

Excerpts from State Bar of Michigan Audited Financial Statements

and Other Supplementary Information, Year Ended September 30, 2019
with Report of Independent Auditors



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December 12, 2019

Honorable Bridget Mary McCormack
Chief Justice
Supreme Court of Michigan
Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

Pursuant to Rule 7 of the Rules Concerning the State Bar of Michigan, please accept the FY 2019 Annual Financial Report of the State Bar of Michigan. The Annual Financial Report covers the fiscal year ended September 30, 2019 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 as a public body corporate operating pursuant to statute and rules set forth by the Michigan Supreme Court.

The State Bar of Michigan's management is responsible for the information provided in this FY 2019 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 2019 Annual Financial Report should be directed to Janet K. Welch, executive director of the State Bar of Michigan.

Dennis M. Barnes
President

Janet K. Welch
Executive Director

Daniel D. Quick
Treasurer

James C. Horsch
Director of Finance
& Administration

Overview of the State Bar of Michigan

The State Bar of Michigan was established in 1935 by public act and is regulated by the Michigan Supreme Court through court

rules. Pursuant to those rules, the State Bar of Michigan exists to aid in promoting improvements in the administration of justice and advancements in jurisprudence, improving relations between the legal profession and the public, and promoting the interests of the legal profession in Michigan. By law, all persons licensed to practice law in Michigan constitute the State Bar of Michigan's membership. The State Bar of Michigan is a public body corporate, funded by member dues and revenue generated by its activities. It receives no appropriations from the state of Michigan.

The State Bar of Michigan works to promote the professionalism of lawyers, advocates for an open, fair and accessible justice system, and provides services to members that enable them to best serve their clients.

Governance

By integrating the bar into the regulatory structure of the legal profession, the state of Michigan adopted a modified form of the self-governance of the legal profession common to England and Commonwealth countries. Pursuant to Rule 5 of the Rules Concerning the State Bar of Michigan, the State Bar is governed by a Board of Commissioners. The president, president-elect, vice president, secretary, and treasurer are the elected officers of the State Bar, elected by the Board of Commissioners.

State Bar Rule 6 provides for a 150-member Representative Assembly as the final policymaking body of the State Bar. Its elected officers are the chair, vice chair, and clerk.

Structure

The State Bar of Michigan helps lawyers, as officers of the court, fulfill their shared ethical obligations to improve the quality of legal services and assist in the regulation of the legal profession. The State Bar of Michigan accomplishes a substantial portion of this work through its volunteers in addition to its Board of Commissioners and Representative Assembly. There are 22 standing and two special committees of the State Bar created to advance the work of the State Bar as defined by court rule. Nearly 500 attorneys served on State Bar of Michigan committees, task forces, and workgroups. In addition, there are 44 sections of the State Bar, each with its own bylaws approved by the Board of Commissioners. The work of the sections is largely focused on excellence in specific practice areas. Forty-two sections are funded by voluntary dues from their membership.

The State Bar employs a paid staff to carry out its mission under the supervision of the executive director appointed by the Board of Commissioners. The State Bar of Michigan employed 72.0 full-time equivalent employees (FTEs) at the end of fiscal year 2019, no change from fiscal year 2018.

Key Activities

Activities Mandated by Statute or Court Rule

Administrative Activities

- Maintenance of official attorney database
- Collection of license fees and administration of licensing requirements
- Administrative support for the attorney discipline system
- Governance (self-governing features of the integrated bar are defined by court rule)

Activities Specifically Mandated by Statute, Court Rule, or Supreme Court Administrative Order

- Character and fitness operations
- Pro hac vice administration
- Annual Meeting
- Unauthorized practice of law prosecution
- Client Protection Fund administration
- *Michigan Bar Journal*
- Member directory
- Administration of prepaid legal services regulation
- Administration of nonprofit lawyer referral services regulation
- Regulation of advocacy concerning promotion of improvements in the administration of justice and advancements in jurisprudence
- Administration of IOLTA financial institution registrations
- Nominations for statutory positions

Activities Authorized by Board of Commissioners to Carry Out Governmental Mandate

Improvements in the Administration of Justice and Advancements in Jurisprudence

- Administration of AO 2004-1 concerning State Bar of Michigan public policy activities
- Access to justice initiatives
- Policy development and research
- Diversity and inclusion initiatives
- Advocacy (court rule and statute)

Improvements in Relations Between the Legal Profession and the Public

- Unauthorized practice of law educational resources
- Online legal resource center
- Civic education and public outreach

- Pro Bono program and A Lawyer Helps
- Enhanced profile directories

Promotion of Interests of Legal Profession

- Administrative support for sections
- Practice management support services
- Lawyers and judges assistance
- Ethics helpline
- Legal research tool
- Endorsed products and services
- Ethics seminars and resources
- E-Journal
- Practice management seminars
- Support for local and affinity bars

Highlights of FY 2019

Activities Mandated by Statute or Court Rule

Administrative Activities

• **Maintenance of Official Attorney Database**

In response to the Strategic Plan, an independent tech audit was completed that reviewed the IT infrastructure, resources, organization, controls, appropriateness, and effectiveness of the State Bar technology applications, including security, application development, testing processes, and best practices. The audit recommendations have begun to be implemented.

