

Of State Bars and Bar Associations



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As I write this, it is June 2020. At this moment, we are living through a convergence of crises that have substantially disrupted our civic, professional, and personal lives. The causes and responses to these crises are volatile and often unpredictable. And, by nature, they are pregnant with transformational power.

True crises rightfully command everyone's focused attention. Suddenly, discussions on other topics, however compelling they may have seemed before the crisis, feel trivial. In a true crisis, we somehow understand that we need to pull together. But while we all seem to agree that finding the right way forward requires principled, knowledge-driven consensus and concerted action, we don't always agree about the principles, we don't always have all the knowledge, and we need dialogue to reach consensus on what the right way forward should be.

Unfortunately, the current crises have arrived in one of the most polarized environments of our lifetimes. Even a cursory review of our national media or a quick dip into social media reveals an environment so divisive that we sometimes seem to lack a common language to describe the nature of

the crises. *Masks. Freedom. Social distancing. Oppression. Liberty. Tyranny. Responsibility. Victims. Protest. Empathy. Riot. Rule of law. Civil disobedience. Crime. Equal justice. Racial justice. Law and order.* Words that in other times might draw us into a fruitful discussion instead now stereotype the speaker and become triggers for anger.

Our reactions to these crises are naturally influenced by our own ideological perspectives, and they often are or appear to those with different perspectives to be driven by political agendas. In this environment, we seem to have stopped listening to the factual basis and quality of thought underlying statements about the crises. Instead, we're tuned to signals for which "side" the speaker is on. When someone speaks about the crisis, if they're on our side, we keep listening; if not, we tune out, or worse, stay tuned only as fuel for outrage. Seeking comfort, we want to identify and huddle together with those who think as we do, and condemn everyone who doesn't. And in these times, even silence is construed politically—whether as acceptance of the status quo or even as cowardice.

This environment presents a unique opportunity for lawyers, who are needed now more than ever. Forgive me for repeating something I said in my first column, but lawyers are uniquely qualified to provide constructive leadership toward a significant public good—improving the tone and quality of our public civil discourse. We are members of a learned profession and public citizens.

We deal with conflicting rights, interests, and personalities every day, and the very essence of what we do is to resolve conflicts and solve problems for others. Our training and experience have taught us to do so through thoughtful consideration, dialogue, reason, and persuasion. The very best lawyers express themselves well, but they also listen well. These are essential tools for engaging in the necessary dialogue to reach consensus on what the right way forward should be.

But this environment presents a sharp challenge for the State Bar of Michigan. Unlike the wide variety of local and special-interest voluntary associations for lawyers and judges across the state, the State Bar is a public body corporate with a mission defined by the Michigan legislature and Michigan Supreme Court, and constitutional limitations defined by the United States Supreme Court. It is necessarily and, by design, apolitical. That means that its policies and actions are not a tug of war between ideological factions among Michigan lawyers. In a world that perceives every word (and even silence) as ideological and political, the State Bar must be careful to walk the tightrope between inaction and political action.

As formidable a challenge as it is to act apolitically in a hyper-politicized environment, the State Bar's status does not and should not paralyze us. Notwithstanding criticism, operate we must, because lawyers are needed more than ever in times of crises, and because the State Bar *is* built to

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help every lawyer, regardless of their ideology, operate effectively—especially in times of crisis.

To members who view the State Bar as a professional association that should be acting as the “voice of the profession” (which, translated, often means advancing their particular personal views on how to respond to the crises we face), the State Bar’s actions may have seemed unsatisfactory, or worse.¹ Specifically, beyond the necessary but unglamorous work the State Bar has undertaken during the present crises, some members have exhorted the Bar to:

- Sue the governor.
- Condemn the governor.
- Condemn the legislature.
- Rebuke a Court of Appeals judge for a controversial opinion.
- Opine generally on racial conflict.

The list goes on, but I hope you get the point. Each of these actions is outside the boundaries within which the State Bar is required to remain.

