

Excerpts from State Bar of Michigan Audited Financial Statements

and Other Supplementary Information, Year Ended September 30, 2020
with Report of Independent Auditors



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December 9, 2020

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 2020 Annual Financial Report of the State Bar of Michigan. The Annual Financial Report covers the fiscal year that ended on September 30, 2020 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 2020 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 report should be directed to Janet K. Welch, executive director of the State Bar of Michigan.

Ordinarily this report is transmitted without further comment, but this has been an extraordinary year, and we want to note that the State Bar is especially proud of what it has been able to accomplish for the benefit of the public and the legal profession under these unprecedented circumstances, and to express gratitude to the Michigan lawyers who generously volunteered their time and to the stakeholders with whom we partnered in our efforts.

Robert J. Buchanan
President

Janet K. Welch
Executive Director

Joseph P. McGill
Treasurer

Tatiana Goodkin
Chief Financial Officer

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. 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 licensing fees and revenue generated by bar 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 (State Bar Rules), the State Bar is governed by a Board of Commissioners. The president, president-elect, vice president, secretary, and treasurer are the 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 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, led by the leadership of the Board of Commissioners and Representative Assembly. There are 21 standing committees, one special committee, and two task forces of the State Bar created to advance the work of the State Bar as defined by court rule. Almost 450 attorneys served on State Bar of Michigan committees, task forces, and workgroups. The State Bar's 44 sections, each with its own bylaws approved by the Board of Commissioners, focused largely on excellence in specific practice

areas. 42 of the sections are funded by voluntary dues from their membership. The work of the Young Lawyers Section and Judicial Section is funded by State Bar dues.

The State Bar of Michigan 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 full-time equivalent employees (FTEs) at the end of fiscal year 2020, no change from fiscal year 2019.

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 & services
- Ethics seminars & resources
- E-Journal
- Practice management seminars
- Support for local and affinity bars

Highlights of FY 2020

Activities Mandated by Statute or Court Rule

Administrative Activities

• **Collection of license fees and administration of licensing requirements**

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

• **Governance**

Court rules define the self-governing features of the State Bar of Michigan, as an integrated bar. A task force reviewed and examined ways to modernize the governance structure of the State Bar of Michigan for the purpose of making governance more cost-effective and timely. Its work will be presented to the Representative Assembly.

• **Conversion of State Bar activities to remote work and virtual proceedings**

Consistent with executive orders and public safety, the State Bar converted the bulk of its operations to remote work and assisted Michigan lawyers and the Supreme Court in adapting legal practices to adhere to COVID-19 restrictions and safe practices.

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

• **Bar admissions**

The State Bar of Michigan processed 748 character and fitness (C&F) applications for the July 2019 and February 2020 bar exams and conducted interviews for 47 applicants. Eighteen additional matters were referred, with interviews or recommendations pending. 26 matters are expected to be referred to C&F district committees upon completion of the investigation. There were 14 formal in-person hearings completed prior to pivoting to Zoom hearings in June due to COVID-19. Subsequently, the C&F Standing Committee

completed 20 hearings. Three formal BLE hearings were held in person prior to March, and one hearing was subsequently conducted by Zoom.

- **Annual Meeting**

The 2020 Annual Meeting and associated business functions were successfully conducted by Zoom.

- **Unauthorized Practice of Law administration**

The State Bar of Michigan received 66 complaints alleging the unauthorized practice of law (UPL) during FY 2020. Of these complaints, 40 were closed after investigation, one is pending committee review after investigation, five are pending resolution after committee review, and 15 remain open for further investigation and review. The Board approved litigation in five matters where informal resolution to prevent further occurrence of the conduct could not be accomplished. The UPL department obtained injunctions in three cases.

- **Client Protection Fund administration**

The Board of Commissioners approved payment of 43 Client Protection Fund claims totaling \$710,359 to reimburse clients whose attorneys misappropriated their funds during FY 2020. Claim payments totaling \$576,129 were disbursed from the Fund in FY 2020, which included a portion of claims approved by the Board of Commissioners in FY 2019. As of September 30, 2020, \$178,925 in approved claim payments remained pending, awaiting signed subrogation agreements from the prospective payees.

