

Familiar Headwinds and Decades of Searching for Solutions



Julie I. Fershtman

In my November 2011 President's Page ("Looking Inward, Listening, and Providing Service in Challenging Times"), I wrote about "headwinds" that have challenged our profession—competition, technology, and constant change. My column also explained how the State Bar has been working hard to help members succeed and overcome them.

These headwinds are, in my opinion, very real. The State Bar's comprehensive member survey last year confirmed that a significant percentage of our members feel their impact. Although these headwinds might seem wholly influenced by current times, it might surprise you to learn that the Bar has recognized some of them for almost as long as its existence. How we can defeat them and help lawyers succeed has generated discussion and debate for decades.

The Bar's 2011 Comprehensive Member Survey

In an attempt to better understand the concerns of SBM members and develop an invaluable resource for strategic planning, the State Bar conducted a comprehensive member survey last year. This survey, the first in 10 years, asked members how well the State Bar was serving them and what they expected from it; whether they utilized SBM programs and services, and if new programs and services were worth considering; and encouraged respondents to voice their concerns.

The response was strong. Thousands of members responded, offering more than 10,000 personal comments. These responses offered valuable insights into the many issues and concerns of our members. Following are some of them.

Making a Living Today

An alarming response to the survey was that more than *one-third* of members were "extremely concerned" about earning a living. Factoring in those who were "very concerned," the number rose to a staggering 59.5 percent. Similarly, 42 percent were "extremely concerned" or "very concerned" about job security. The State Bar takes these concerns very seriously and is working to help lawyers succeed through free programs that include the Practice Management Resource Center, among others.

Interestingly, however, concerns about profitability have been with us for more than 50 years. The March 1961 issue of the *Michigan State Bar Journal* cited a January 6, 1961, *Wall Street Journal* article that noted a "widespread" belief among members of the legal profession that lawyers are underpaid. Private-practice lawyers surveyed around that time reported an average income of "a little over \$10,000 a year, roughly half as much as doctors' average annual income." Another study cited in the article concluded that "lawyers' incomes had risen only 58 percent compared with 144 percent for self-employed businessmen, 83 percent for dentists, and 157 percent for doctors."¹

Rapidly Changing Technology

According to the member survey, lawyers have been feeling headwinds of technology. Forty-two percent were "extremely concerned" or "very concerned" about keeping up with technology. The Bar has been working hard to help members manage their practices through efforts such as the Practice Management Resource Center.

We might have to be careful what we wish for on the technology front. The February 1937 issue of the *Michigan State Bar Journal* reported that the Bar hoped to "speed up the publication and dissemination of the Supreme Court Advance Sheets."² These days, the State Bar's e-Journal delivers succinctly summarized opinions to our desks nearly every morning; more than half of those responding to the survey confirmed they were satisfied users. The Bar's Casemaker™ benefit allows members to expand their reach of state and federal primary legal research at no cost.

Public Perception of Our Profession

How the public perceives our profession has been a tremendous concern of members for decades. The most recent member

This survey asked members how well the State Bar was serving them and what they expected from it; whether they utilized SBM programs and services, and if new programs and services were worth considering.

survey told us that 74 percent found it to be a concern, and 58 percent were “extremely concerned” or “very concerned” about the lack of public understanding and confidence in the legal system. Sixty-five percent of survey respondents believed that it was “extremely important” or “very important” for the State Bar to promote a positive image of the profession to the public, and 65.5 percent agree that it is “very important” or “extremely important” for the Bar to protect the public.

The image of lawyers and the role, if any, that the organized bar can play in improving it has been a concern for decades. The March 1961 issue of the *Michigan State Bar Journal* reported that “some attorneys complain they’re often pictured as ‘shysters’ preying on the misfortune of the public.”³ In the September 1946 issue, the State Bar Committee on Public Relations recommended an annual dues increase of \$10 for promoting the image of lawyers to the public.⁴

Civility and Mentoring Programs

More than one-third of those responding to the member survey were “extremely concerned” about civility in our profession; older respondents were most concerned about civility. The survey explored possible solutions. Sixty-nine percent believed that the Bar should establish lawyer-to-lawyer mentoring programs, with 82 percent of lawyers under age 30 and 66 percent of lawyers over 70 showing support. Our Strategic Plan includes exploring “mentoring programs for successful models to assist affinity bar associations, law schools, and others interested in developing a mentoring program” along with increased outreach to law schools.