As an integrated bar, the State Bar does not have the range of options or rhetorical tools in its toolbox that it would have if it were a voluntary professional association, but that does not mean it is hamstrung. On the contrary, the status of an integrated bar comes with unique advantages that are especially useful in a crisis. They include:

- A close relationship with the Supreme Court that regulates the Bar
- An ongoing working relationship with the executive branch on matters related to the regulation of the profession and judicial appointments
- Serving as the central hub for the network of local bars, affinity bars, legal system stakeholders, and State Bar sections populated by voluntary membership

The State Bar provides a crucial platform for all Michigan lawyers to meet their professional obligations, including the obligation to “seek improvement of the law, the administration of justice[,] and the quality of service rendered by the legal profession.”² The State Bar assembles lawyer viewpoints

from across the spectrum of practices, geography, and ideology to produce valuable, broad-based input on issues related to the regulation and discipline of attorneys, the functional improvement of the Michigan court system, the availability of legal services to the public, the regulation of attorney trust accounts, and the regulation of the legal profession. Voluntary bars do not have the same constraints as the State Bar does, but they do not and cannot create the same opportunities for all lawyers across the state or provide the same benefits to the public.

Indeed, even while navigating a difficult course through these contentious times, the State Bar has been more vigorous than ever, and it remains as relevant and effective as ever. During the current crises:

- We have focused on our core mission: helping lawyers serve the public ethically and competently.
- We have asked which services we provide to lawyers and the public are especially relevant to the moment.
- We have listened. To everyone. Without preconceptions or prejudice.
- We have maintained our responsiveness to members and the public, even under the disruption of the quarantine, and even as those needs have grown, around the clock, through weekends and holidays.
- We have gathered affinity and local bar association leaders and justice system stakeholders to discuss and share ideas on how to advance the goal of equal justice during this time of concentrated focus on racial equity issues.
- We have scrupulously followed the extensive processes and rules the Michigan Supreme Court and our predecessors have put in place to ensure that we act only within our defined scope of authority, with transparency and openness, even as the unique exigencies of the pandemic offered plausible excuses to cut procedural corners.

The State Bar has marshalled its resources to give lawyers the timely information they have needed about emergency orders, Supreme Court and local administrative orders, and legislative actions in response to

the pandemic. From the beginning of the quarantine orders, we consistently and persistently made the case for why lawyers have needed the ability to leave their homes when necessary to carry out legal services competently and ethically. And we have been devoted to helping lawyers carry out their duties and business operations effectively and safely.

Finally, an intrinsic strength of the integrated bar is that every person admitted to the practice of law in Michigan has the opportunity to participate in its governance. Its inclusiveness expands the range of opinion in its deliberations and strengthens the quality of its decision making and hence its influence, in contrast to voluntary state bars whose leadership is more susceptible to factionalism and perceptions of self-interest.

If you greeted this defense of the State Bar of Michigan with skepticism, ask yourself if you would react the same way if you thought the State Bar was led by people who thought just like you as you would if you thought the State Bar was led by people who did not. The fact is that the leadership of the State Bar is broadly diverse. That means that among the 32 members of the Board of Commissioners and the 150 members of the Representative Assembly, there *are* many members who think like you on every issue that falls within the authority of the State Bar to address.

The rules governing the State Bar mean that I do not get to project my own ideological perspectives as those of the Bar simply because I have, during my term as president, been handed its microphone for a year. Somewhat to my chagrin, that requires the State Bar president to exercise a high degree of discipline and restraint. But to my comfort and relief, I have every right and expectation that my successors will do the same. ■

ENDNOTES

1. SBR 1 provides that the State Bar “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.” When the State Bar speaks, it speaks to advance that interest and not to represent the private ideologies or interests of any individual lawyer or group of lawyers.
2. MRPC 1.0, Preamble: A Lawyer’s Responsibilities.