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- **Development of resources to respond to COVID-19 pandemic**

In response to the profound, extensive emergency changes in the operations of the court system and the practice of law precipitated by the COVID-19 public health crisis, the State Bar of Michigan refocused its communications and public services to meet the emerging needs of the public and Michigan lawyers. The State Bar developed new resources, including constantly updated resource pages addressing changes in court practices and remote work tools and tips. The State Bar and its sections worked collaboratively with the State Court Administrative Office, the Board of Law Examiners, the attorney discipline system, the Michigan Institute for Continuing Legal Education, and the executive and legislative branches, on necessary adaptations in the provision and regulation of legal services during the pandemic.

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**

The State Bar of Michigan defended its governmentally mandated duties when faced with a federal lawsuit that, as part of a string of lawsuits across the country, raised First Amendment challenges against integrated bars.

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 (W.D. Mich). Taylor alleged that, under *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the Michigan law requiring State Bar membership in order to practice law is unconstitutional. On September 8, 2020, the district court in the Western District of Michigan granted summary judgment in favor of the State Bar of Michigan, explaining that the issues raised by Ms. Taylor have been “squarely decided” by the United States Supreme Court. The decision has been appealed to the 6th Circuit Court of Appeals.

- **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 2020, the Access to Justice Campaign revenue for the fiscal year was more than \$2,215,000 (unaudited), including \$1,010,000 of unique gifts. Approximately \$20.95 million has been received by the Access to Justice Fund in donations and pledges.

- **Justice for All Task Force**

The State Bar of Michigan played a key role of the Michigan Supreme Court's Justice for All Task Force throughout FY 2020, serving on the planning team, task force, and multiple work groups.

- **Diversity and inclusion**

In addition to its traditional work partnering with local and affinity bars on diversity and inclusion events, the State Bar developed a central repository of resources for Michigan lawyers on race and justice, and convened an ongoing online Race and Justice Forum to discuss developments and foster bar collaboration. In partnership with General Motors Legal Staff, the State Bar offered virtual training sessions to all Michigan lawyers on how unconscious processes may affect individuals' decision-making and the wider legal system.

- **Advocacy**

The State Bar of Michigan public policy program fully reviewed 57 public policy items, including legislation, court rules, and administrative rules, and led the advocacy on approximately 40 formal policy positions. Highlights of legislative activity include successful advocacy for funding of the Michigan Indigent Defense Commission and the Judiciary Budget, and 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 and FY 2020. 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. In FY 2020, the Lawyer Referral Service practice areas were updated to facilitate better, more targeted referral matches.

The Legal Resource and Referral Center portal allows call center staff to process referrals and attorney panel members to manage their panel membership online. Development of the Online Legal Resource Center is coordinated with and aided by Michigan Legal Help. FY 2020 saw the expansion of automated data reporting, and of limited scope practice areas and modest means lawyer referral offerings, and the initiation of new collaborations with legal aid, law school clinics, and local bars. Early in the period of COVID-19 emergency orders, the State Bar created a Bono Helpline for Frontline Responders, and a Rapid Response helpline for COVID-19 related legal matters.

In response to COVID-19, the \$25 administrative fee was waived for all matters beginning April 1, 2020.

In total, there were 165,095 unique visitors to the site who accessed 408,084 pages of information.

- **Civic education and public outreach**

The Public Outreach and Education Committee and the Diversity and Inclusion Advisory Committee continued to support law-related education programs across the state and assist partners and stakeholders in adapting public education offerings to a virtual environment.

- **Pro bono program and A Lawyer Helps**

In addition to carrying out the traditional support functions for the pro bono activities of Michigan lawyers, including the tax, patent, and human trafficking projects, the State Bar worked with FEMA, Lakeshore Legal Aid, Legal Services of Eastern Michigan, Red Cross, National Consumer Law Center, Dykema, Bodman, Miller Canfield, and Honigman to assist Michiganders impacted by the flooding disaster. While there was a significant reduction in the volume of legal clinics and pro bono events because of concerns related to the COVID-19 crisis, the State Bar created and maintained new resources specifically targeted at legal needs arising from the crisis, such as COVID-19 Rapid Response helpline.

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 2020, State Bar sections were instrumental in drafting, advocating for, and obtaining emergency order provisions and legislation necessary for legal and court services in a pandemic environment. Membership in the State Bar's sections totaled 44,670, including 34,226 total paid section memberships purchased by 23,350 unique State Bar licensees. Free section memberships were available to law students, first-year licensees, and those who qualified for the Young Lawyers or Judicial sections. There are 44 sections of the State Bar.

