report of the State Bar of Michigan. The Annual Financial Report covers the fiscal year ended September 30, 2016, and contains the audited financial statements and other information required by accounting standards or useful to understanding the operations and effectiveness of the State Bar of Michigan.

MAJOR ACCOMPLISHMENTS IN FY 2016

FY 2016 witnessed continued successful implementation of the State Bar of Michigan's Strategic Plan and provision of enhanced services to the members and the public in a cost-effective manner. The Strategic Plan can be accessed on the State Bar's website at <http://www.michbar.org/generalinfo/pdfs/strategicplan.pdf>. Major accomplishments include:

21st Century Practice Task Force

After a comprehensive, year-long process examining how the State Bar of Michigan can best serve the public and support lawyers in the face of a rapidly evolving profession, the SBM 21st Century Practice Task Force outlined five key problems the legal profession needs to address, along with visions and key innovations necessary to overcome the problems. The task force's work product was issued in April 2016 after several meetings of the task force, countless meetings of the committees and their work groups, and a town hall meeting broadcast live on the Internet from the Hall of Justice to gather input. The five problems tackled by the task force were:

- A dysfunctional legal marketplace
- Significant issues for new lawyers and new challenges for experienced lawyers
- Inefficient and overly complex legal processes
- Regulatory hurdles
- Cultural resistance to innovation

The task force's recommendations included the development of a comprehensive public platform linked to a full range of legal services and information; nurturing of new service delivery options and innovation; simplification and standardization of court and legal processes; dynamic, data-driven support for new lawyers; new models for continuing legal education and professional development; innovative changes to bar admissions; and practical strategies for persistent, value-driven change.

SBM past presidents Bruce Courtade and Julie Fershtman co-chaired the task force. Three committees comprised of prominent Michigan attorneys, judges, academics, and public officials developed the work product. The three committees were Affordability of Legal Services: New Tools for Breaking through the Access Barrier; Building a 21st Century Practice: Developing and Maintaining Professional Excellence in a Dynamic Marketplace; and Modernizing the Regulatory Machinery: Building Resilience and Capacity in the Delivery of Legal Services.

The 21st Century Practice Task Force built on the work of the State Bar of Michigan Judicial Crossroads Task Force. Several recommendations have already been referred to the Representative Assembly and rule amendments for limited-scope representation were approved. The SBM Strategic Planning

workgroup is currently proposing updates to the State Bar's Strategic Plan to include recommendations from this effort.

Character & Fitness

The State Bar processed 946 character and fitness applications for the July 2015 and February 2016 bar exams, 168 fewer applications compared to FY 2015. A national trend of decreasing law school enrollment began several years ago. The decline in bar applications reflects smaller graduating classes and fewer applicants for admission. There were 48 State Bar District Committee interviews, 50 State Bar Standing Committee hearings, and five Board of Law Examiners hearings during the most recent reporting year (May 1, 2015–April 30, 2016). Effective with the February 2016 bar application cycle, the State Bar implemented an e-Commerce portal, requiring applicants to submit their bar applications and pay their bar exam and investigation fees online which, in turn, automatically sends the Application to Sit for the Bar Examination to the Board of Law Examiners. Further modernization of the admission system is underway and will include an applicant portal to provide expedient and seamless communication between Character & Fitness, the Board of Law Examiners, and applicants during the application and exam processes, a State Bar Character & Fitness customized portal to improve workflow and process and enhance robust database management; and a Board of Law Examiners customized portal to improve workflow and process and enhance robust database management.

Client Protection Fund

The Board of Commissioners approved payment of 67 Client Protection Fund claims, totaling \$912,566.06 to reimburse clients whose funds held by their attorneys were misappropriated. Claim payments totaling \$620,306.12 were disbursed from the Fund in FY 2016, which included a portion of claims approved by the Board of Commissioners in FY 2015. As of September 30, 2016, \$299,259.94 in approved claim payments remained pending, awaiting signed subrogation agreements from the prospective payees. The State Bar hosted the National Client Protection Organization's Fall Forum in September 2016 at the Detroit Marriott at the Renaissance Center.