• **Collection of License Fees and Administration of Licensing Requirements**

The State Bar of Michigan member portal was upgraded to streamline the mandatory disclosures and license fee collection process.

- **Governance** (self-governing features of the integrated bar are defined by court rule). A workgroup to review and modernize the governance structure of the State Bar of Michigan for the purpose of making governance more cost-effective and timely. The group met throughout the year and is expected to conclude in FY 2020 with recommendations to the Representative Assembly and Board of Commissioners.

Activities Specifically Mandated by Statute, Court Rule, or Supreme Court Administrative Order

• **Bar Admissions**

The State Bar of Michigan processed 794 character and fitness applications for the July 2018 and February 2019 bar exams. There were 43 State Bar District Committee interviews, 35 State Bar Standing Committee hearings, and five Board of Law Examiners hearings during FY 2019. The Supreme Court approved an increase in the C&F fee from \$225 to \$375 and an increase in the late submission fee from \$100 to \$175, effective January 1, 2019, to better cover

the cost of State Bar administration of the program. Further improvement of the Character & Fitness portal to permit on-line and seamless communication with applicants and third parties during the application process is ongoing.

- **Annual Meeting**

The Board of Commissioners reviewed the persistent decline in Annual Meeting attendance, extensively surveyed section members, and, after weighing the costs and benefits of the traditional Annual Meeting format, voted to restructure and streamline it, for a net cost reduction of \$100,000 (lower expenses net of lower revenue) in FY 2019 compared to the FY 2019 budget. Future savings will be more substantial. The downsized Annual Meeting included the Board of Commissioners meetings and the Representative Assembly meeting. The annual awards ceremony changed from an evening program to a luncheon program and was combined with the inaugural luncheon.

- **Unauthorized Practice of Law (UPL) Administration**

The State Bar of Michigan received 78 complaints alleging the unauthorized practice of law (UPL) during FY 2019. Of these complaints, 51 were closed after investigation, 6 are pending committee review after investigation, 2 are pending resolution after committee review, 6 are pending Board review, and 13 remain open for further investigation and review. The Board approved litigation in 17 matters where informal resolution to prevent further occurrence of the conduct could not be accomplished.

- **Client Protection Fund Administration**

The Board of Commissioners approved payment of 49 Client Protection Fund claims totaling \$443,112 to reimburse clients whose attorneys misappropriated their funds during FY 2019. Claim payments totaling \$541,410 were disbursed from the Fund in FY 2019, which included a portion of claims approved by the Board of Commissioners in FY 2018. As of September 30, 2019, \$51,225 in approved claim payments remained pending, awaiting signed subrogation agreements from the prospective payees.

- **Promotion of Improvements in the Administration of Justice and Advancements in Jurisprudence**

In anticipation of the January 1, 2020 effective date for new civil discovery rules the State Bar of Michigan developed and championed, the State Bar created a variety of materials to help the bench and bar prepare for the changes. The *Michigan Bar Journal* has published a series of articles discussing the rule changes in its September, October, and November issues. The State Bar partnered with the Detroit chapter of the Association of Certified e-Discovery Specialists to provide a free electronic Civil Discovery Guidebook authored by attorneys at Dickinson Wright and Warner Norcross + Judd. A paper version of the guidebook is available

for purchase through the State Bar. In addition, the State Bar partnered with the Institute of Continuing Legal Education to provide a free webinar in which Judge Christopher Yates and State Bar Civil Discovery Court Rule Review Committee chair Daniel Quick discuss the rule changes. These materials and more are available on the State Bar Civil Discovery Resource Center at www.michbar.org/civil-discovery. In addition, many members of the Review Committee have been making presentations to bar associations and other organizations throughout the state.

