

From the Chair The Work Continues

The section is now an official co-sponsor of ICLE's Solo/Small Firm Institute to be held October 20 and 21, 2005 at the Dearborn Inn. Other sponsors include the State Bar of Michigan and the General Practice section of the State Bar. In January, section council members met with Sheldon Stark of ICLE to assist in planning the programming for the Institute. This year's event is shaping up to be a program not to be missed. The Institute will offer sessions on starting a law practice, reducing expenses, finding free legal assistants and law clerks, marketing, setting and collecting fees, law practice management, training on software such as Timeslips, building and running a collection practice, adding criminal law to your practice, adding juvenile law to your practice, the ABCs of consumer bankruptcy, discovery in family law cases, prenuptial agreements, Medicaid, and more. There will also be a separate track of courses geared for legal assistants and other legal support persons. Sections members are encouraged to attend this event. Registration information will be available soon.

In August, our section formed an alliance with the State Bar of Michigan to co-develop, with the State Bar, law practice management initiatives for its members. We are working closely with the State Bar's director, John Berry, on this project and look forward to active involvement in this part of the Bar's Strategic Plan. Currently, section council members are putting together a list of law practice management resources for the State Bar to provide its membership. Just a reminder that Techshow 2005, the ABA's Legal Technology Conference and Expo, is scheduled for March 31 – April 2, 2005 at the Sheraton Chicago Hotel & Towers, Chicago, Illinois. You can register for the event at www.techshow.com.

In June, I will be speaking on behalf of the section on "Running a Successful Law Practice" at the 2005 Upper Michigan Legal Institute at the Grand Hotel, Mackinac Island.

The section council continues its efforts to produce a quality quarterly newsletter for its membership and welcomes any contributions you may wish to make to the newsletter. Draft articles may be e-mailed to me at vestranj@cooley.edu. Finally, should you have any suggestions as to services or programs you would like to see the section provide and/or you have an interest in serving on the council, do not hesitate to contact me. I look forward to hearing from you in this regard. Thank you.

Joan P. Vestrand, Esq.

If you have comments, suggestions, or criticisms, please feel free to contact Joan Vestrand at (248) 370-3632 or vestranj@cooley.edu.

Table of Contents

The Ethical Lawyer	2
Holistically Speaking	4
Site Watch	4
Master Points	6

Listserv

If you would like to raise a question or begin a discussion on the listserv, just address your message to:

Lawprac@groups.michbar.org

For those responding to a comment or question, send your response to the list. This is easily done by pushing the Reply to All button and typing your answer. If you want your answer to be sent only to the author, find the author's address and respond directly to him or her. By pushing the Reply to Author button, you may be sending your response back to the list if you are not careful. Of course, we have more fun when we can all join in on the conversation.

**STATE BAR OF MICHIGAN
Law Practice Management
Section Council**

2004-2005

Chairperson

Joan P. Vestrand (P37062)
Phone: 248-370-3632
Fax: 248-370-3635
e-mail: vestrandj@cooley.edu
Thomas M. Cooley Law School
Rochester/Oakland University
472 O'Dowd
Rochester, MI 48309

Chairperson-Elect

Vincent Romano, Grosse Pointe Park

Vice-Chairperson

Michael J. Fraleigh, Lansing

Secretary

Gary P. Bauer, Lansing

Treasurer

Ernest I. Gifford, Birmingham

2005

Daniel H. Bliss, Troy
John A. Decker, Saginaw
Edward B. Goodrich, Grand Rapids
Linda V. Parker, Detroit
Joseph Shulman, Southfield

2006

Gary E. Gardner, Dearborn
Henry S. Gornbein, Bloomfield Hills
Konnie G. Kustron, Milford
Joellyn T. Stokes, Pleasant Ridge

2007

Joan R. Bullock, Orlando, FL
Beverly M. Helm, Wheaton, IL
Craig S. Neckers, Grand Rapids
Cindy Rhodes Victor, Utica

Immediate Past Chairperson

Barry Brickner, Bingham Farms

Ex-Officio

Austin G. Anderson	Michael J. Fraleigh
Benson J. Barr	Howard J. Gourwitz
Linda D. Bernard	Wesley P. Hackett, Jr.
L. Ray Bishop	Kenneth Lee Lewis
John C. Buchanan	Miles J. Postema
Daniel J. Cline	David C. Sarnacki
Reginald D. Dozier	Cindy Rhodes Victor
Mark R. Filipp	Thomas R. Winquist
Milton I. Firestone	