Unauthorized Practice of Law

There were 64 complaints alleging the unauthorized practice of law (UPL) received during FY 2016. The Board approved litigation in five matters where UPL is believed to have occurred. Of the remainder, 18 were closed after investigation, 13 are pending committee review after investigation, nine are pending resolution after committee review, and 19 remain open for further investigation and review.

Promoting Ethics

State Bar staff counsel responded to approximately 10–20 inquiries daily from attorneys and judges seeking informal advice through the Ethics Helpline. The State Bar presented its "Tips and Tools for a Successful Practice" ethics seminar twice during the bar year to help lawyers strengthen their law practices. The State Bar presented its "Lawyer Trust Accounts: Management Principles and Recordkeeping Resources" ethics seminar three times during the bar year to assist lawyers with ethical management of trust accounts and provide resources for effective traditional and electronic recordkeeping. Staff counsel gave ethics presentations to professional responsibility classes at law schools, the PMRC Boot Camp, legal associations, State Bar sections, and bar-related entities. Staff counsel supported Professionalism in Action programs hosted by all five Michigan law schools.

The Professional Ethics Committee issued six new ethics opinions and recommended the Board of Commissioners and Representative Assembly propose amendments to the Michigan Rules of Professional Conduct to include Rules 1.18 and 4.4(b) of the ABA Model Rules of Professional Conduct; the Judicial Ethics Committee issued two new ethics opinions.

Pro Hac Vice Processing

Since May 1, 2016, when administration of the pro hac vice program transferred to the State Bar, the State Bar has processed 301 pro hac vice applications using its new automated online system.

Lawyer Referral

The Lawyer Referral and Information Service (LRIS) responded to telephone calls and online referral requests, providing a daily average of 107 referrals to members of the public. LRIS modernization is ongoing. A platform for making online and telephone referrals to consumers is being developed which would allow consumers to be better connected to a variety of legal resources to meet their needs. An online portal system under development will streamline reporting requirements and allow electronic input of information by panel members.

Lawyers and Judges Assistance

The Lawyers and Judges Assistance Program (LJAP) opened 58 new cases and provided monitoring or referral services to 241 clients. LJAP performed 49 assessments and monitored an average of 72 clients each month. LJAP provided 52 telephone consultations for attorneys, law students, judges, or concerned colleagues or friends struggling with addiction or mental health issues. LJAP clinicians have presented 19 times to law students, attorneys, and judges on issues including addiction, stress management, and dealing with difficult personalities.

Public Policy

The State Bar's public policy program fully reviewed 53 bills and court rules and led the advocacy on approximately 41 formal legislative and court rule positions. Highlights of legislative activity include successfully advocating for judicial compensation reform and funding for statewide electronic filing.

Board of Commissioners

The Board of Commissioners adopted or updated several policies this fiscal year including an update of the investment policy, an expanded conflict of interest policy, an update on the awards policy, and a new policy requiring online acceptance of credit card payments.

Strategic Planning

A Strategic Planning Work Group comprised of 12 SBM commissioners met over several months to review the current Strategic Plan and propose updated goals, strategies, and key priorities of the State Bar of Michigan. The workgroup's recommendations will be presented to the full Board of Commissioners in early 2017. The extensive work of the 21st Century Practice Task Force and the results of a comprehensive member survey conducted in May 2016 provided the foundational information for the group.