Activities Authorized by Board of Commissioners to Carry Out Governmental Mandate

Improvements in Administration of Justice and Advancements in Jurisprudence

- **Administration of AO 2004-1 and Policy Development**

In response to national and state challenges, the State Bar of Michigan defended its governmentally mandated duty to aid in promoting improvements in the administration of justice and advancements in jurisprudence, and to regulate bar activities consistent with constitutional restrictions. In April, the State Bar of Michigan filed an amicus brief in the Eighth Circuit Court of Appeals for a case raising First Amendment challenges against an integrated bar. The amicus brief was joined by five other integrated bars. The brief describes the fundamental differences between labor unions and the integrated bar, and the processes the State Bar of Michigan follows under AO 2004-1 to conform to constitutional requirements. On August 30, the Eighth Circuit ruled in favor of the integrated bar by affirming the trial court's dismissal. On November 21, the plaintiff filed a petition for certiorari, which is now pending in the United States Supreme Court.

On August 22, 2019, a State Bar of Michigan member filed a complaint in the Western District of Michigan alleging that mandatory membership in and payment of dues to the State Bar of Michigan infringes on her first amendment right to free association and free speech. *Taylor v State Bar of Michigan*, No. 1:19-cv-00670-RJJ-PJG (WD Mich). Taylor alleges that, under *Janus v AFSCME*, 138 S Ct 2448 (2018), the Michigan law requiring State Bar membership in order to practice law is unconstitutional.

- **Access to Justice Initiatives**

Promotion of access to justice is a thread that winds through many State Bar of Michigan activities. In addition to policy development, the State Bar of Michigan supports a centralized fundraising campaign administered by the separate Michigan State Bar Foundation in partnership with the State Bar, to raise money for qualifying civil legal aid programs in Michigan. In FY 2019, the Access to Justice Campaign revenue for the fiscal year was more than \$1,068,000 (unaudited),

including \$81,000 of unique gifts. Approximately \$18.75 million has been received by the Access to Justice Fund in donations and pledges. During FY 2019, the State Bar of Michigan provided financial support to the Michigan State Bar Foundation (MSBF) to hire a fundraising coordinator and redesigned the foundation's e-commerce payment webpage to streamline the ATJ Fund donation process. Access to Justice Fund contributions are received and administered by MSBF.

- **Diversity and Inclusion**

The State Bar of Michigan partnered with the Prosecuting Attorneys Association of Michigan (PAAM) to provide implicit bias training to Michigan prosecutors, and with Golightly Career and Technical Center, 36th District Court, General Motors, and Comcast to conduct the Face of Justice Program, a pipeline program for school children. State Bar of Michigan leaders and staff also participated in a daylong implicit bias training program.

- **Advocacy**

The State Bar of Michigan public policy program fully reviewed 77 public policy items, including legislation, court rules, and administrative rules, and led the advocacy on approximately 65 formal policy positions. Highlights of legislative activity include successful advocacy for full funding of the Michigan Indigent Defense Commission and the Judiciary Budget, extension of the sunset for e-filing fees, and the creation of juvenile mental health courts. The State Bar of Michigan's public policy program also advocated for continued funding for the Legal Services Corporation at the federal level. Pursuant to AO 2004-1, all advocacy is reported on the State Bar of Michigan Public Policy Resource Center, <https://www.michbar.org/publicpolicy/Home>.

Improvements in Relations Between the Legal Profession and the Public

- **Online Legal Resource Center and Access to Justice Initiatives**

In FY 2018, the State Bar of Michigan launched the country's first full-service state bar online Legal Resource and Referral Center and advanced its offerings throughout FY 2019. The new service is taking full advantage of online access, automated administration, consumer-centered business practices using data-driven marketing and feedback, and new standards of accountability based on best business practices and ethics. It includes lawyer referral, the online attorney directory, and educational materials to help consumers with their legal needs. A second phase of the Legal Resource and Referral Center portal was completed that now enables call center staff to process referrals and attorney panel members to manage their panel membership online. During FY 2019, there were 143,702 unique visitors to the site who accessed 355,080 pages of information. Development of the site has been coordinated with and aided by Michigan Legal Help.

In FY 2019, the State Bar of Michigan advanced a Modest Means Referral Program for consumers who do not qualify for legal aid but have limited resources. Its initial focus is family law and bankruptcy and will be expanding to include general civil matters, probate and estate planning, driver's license restoration, expungements, real property and immigration. The Modest Means panel is available to income-eligible clients who are at 250 percent of the poverty guidelines, and almost 1,000 applications have been approved since the inception of the program in February 2018—more than 800 during fiscal year 2019. Lawyer referral service programs were also developed for limited scope representation in family, consumer, and landlord-tenant practice areas.

The State Bar of Michigan developed a Limited Scope Practice toolkit hosted on the State Bar of Michigan website and partnered with ICLE to develop a free Michigan-specific on-demand webinar for Michigan lawyers seeking to develop a limited scope practice.