Commissioner Liaison Julie I. Fershtman

The Ethical Lawyer

The Importance of Effective Communication

A few years ago, the ABA section on Litigation conducted a study on client satisfaction with lawyers. The results of the study were not surprising. A vast majority of those who responded listed as their #1 complaint lack of adequate communication in the course of the attorney/client relationship. This sentiment is consistent with disciplinary statistics, which rank lack of communication as a leading basis for the filing of grievances against attorneys. The failure to adequately communicate is also a leading cause of malpractice claims. It is said that 15% of all malpractice actions are based on the lawyer's alleged failure to obtain client consent to strategy and other case management decisions. The importance of effective client communication cannot be underscored enough. Effective communication is the #1 method by which you can assure client satisfaction with your services. Equally significant, it is one of the most effective means of successfully marketing a practice. Poor communication, it follows, is self-sabotage and a leading factor in business failure.

Components of Quality Communication

1. Listen!

Are you a good listener? Do you really listen to what the client has to say? Do you give each client the opportunity to be heard? Or, as soon as you think that you have enough information, do you cut the client off, take control, and dominate the remainder of any discussion? While you may not need to hear anything else in order to fashion remedies and strategies for your client, you are making a big mistake in not allowing the client to fully unburden himself to you. The

client's perception of whether he was actually heard by his lawyer is a bigger factor in client satisfaction than is the outcome of the case! In other words, if you listen well, even if you lose the client's case, the client is likely to be satisfied with you and the services that you rendered. Make it a habit to allow a client, at the initial consultation, to tell you everything on his or her chest. In addition, really listen! Listening carefully not only ensures client satisfaction, it will help you identify the best means to help this particular client.

2. Keep the Client Informed

Keeping the client informed is imperative to client satisfaction. The client who hears nothing or who rarely receives contacts will, justifiably or not, equate silence with lack of care and concern for their interests. You must be in regular communication with current clients. To ensure regular communication, have the following policies in effect:

- Determine the client's preferred method of communication.
- Promptly copy clients on all documents generated in the case.
- Promptly respond to client inquiries. (A recent ABA study revealed that, reasonably or unreasonably, clients expect a return call within three hours. This expectation has caused the ABA to recommend that lawyers attempt to return calls within four hours of receipt).
- Promptly advise the client of any developments in the case, good or bad.
- Regularly consult with the client and obtain the client's informed consent to strategy

and important decisions in the case.

f) Send regular, itemized billings.

The practice of law is a service business. It's just like a restaurant. Despite the quality of the legal work, if the service is lousy, clients are unlikely to return or to refer business the lawyer's way. Lawyers must view every

client as a potential ambassador of his or her practice. Client satisfaction is an excellent marketing device: it leads to repeat business and referrals. Each and every time we fail to adequately communicate, we need to recognize that the damage wreaked has consequences far beyond the immediate client. We need to realize the effect of

our inadequacies on our reputation and the wellbeing of our practice.

Joan Vestrand is an Assistant Dean/Associate Professor of Law at the Thomas M. Cooley Law School. The author can be reached at (248) 370-3632 or by email at vestranj@cooley.edu.

Special Counsel®

The Global Leader in Legal Solutions

ARE YOU AN ATTORNEY WITH BUSINESS?

If you are interested in opportunities offering tremendous professional and financial growth, we should talk.

My name is Angie Pierce, and I am an Attorney Recruiter with the nation's largest legal staffing firm. I specialize in senior level attorney placement with top Michigan law firms and corporations. At this time, I have several excellent opportunities for attorneys with substantial, portable business (300K+) in the following areas of the law:

- Business/Corporate Transactional
- Environmental
- Labor and Employment
- Intellectual Property
- Probate and Estate Planning
- Commercial Litigation

If you have an interest in learning more, please contact me at (248) 614-0013, or by email at angie.pierce@specialcounsel.com

www.specialcounsel.com
(800) 737-3436 or (248) 614-0013

A Member of the **MPS**
MPS Group **LISTED**
NYSE

Holistically Speaking

Definitions

By Nancy A. Werner, Esq.

National Public Radio recently interviewed Pulitzer Prize-winning author Jeffrey Marx and former Baltimore Colts player Joe Ehrmann. It was an interesting discussion between men of their perceptions of what it means to be a man and defining success.