Representative Assembly

The Representative Assembly supported 12 proposals to amend the Michigan Rules of Professional Conduct, the Michigan Court Rules, the Rules Concerning the State Bar of Michigan and the Michigan Constitution:

- Proposal to amend Rules 2.116 and 2.119 of the Michigan Court Rules to adjust the timing of dispositive motions to allow for reply briefs, and clarify that reply briefs are not allowed for any other motions unless leave is given by the court.
- Proposal to amend Rules 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and 6.933 of the Michigan Court Rules to address the issue of sentencing indigent litigants to jail or prison for the failure to pay court-ordered fees, fines or costs without a prior determination of the ability to pay.
- Proposals to amend Section 19 of Article VI of the Michigan Constitution of 1963 to remove and/or increase the age limitation eligibility criteria for judicial office (SJR J and HJR S, respectively).
- Proposal to amend Rule 8.119 of the Michigan Court Rules to provide that a protective order issued under MCR 2.302(C) governs the process for filing discovery materials under seal and make it clear that anyone can still petition the court to lift the seal and see the documents.
- Proposal to amend Rule 5.125 of the Michigan Court Rules to accommodate the service of minor guardianship reports.
- Proposal to amend Rule 7.2 of the Michigan Rules of Professional Conduct.
- Proposal to amend the Michigan Rules of Professional Conduct to add new Rule 1.18 and its comments and revisions to Rule 7.3 and its comments for consistency with the terminology of Rule 1.18.

- Proposal to amend Rule 4.4 of the Michigan Rules of Professional Conduct to add subsection (b) of the ABA Model Rules and the associate commentary.
- Proposal to amend Rule 15 of the Rules Concerning the State Bar of Michigan to increase the character and fitness investigation fee to \$375 from the current fee of \$225 and increase the late application fee to \$175 from the current fee of \$100.
- Proposal to amend Michigan Court Rules 2.107, 2.117, and 6.001 and Michigan Rules of Professional Conduct 1.0, 1.2, 4.2, and 4.3 to provide direction concerning the advancement of limited-scope representation in Michigan.
- Proposal to amend Rule 1.2(c) of the Michigan Rules of Professional Conduct to permit lawyers to counsel or assist clients in legal matters permitted under the Michigan Medical Marihuana Act or other laws relating to marijuana that may in the future be adopted (collectively, the Marijuana Laws) as long as the Marijuana Laws have not been held to be preempted, void, or invalid; the lawyer reasonably believes the client's conduct is allowed under the Marijuana Laws; and the lawyer advises the client about federal law implications.
- Proposal to amend Rule 8.4(b) of the Michigan Rules of Professional Conduct and related comments to make clear that a lawyer or prospective lawyer's use of marijuana in accordance with applicable state law shall not constitute professional misconduct.

Sections of the State Bar

During FY 2016, membership in the State Bar's 41 sections totaled 68,953, including 34,012 paid memberships. This represents a one percent decrease in paid memberships. Free section memberships are offered to new members, those qualifying for the Young Lawyers or Master Lawyers sections, and members of the judiciary.

Services to the sections were enhanced and reviewed with section leaders at the annual Section Chair Orientation, "21st Century Sections: The Future of the Profession." Recent enhancements to sections included providing monthly membership numbers, conducting section leader luncheons, augmenting event services, and automating several forms used by sections.

A new LGBTQA Law Section (acronym stands for Lesbian, Gay, Bisexual, Transgender, Questioning and Allies) was approved by the Board of Commissioners at its July 2016 meeting. Its jurisdiction is to review law, cases, regulations and other legal matters that affect LGBTQA residents of this state and to promote the fair and just administration of those laws.

Committees of the State Bar

Volunteers filled 684 positions on the 27 standing and special committees and four justice initiatives of the State Bar of Michigan. Seventeen nonlawyers were appointed to assist in that work. An in-person and webinar orientation for new committee members and leaders was conducted to promote effective participation in the committee process and compliance with court rules, administrative orders, and State Bar bylaws and policies.

Promoting Diversity in the Profession

On the 20th anniversary of the State Bar's Task Force on Race, Ethnic and Gender Issues in the Courts and Legal Profession, the Diversity and Inclusion Advisory Committee (DIAC) identified 21 recommendations concerning ethics and professional development out of a total of 167 for review and focus. Discussions have begun with the State Court Administrators Office; other responsible entities will be engaged in the coming year.