- **Civic Education and Public Outreach**

The Public Outreach and Education Committee and the Diversity and Inclusion Advisory Committee continue to support law-related education programs across the state, including Face of Justice and other pipeline programs, Constitution Day, Law Day, the Liberty Bell Award, and the work of the Michigan Center for Civic Education including High School Mock Trial, "We the People," and Project Citizen.

The State Bar president and staff continued the tradition of visiting many of the 116 voluntary bar associations recognized by the State Bar, attending more than 50 affinity bar events in FY 2019. These visits gather information about the status of the legal profession, provide education concerning new and revised court rules and legislation, deliver practice management seminars, and familiarize lawyers and judges with State Bar of Michigan resources and services.

- **Pro Bono Program and A Lawyer Helps**

For the 11th year in a row, the State Bar of Michigan 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 was the most successful to date, with more than 65 pro bono events planned across the state of Michigan. The State Bar of Michigan also hosted the 11th annual Pro Bono Workshop on May 21, 2019. The workshop attracted a near-capacity crowd to the State Bar building, including legal aid staff, law firm and corporate attorneys, and many other stakeholders interested in increased access to justice for all. The workshop also provided an opportunity to showcase the many advancements in the State Bar's pro bono work, including the successful development of several Justice Initiative Committee-sponsored programs.

The QDRO Pro Bono Program has been providing legal assistance to low-income clients for more than 12 years by preparing QDROs that enable clients to enforce their property rights and collect retirement benefits they are legally entitled to receive. 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 in 2013, the program has placed nearly 200 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 150 requests for assistance since it was created four years ago. Also, the Malpractice Insurance for Pro Bono Program continues to be a way for Michigan attorneys without malpractice insurance to receive coverage for the purpose of providing pro bono legal assistance to low-income clients.

The State Bar's Circle of Excellence was retired after 14 years to pave the way for the "A Lawyer Helps Pro Bono Honor Roll." In its place, the Access to Justice (ATJ) Campaign and the State Bar of Michigan expanded their attorney recognition efforts and began recognizing financial contributions and pro bono service separately. The July 2019 *Michigan Bar Journal* published the 2019 Pro Bono Honor Roll and ATJ Campaign recognition lists in their entirety. A new Pro Bono Partner Program now recognizes partner programs that 1) provide direct civil legal services for free or at a significantly reduced fee to low-income individuals or organizations; 2) apply a means test to ensure it is providing services to low-income clients; 3) do not discriminate against prospective clients; and 4) facilitate participating pro bono attorneys' compliance with the State Bar of Michigan's Voluntary Pro Bono Standard.

Promotion of Interests of Legal Profession

• **Administrative Support for Sections**

The State Bar provides basic administrative support for the sections of the State Bar, primarily by collection of voluntary dues, maintenance of the sections' membership databases, financial services, and website support. Any policy advocacy by sections is financed entirely by voluntary dues. The sections serve the profession with educational and networking events throughout the year specific to the legal interests of each section's practice area. In FY 2019, State Bar sections held over 184 events; over 140 included substantive legal education for lawyers, judges, and law students. Membership in the State Bar's sections totaled 64,065, including 31,994 total paid section memberships purchased by 17,668 unique State Bar licensees. Free section memberships were available to law students, first-year licensees, and those who qualified for the Master Lawyers, Young Lawyers, or Judicial Section. In FY 2019, the Board of Commissioners dissolved the Master Lawyers Section and approved two new sections: the Immi-

gration Law Section and the Senior Lawyers Section. There are 44 sections of the State Bar.

• **Practice Management Support Services**

The Practice Management Resource Center (PMRC) continued to update and provide resources through the State Bar of Michigan website. Staff responded to calls from lawyers and firms seeking practice management advice via the PMRC helpline; authored practice management articles for the *Michigan Bar Journal* and external publications; and broadcast the On Balance podcasts in partnership with the Lawyers & Judges Assistance Program on topics including "Exploring Gambling Addiction and the Path to Recovery," "Michigan's New Civil Discovery Rules," "How Loneliness Impacts the Practice of Law," "Using Positivity to Increase Well-Being," "Making Workplace Conflict Productive," and "Michigan's Rule Changes for Limited Scope Representation."

• **Lawyers and Judges Assistance**

The Lawyers and Judges Assistance Program (LJAP) opened 63 new cases and provided monitoring or referral services to 228 clients. LJAP performed 52 assessments and monitored an average of 54 clients each month. The program also provided 54 telephone consultations for attorneys, law students, judges, or concerned colleagues or friends struggling with addiction or mental health issues. LJAP clinicians made 28 presentations to law students, attorneys, and judges on issues including addiction, stress management, and dealing with difficult personalities. LJAP staff have also participated in providing On Balance podcasts on wellness topics in conjunction with practice management as well as the first ICLE webinar on wellness.