Marx' book about Ehrmann, "Season of Life: a football star, a boy, a journey to manhood" is a book about relationships: that of Marx and Ehrmann; Ehrmann's life journey; and Marx and his father. When Ehrmann left pro football, he became a minister and through a combination of his ministry with inner city children and his own personal experiences and growth, he gradually formulated a philosophy he termed "Building Men for Others."

Ehrmann also is the assistant coach for Gilman High School, a Baltimore area high school. The coaching philosophy is not about winning games as much as it is about preparing young men for manhood. As an aside, the team is also highly successful, showing the players respond to stepping up to a higher plane. Ehrmann postulates that fathers do not always adequately instill in their sons what it means to be a man. Fathers may consciously or unconsciously pass along limiting, outdated, or negative behaviors to their sons, thereby reinforcing dysfunctional behavior generation after generation.

"Well, what we end up with is a cycle that keeps going," Joe said. "The father has no clue what it means

to be a man, no strategic definition whatsoever. The son gets whatever the dad gives him. And so the whole thing keeps getting repeated. Without a definition, most of us don't even know if we're good men or not. But most of us feel that whatever the criteria are, we're just below whatever that definition is." (Season of Life, p. 99)

Ehrmann isolates three common indicia of success that he calls "false masculinity": athletic ability, sexual conquest; and economic success. He summarizes the culture simply as from ball field to bedroom to billfold. If one or more of these is perceived as inadequate or missing, then masculinity is challenged. "As a young boy, I'm going to compare my athletic ability

» » »



There is a new kid in town. Answers.com provides a new approach to searching the Internet. Unlike Google and the other popular search engines, Answers.com provides information directly rather than by providing a list of web sites where the information you are seeking may or may not be found.

Using the key words "Abraham Lincoln" on Google, for instance, will produce over three million web sites where information about Abraham Lincoln can be found. To find the particular information you are seeking will require clicking on one or more of those web sites.

Using the key words "Abraham Lincoln" in the "Who is...What is..." box of Answers.com will provide a page of information created from a variety of sources such as dictionaries and encyclopedias about Abraham Lincoln. Thus, the information you are seeking may be provided directly without requiring any additional web site to be opened. Additional information can be obtained by clicking on one or more of the page links provided on the left side of the web page. If you want to expand the search to additional links, a "Web Pages"

link is provided. Clicking on "Web Pages" generates a Google search.

While Answers.com is presently in its initial stages of development and is therefore somewhat limited in the subjects and individuals for which it can provide information, it is already very useful and is pointing in a new direction for conducting searches on the Internet. Give it a try at www.answers.com.

Ernest Gifford is a principal in the patent firm of Gifford Krass Groh Sprinkle Anderson & Citkowski, PC, located in Birmingham, Michigan. He can be contacted at (248) 647-6000 or by email at egifford@patlaw.com.

Holistically Speaking
Continued from previous page

to yours and compete for whatever attention that brings. When I get older, I'm going to compare my girlfriend to yours and compete for whatever status I can acquire by being with the prettiest or the coolest or the best girl I can get. Ultimately as adults, we compare bank accounts and job titles, houses and cars, and we compete for the amount of security and power that those represent. We will even compare our children and compete for some sense of fatherhood and significance attached to their achievements. We compare, we compete. That's all we ever do. It leaves most men feeling isolated and alone. And it destroys any concept of community." (Season of Life, p. 73)

Instead, Ehrmann suggests "strategic masculinity", which is defined by relationships and having a cause beyond yourself. "Masculinity, first and foremost, ought to be defined in terms of relationships," Ehrmann says. "It ought to be taught in terms of the capacity to love and to be loved. It comes down to this: What kind of father are you? What kind of husband are you? What kind of coach or teammate are you? What kind of son are you? What kind of friend are you? Success comes in terms of relationships. And then all of us ought to have some kind of cause, some kind of purpose in our lives that's bigger than our own individual hopes, dreams, wants, and desires. At the end of our life, we ought to be able to look back over it from our deathbed and know that somehow the world is a better place because we lived, we loved, we were other-centered, other-focused." (Parade Magazine, August 29, 2004).

