

A New Decade Begins for the State Bar of Michigan

Where Do We Stand?



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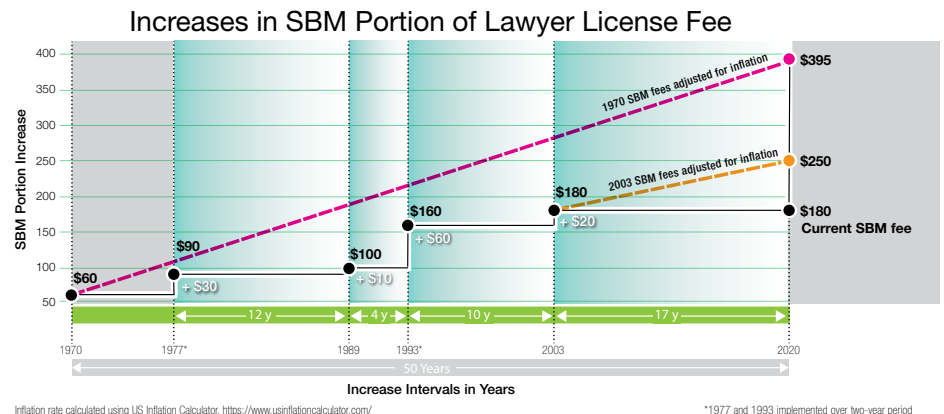
This is a critical moment in the history of the legal profession, with social media and an unregulated online marketplace for legal services disrupting norms, including traditional views about the profession and the rule of law. Some of you have been lucky enough to be able to carry on with little change—so far. Some of your professional lives have already been roiled by these developments. But regardless of where we are in our professional life cycles, we cannot, individually or collectively as a bar, stop these changes in their tracks. The question is, can we maintain the fundamental ethical values we have long cherished as a profession in the face of these changes? An essential function of any bar is helping members navigate these choppy waters, and the State Bar of Michigan has been a leader in this challenge.

In recent years, the State Bar has been active in promoting improvements in the administration of justice in ways that benefit lawyers and their clients, judges, and all Michigan citizens. Some recent examples of changes for which efforts of the State Bar were critical include modernizing the civil

discovery rules; expanding access to civil legal services in a variety of ways, including through new limited scope representation court rules; improving indigent criminal defense services through creation of the Michigan Indigent Defense Commission; eyewitness identification reform; and development and expansion of specialty courts, particularly business courts.

We are also at a critical moment in the financial life of the State Bar of Michigan. The State Bar has been operating on the fee amount set by the Michigan Supreme

Court in 2003—\$180—for 17 years, the longest period without an increase in modern bar history.¹ Bars, especially integrated bars² whose revenue is determined by an external entity (the Michigan Supreme Court, in our case), typically operate on cycles whereby a fee amount is initially set higher than the amount immediately needed; reserves are accumulated at the beginning of the cycle, and are drawn down toward the end of the cycle. Historically, an average fee cycle has been seven years, which we have already exceeded by 10 years.



Inflation rate calculated using US Inflation Calculator, <https://www.usinflationcalculator.com/>

¹1977 and 1993 implemented over two-year period

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Because we are an integrated bar, your voice is critical in making sure that we operate cost-effectively and in the public interest. Over the next several months, we will actively seek your input to help us meet these challenges.

Through a combination of fiscal prudence and increasing efficiencies, the State Bar has managed to operate on the same fee level for 17 years without sacrificing quality. We have automated manual transaction processes and member interactions such as license renewal, pro hac vice applications, and new member applications. Paper, printing, and mailing costs have been reduced by not mailing license fee statements, no longer printing the alphabetical directory, providing a voluntary opt-out of the *Bar Journal* and bar cards, and using more electronic communication. Changes in Michigan law have helped the State Bar better manage employee benefit costs. The recent downsizing and restructuring of the SBM Annual Meeting are the most recent examples of cost-saving changes.

As those of you who are licensed in other states already know, the cost of practice varies dramatically across jurisdictions. Michigan's license fees are well below the national average and are more than 50 per-

cent lower than the top license fees. To the surprise of some, license fees in voluntary bar states are often equal to or greater than those in integrated bar states; six voluntary bar states have higher license fees than Michigan.³ When you factor in the cost of mandatory continuing legal education requirements in other states, the total cost to practice law in Michigan is one of the lowest in the nation.

Without increasing fees since 2003, the State Bar has been able to carry out a variety of functions at a high level, as shown in the chart below.

As happy as we are that careful fiscal management has allowed the State Bar to operate on a fixed amount for so long, a fixed-fee amount is not sustainable forever. The State Bar's Financial Safety Margin Policy sensibly prohibits it from adopting a budget that would deplete its reserves below 33 percent of annual operating costs. At normal rates of inflation and no change in operations, we can expect to reach that level

in FY 2022–2023. Although a substantial increase would be justified by inflation and historically in line with past increases, the State Bar leadership is actively exploring all options for carrying out the Bar's mandated mission as cost effectively as possible to keep any increase as low as possible.

So, what's next? The Michigan Supreme Court sets fees pursuant to Michigan statute, and the Representative Assembly (RA) has exclusive authority on behalf of the State Bar to recommend to the Supreme Court a change in the Bar's portion of the fees.⁴ This exclusive authority has been vested in the RA because, with 150 members from all judicial circuits across the state, it is best situated to garner feedback from members and make a recommendation that will allow the State Bar to operate in a manner that our members support. Because we are an integrated bar, your voice is critical in making sure that we operate cost-effectively and in the public interest. Over the next several months, we will actively seek your input to help us meet these challenges.

I look forward to hearing your voices. ■

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 administration
- 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 filings
- 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 the Legal Profession

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

ENDNOTES

1. The full license fee amount of \$315 for active practice consists of \$180 for the SBM portion, \$120 for the attorney discipline system, and \$15 for the Client Protection Fund.
2. In the 33 states in which members of the bar must belong to the organized state bar as a condition of being licensed to practice, the state bar has been integrated into the state's regulatory structure, albeit in a variety of different ways—thus the term “integrated bar” is increasingly seen as a better descriptor than “mandatory bar.”
3. That a change in the State Bar's status as an integrated bar would not necessarily (or even likely) reduce the amount Michigan lawyers pay for licensure is borne out by the fact that lawyers in one-third of the states without an integrated bar pay more for licensure, some substantially, than we do in Michigan (*State and Local Bar Benchmarks*, Division of Bar Services, ABA [2019]). When the State Bar of California was converted in effect into a licensing agency in 2017, with section functions spun off into a voluntary state bar, the license fee was increased this year by 27 percent. Meanwhile, the cost of joining the voluntary California Lawyers Association, to which the State Bar of California sections were spun off, is \$95 plus \$95 per section, *California Bar Fees Will Increase in 2020*, UC Davis School of Law (2019) <<https://law.ucdavis.edu/library/news/posts/2019-12-05-california-bar-fees-will-increase-in-2020.html>> and *Frequently Asked Questions*, California Lawyers Ass'n <<https://calawyers.org/frequently-asked-questions/>>.
4. Rules Concerning the State Bar of Michigan, Rule 6, Section 1.