- **Practice management support services**

The Practice Management Resource Center (PMRC) continued to update and provide resources, trainings, and guidance through the State Bar of Michigan website, one-on-one helpline, MBJ articles, newsletters and social media. The PMRC pivoted to adapt its offerings to the needs of lawyers serving the public in a pandemic environment, with a special focus on training and tips concerning online meeting platforms. The State Bar's *On Balance* podcasts focused on the emerging needs and concerns of lawyers practicing in a pandemic environment.

- **Lawyers and Judges Assistance**

The Lawyers and Judges Assistance Program (LJAP) is dedicated to assisting legal professionals with mental health and substance use concerns and those looking to address general wellness. This year, LJAP has specifically focused on helping law students, bar applicants, lawyers and judges cope with the ongoing COVID-19 pandemic, with clinicians making 15 presentations to law students and legal professionals on issues of stress management, compassion fatigue, well-being

concerns within the field of law, and a number of specific presentations focusing on coping with the COVID-19 pandemic and resulting fatigue. LJAP opened 45 new cases and provided monitoring or referral services to 233 clients. LJAP performed 41 assessments and monitored an average of 57 clients each month, an increase of three average clients per month from FY 2019. LJAP provided numerous telephone consultations concerning legal professionals struggling with addiction or mental health issues. LJAP staff continues to participate in providing *On Balance* podcasts on wellness topics in conjunction with the Practice Management Resource Center staff. LJAP began working in conjunction with other State Bar staff on establishing the SOLACE (Support of Lawyers/Legal Personnel—All Concern Encouraged) Program in Michigan, with the hopes of beginning this program in 2021.

• 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 one new ethics opinion and prepared additional FAQs on meeting ethical requirements regarding cybersecurity, which will be published in the next fiscal year.

• Interim Administrator Program

The State Bar of Michigan Representative Assembly voted in 2019 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. The proposed rules are currently pending consideration by the Michigan Supreme Court.

• Support for local and affinity bars

The State Bar president and staff traditionally visit many of Michigan's 120 voluntary bar associations, participating in more than 50 local events in FY 2019. Unfortunately, COVID-19 put a damper on both bar association event planning and travel. In FY 2020, the president was able to attend only a handful of events in November and December 2019, all in Metro Detroit, and make a single visit to St. Joseph County in September 2020. Typically, these visits help the State Bar gather information about local triumphs and concerns, provide education to local bar members concerning new Court Rules and developments in public policy,

and connect lawyers and judges with the many resources and services available from the State Bar. In the new environment, the State Bar continues to develop the capacity to provide these benefits both through inperson visits and virtually.

Financial and Membership Summary

Financial Summary

As of September 30, 2020, the State Bar's net position in the Administrative Fund totaled \$11,571,909, a decrease of \$645,311, or 5.3 percent, during FY 2020. Excluding the retiree health care trust assets net of associated liabilities and other financial impacts, the Administrative Fund totaled \$9,182,653, a decrease of \$1,076,269, or 10.5 percent during FY 2020. The Administrative Fund decrease was anticipated as a standard feature of the SBM budgeting at the end of an extended "fee cycle." The current 17-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 \$2,031,710, an increase of \$34,919, or 1.7 percent during FY 2020. The sections' net position, calculated separately as it consists of voluntary section dues and other section funds, totaled \$2,619,740, an increase of \$369,224 or 16.4 percent during FY 2020. The State Bar operates with no outstanding debt.

Approved FY 2021 Budget

The State Bar Board of Commissioners has approved a FY 2021 Administrative Fund budget totaling \$11,178,902, using \$1,949,012 of reserves, focused on continued accomplishment of the State Bar's strategic focus. A summary of the FY 2021 approved budget was published in the November 2020 *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 2020, the number of State Bar of Michigan attorney members increased by 228, or 0.5 percent over FY 2019; however, the number of paying attorneys decreased by 433 or 1 percent. Below are the statistics for each class of member and affiliate group for the year ended September 30, 2020:

Attorney Members	
Active members	42,401
Inactive members	1,192
Emeritus members	<u>2,727</u>
Total Attorney Members	<u>46,320</u>
Affiliates	
Legal administrators	8
Legal assistants	<u>317</u>
Total Affiliates	<u>325</u>

During FY 2020, 807 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.