Based on the success of the first program held in Detroit last year, a second implicit bias seminar took place in Grand Rapids. The event hosted by DIAC and the Equal Access Initiative of the Committee on Justice Initiatives, in partnership with the Michigan Roundtable for Diversity and Inclusion, the Michigan Diversity Council, and the Grand Rapids Bar Association trained more than 100 participants on improving their awareness and cultural competency.

The second annual Brunch for Bars took place the Sunday following the annual Barristers Ball. The keynote speaker was then American Bar Association president Paulette Brown, who spoke to the group about the continuing need to focus on diversity and inclusion in the profession and work being done at the national level influenced and informed by Michigan lawyers.

The Diversity & Inclusion and Advisory Committee continues to add resources to the *Pipeline Program Guide*, which was developed last year and identifies Michigan programs that support efforts to encourage youth from

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underserved communities to consider a career in the law. The guide is available online and in hard copy.

Supporting Pro Bono

The State Bar of Michigan hosted the eighth annual Pro Bono Workshop on May 24, 2016. The workshop provided an opportunity to showcase the many advancements in the State Bar's pro bono work, including the successful development of several Pro Bono Initiative-sponsored programs. The Tax Pro Bono Referral Panel Program, a partnership with the Taxation Section and Michigan's Low-Income Taxpayer Clinics continued to help low-income clients from across Michigan. Since its inception, the program has placed almost 120 cases with pro bono lawyers. The Michigan Patent Pro Bono Project, a partnership with the Intellectual Property Law Section, also continues to help low-income clients in Michigan, receiving more than 60 requests for assistance since it was created less than two years ago.

For the seventh year in a row, the State Bar of Michigan Pro Bono Initiative sponsored Pro Bono Month in conjunction with the American Bar Association's Pro Bono Week celebration, a national recognition of pro bono activities. The Pro Bono Month celebration is an opportunity to recruit more pro bono volunteers, increase legal services to the poor, mobilize community support for pro bono, foster collaborative relationships, and recognize and publicize the pro bono efforts of Michigan's lawyers. Pro Bono Month continues to grow, and October 2015 was one of the most successful with approximately 50 events planned and posted on the State Bar's Pro Bono Month website.

SBM Annual Meeting and Major Events

The SBM held two annual meetings in FY 2016. The first was held October 5-7, 2015, in Novi and the second was September 21-23, 2016 in Grand Rapids. Both were well attended and the Institute of Continuing Legal Education (ICLE) provided educational content. In addition, the annual meetings included awards banquets, diversity receptions, inaugural luncheons, and 50-year honoree celebrations.

In June, the Bar Leadership Forum and Upper Michigan Legal Institute were held on Mackinac Island. The future of the profession was the focus of the Bar Leadership Forum with panel discussion about the work of the 21st Century Practice Task Force. Fred Headon, past president of the Canadian Bar Association spoke on leadership during a critical time. The Upper Michigan Legal Institute offered a range of legal topics including medical marijuana's impact on family law, estate and elder law planning, representing no-fault claimants, and a criminal law update.

Legal Milestones

On June 21, 2016, the State Bar dedicated its 40th Michigan Legal Milestone, "The Kalamazoo Case: Establishing High School for All" in Kalamazoo. Six speakers headlined the presentation: SBM President Lori Buiteweg, SBM Executive Director Janet Welch, Varnum partner John Allen, Western Michigan Cooley Law School Associate Dean of External Affairs and General Counsel James Robb, Kalamazoo Promise Executive Director Bob Jorth, and Kalamazoo Public Schools Superintendent Michael Rice. The bronze milestone plaque was installed outside the Ninth Circuit Court in Kalamazoo.

Practice Management Resource Center

The Practice Management Resource Center (PMRC) continued to update and provide resources through the SBM website. Both hard-copy and digital PMRC libraries inventory expanded as new publications were added throughout the year. PMRC staff continued to respond to approximately 40 telephone calls monthly from lawyers and their staff seeking practice management advice via the PMRC helpline, authored practice management articles for the *Michigan Bar Journal* and external publications, and participated in and developed webinars, podcasts, and numerous seminars and programs sponsored by the PMRC and/or local bar associations, the American Bar Association, ICLE, law schools, and bar-related entities.