Mentoring programs have been considered for as long as the Bar’s existence. In the September 1939 issue of the *Michigan State Bar Journal*, the State Bar Committee on Legal Education and Administration was “strongly of the view that a period of training in a law office should be made one of the requirements to practice in this State.”⁵

Number of Lawyers

Nearly 85 percent of member survey respondents were concerned about the num-

ber of lawyers, with more than half “very concerned” or “extremely concerned.” The issue is not new. Forty years ago, the March 1972 edition of the *Michigan State Bar Journal* quoted remarks from a speech delivered by American Bar Association President-Elect Robert W. Meserve called “We Are Flooded—Where Are the Life Preservers?” He stated, in part:

Perhaps I can best illustrate what I want to call to your attention in the following way.... One of the first stories law students of my generation heard was the one concerning the Dean admonishing the members of his first-year class to look to the right and then to the left because only one in three would be there three years later at graduation.

I don’t know if any Dean ever really said that to a first-year class, but in any event I will ask you to look to the right and to the left, and then look in front and in back, because in three years there are going to be an awful lot more of you.

At this moment there are 94,468 law students in ABA-approved law schools throughout the country. That is up almost 12,000 from what it was in 1970–71—an increase of 15 percent. What it means is that there is one law student for every three-and-a-half members of the legal profession.

The total enrollment of the law schools in the State of Michigan today is 3,670, 120 percent of the enrollment five years ago, or 180 percent of the enrollment ten years ago, one law student for every three members of the State Bar of Michigan.⁶

The issue continues to generate considerable debate today.

Possible Solutions Debated for Decades

How can the Bar help members succeed? As we explore new and innovative options, old ideas reappear but quickly return to the shelf. One program other states have turned to is law-practice specialty certification, which, not surprisingly, Michigan has consid-

ered for decades. In December 1968, then State Bar President Gilbert H. Davis wrote in the *Michigan State Bar Journal* that law-practice specialty certification deserves serious consideration. He asked, “If we don’t inform the public of a lawyer’s special skills, are we properly serving the public interest?”⁷ In 1975, the Representative Assembly adopted in principle the concept of specialization and sought a report from the Committee on Specialization in Legal Practice. In 2004, the Board of Commissioners declined to pursue specialty certification—rightfully so, the member survey suggests. Fifty-four percent of respondents opposed it.

Mandatory continuing legal education has also been proposed as a way to keep lawyers up to date, thereby promising greater public protection. Michigan is currently among a few state bars with no such requirement; Connecticut, the District of Columbia, Maryland, Massachusetts, and South Dakota are the others. Over the years, however, the Michigan Supreme Court has considered, tried, and withdrawn these requirements. With 60 percent of the member survey respondents opposing mandatory continuing legal education, it appears that members want the issue closed.

Conclusion

You continue to have my assurances that the State Bar is working steadily to give you the resources to succeed and derive greater satisfaction from your work. An encouraging sign from the member survey is that 72 percent of respondents reported to be satisfied or extremely satisfied with the services the State Bar provides its members and the public. Still, we’re not resting on our laurels. Please contact me or the State Bar if you have ideas for how we can serve you better. ■

FOOTNOTES

1. 40 Mich St B J 28 (1961).
2. 16 Mich St B J 67 (1937).
3. 40 Mich St B J 29 (1961).
4. 25 Mich St B J 570 (1946).
5. 18 Mich St B J 386 (1939).
6. Meserve, *We are flooded—where are the life preservers?*, 51 Mich St B J 158–159 (1972).
7. 47 Mich St B J 8 (1968).