• **Ethics Helpline and Seminars**

The State Bar of Michigan staff counsel responded to approximately 10–20 inquiries daily from attorneys and judges seeking informal advice through the Ethics Helpline. The Professional Ethics Committee issued three new ethics opinions and prepared additional FAQs on the ethical use of social media platforms. The State Bar of Michigan presented a full-day "Tips and Tools for a Successful Practice" ethics seminar twice and a half-day "Lawyer Trust Accounts: Management Principles and Recordkeeping Resources" ethics seminar three times. Staff counsel gave ethics presentations to law schools' Professional Responsibility classes, ICLE, State Bar of Michigan sections and bar-related entities, and local and national bar associations. Counsel also supported Professionalism in Action programs hosted at four Michigan law schools.

A task force on the Ethics & Regulation of Legal Services Marketing was formed to make recommendations on revisions to the Michigan Rules of Professional Conduct concerning attorney advertising and online legal services marketing and the need for and the possible efficacy of regulation of

advertising and marketing programs offered for use by lawyers and non-lawyer legal services providers, and expanded access to legal services funding.

- **Interim Administrator Program**

The State Bar of Michigan Representative Assembly voted to approve an Interim Administrator Program and to recommend appropriate rule changes to implement the program. The program would provide education and resources for active Michigan attorneys in private practice regarding succession planning in the event that the attorney becomes unexpectedly unable to practice law due to death, disability, or discipline. Currently, the Attorney Grievance Commission is responsible for law practice receiverships under similar circumstances. Under the new proposed program, all active attorneys in private practice would be required to designate a successor attorney or law firm or pay a fee to participate in the State Bar of Michigan Interim Administrator Program, which would act as, or nominate and assist, an interim administrator. The interim administrator would manage or wind up the attorney's practice depending on the circumstances.

- **Professionalism & Civility**

The Representative Assembly also voted to approve civility principles for the legal profession recommended by the Ad Hoc Work Group on Professionalism.

- **Support for local and affinity bars**

The annual Brunch for Bars event focused on membership-based bar organizations and the issues surrounding competition for the limited time of professionals, generational differences in calculation of "return on investment" volunteering, and continual relevance in a rapidly changing professional environment. Attendees explored the challenges and identified strategies to address the commonly held goal of maintaining a robust association. The annual Bar Leadership Forum in June provided leadership training and practical information to rising leaders of sections and affinity bars.

Financial and Membership Summary

Financial Summary

As of September 30, 2019, the State Bar's net position in the Administrative Fund totaled \$12,217,220, a decrease of \$583,551, or 4.6 percent, during FY 2019. Excluding the retiree health care

trust assets net of associated liabilities and other financial impacts, the Administrative Fund totaled \$10,263,766, a decrease of \$1,036,977, or 9.2 percent during FY 2019. The Administrative Fund decrease was anticipated as a standard feature of bar budgeting at the end of an extended "fee cycle." The current 16-year cycle is over twice the normal bar fee cycle, and the longest in at least half a century. The Client Protection Fund's net position totaled \$1,996,791, a decrease of \$12,963, or 0.65 percent during FY 2019. The sections' net position, calculated separately as it consists of voluntary section dues and other section funds, totaled \$2,250,516, a decrease of \$5,755 during FY 2019. The State Bar operates with no outstanding debt.

Approved FY 2020 Budget

The State Bar Board of Commissioners has approved a FY 2020 Administrative Fund budget totaling \$11,382,131, using \$1,793,681 of reserves, focused on continued accomplishment of the State Bar's strategic focus. A summary of the FY 2020 approved budget was published in the November 2019 *Michigan Bar Journal* and can also be found on the State Bar's website at www.michbar.org/generalinfo/.

Membership and Affiliate Statistics

During FY 2019, the number of State Bar of Michigan attorney members increased by 377, or 0.8 percent over FY 2018. Below are the statistics for each class of member and affiliate group for the year ended September 30, 2019:

Attorney Members	
Active members	42,506
Inactive members	1,139
Emeritus members	<u>2,447</u>
Total Attorney Members	<u><u>46,092</u></u>
Affiliates	
Legal administrators	10
Legal assistants	<u>393</u>
Total Affiliates	<u><u>403</u></u>

During FY 2019, 922 new members joined the State Bar of Michigan.

NOTE: These figures reflect members and affiliates in good standing and do not include those disciplined, disbarred, resigned, deceased, or suspended for nonpayment of license fees.