Through a customized training and consulting program, PMRC staff conducted consultations for members referred by attorney discipline agencies, and performed individualized practice management consultations and customized technology training sessions for lawyers and law firms. PMRC staff continued to offer its day-long program called "Boot Camp: Starting a 21st Century Law Firm," making two boot camps available in FY 2016 to law students, new lawyers, and lawyers wanting to improve their practices. The PMRC also revitalized its opt-in email list for practice management updates, and in partnership with the ABA Law Practice Division syndicates and sends to its mailing list the *Law Practice Today* digital publication.

Member Benefit Programs

The State Bar's member benefit programs evaluated by the State Bar's Member Services Committee were enhanced with the addition of Credible, LawPay and Hartsville Pet Insurance. Credible offers State Bar of Michigan members personalized solutions to refinance student loans from a marketplace of vetted lenders. Additionally, Credible acts as a resource for members dealing with student loan debt by providing independent, unbiased educational resources in the form of webinars and guides. LawPay, is a custom payment solution for attorney's exclusively offered through bar and legal associations. It offers competitive processing rates with no minimum processing requirements and partners with various practice management tools. Hartsville Pet Insurance offers members up to 20 percent savings on plans and premiums based on choice of level, deductible, and co-pay with no limit on the number of claims.

Support of the Access to Justice Fund

The Access to Justice Campaign revenue (including pledges) for the fiscal year ended September 30, 2016, was more than \$985,000 (unaudited). The Access to Justice Campaign is a partnership of the State Bar of Michigan, the Michigan State Bar Foundation, and Michigan's legal aid providers to increase resources for civil legal aid to the poor in Michigan. Approximately \$15.2 million has been received to date by the Access to Justice Fund in donations and pledges. Access to Justice Fund contributions are received and administered by the Michigan State Bar Foundation. Access to Justice Fund guidelines can be found at www.msbf.org/atjfund.

Member Growth and Financial Performance

A total of 1,041 new member applications were processed. Attorney members in good standing grew to 45,012 members, an increase of 1.1 percent over FY 2015.

As of September 30, 2016, the State Bar's net position in the Administrative Fund totaled \$12,596,774, a decrease of \$179,249 during FY 2016. The Client Protection Fund's net position totaled \$2,424,701, a decrease of \$92,214 during FY 2016. The sections' net position totaled \$2,132,115, an increase of \$116,900 during FY 2016. The Retiree Health Care Trust's net position totaled \$2,444,495, an increase of \$280,960 during FY 2016, which will be used for future retiree health care premiums. The State Bar operates with no debt.

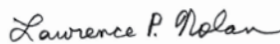
APPROVED FY 2017 BUDGET

The State Bar Board of Commissioners has approved a FY 2017 Administrative Fund budget totaling \$10,294,473, using \$606,774 of reserves, focused on continued accomplishment of the State Bar's strategic focus. As a result of careful management, the State Bar's dues cycle has been extended well beyond the normal seven-year cycle, and budgets using reserves are now expected and planned for into the foreseeable future. A summary of the FY 2017 approved budget was published in the November 2016 *Michigan Bar Journal* and can also be found on the State Bar's website at www.michbar.org/generalinfo/.

MANAGEMENT'S RESPONSIBILITY

The State Bar of Michigan's management is responsible for the information provided in this FY 2016 Annual Financial Report. The basic financial statements and related notes are audited by the independent accounting firm of Andrews Hooper Pavlik PLC in accordance with auditing standards generally accepted in the United States of America, and their opinion is provided as a part of this report.

Questions or comments on this FY 2016 Annual Financial Report should be directed to Janet K. Welch, executive director of the State Bar of Michigan.



Lawrence P. Nolan
President



Janet K. Welch
Executive Director



Robert J. Buchanan
Treasurer



James C. Horsch
Director of Finance and Administration