"Building Men for Others" is based on this focus beyond oneself. The Gilman coaching staff teaches both by instruction and

example those ideas that encourage growth of their players into emotionally healthy men. The "Building Men for Others" concept can be simply stated as:

- Allow yourself to love and be loved. Build and value relationships.
- Accept responsibility, lead courageously, and enact justice on behalf of others.
- Practice the concepts of empathy, inclusion, and integrity.
- Learn the importance of serving others. Base your thoughts and actions on "What can I do for you?"
- Develop a cause beyond yourself.

Try to leave the world a better place because you were here.

Certainly in a professional sense, both male and female lawyers actively work toward many of these ideals. It is altruistic in the best sense of what we all strive to be as lawyers.


"Season of Life: a football star, a boy, a journey to manhood," Jeffrey Marx, Simon & Schuster, 2003.

To read an article about Joe Ehrmann written by Jeffrey Marx, see http://archive.parade.com/2004/0829/0829_coach.html.

Other online articles about Joe Ehrmann: <http://www.inyoregister.com/articles/2004/12/27/sports/104spo01.txt>, <http://www.amorenaturalway.com/pam-phlet81.htm>.

Listen to NPR's "The Diane Rehm Show" featuring Jeffrey Marx and Joe Ehrmann at <http://www.wamu.org/programs/dr/04/12/16.php>.

Nancy A. Werner, a licensed attorney in Michigan and Illinois, is a member of the Lawyers and Judges Assistance Committee and Chair of the PR/Media/Education subcommittee. She currently facilitates a non-denominational meditation group at the Cooper Street Correctional Facility in Jackson. Nancy is available to speak to groups and conduct in-house workshops on the topics of holistic stress education/management and the benefits of meditation. She can be contacted at (734) 915-3744 or nawlaw@btc-bci.com.

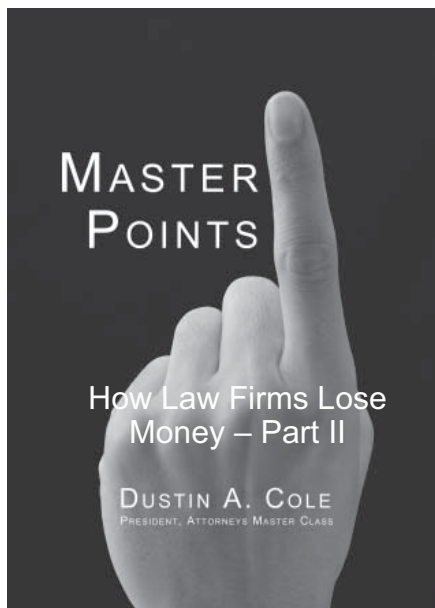


Nancy Werner has started a new Yahoo group called *Pax_Vobiscum_Lex*. You can find it at http://health.groups.yahoo.com/group/Pax_vobiscum_lex/.

The group is named *pax vobiscum lex*, Latin for "peace be with you" and "law."

This is a private, moderated, anonymous group for lawyers and judges to exchange ideas and cultivate inner peace.

Membership is open to those recovering from addiction, searching for answers but with an untreated addiction, going through mental or physical health challenges, experiencing life changes/challenges or seeking a deeper human experience in tandem with the practice of law. In short, this is for any legal professional looking for peace in his or her life.



Editor's note: This is the final installment of a two-part series in which Dustin Cole enumerates ways in which law firms lose money. In the last installment, which can be found in the Fall 2004 issue of this newsletter, Mr. Cole listed four ways law firms hamper their ability to be both profitable and yield superb legal services. Those four ways are:

1. Lack of an objective, standardized new client evaluation process;
2. Holding on to "C" clients;
3. Customizing rather than systemizing work; and
4. Lack of control over time.

We pick up with ways 5 through 7 of how law firms lose money.

5. Inadequate and antiquated mentoring systems

While most firms point to extensive education, training, and mentoring programs for new attorneys, most firms have done little beyond add some frosting around a core concept that is no longer adequate for the times. For instance, in the majority of firms, the Mentor and the Supervisor are the same person. To be effective, the Mentor should NOT be the Mentee's work supervisor, but an advisor and counselor. The Associate's Supervisor should be the primary teacher and trainer. If Supervisor and Mentor are combined, a

frustrated Mentee often cannot or will not criticize his or her supervisor to his or her Mentor. They are effectively discouraged from asking for a new Mentor, discussing personal concerns, or requesting special help.

For the Associate, this lack of role separation can create a high level of frustration, dissatisfaction, and often a lessened ability to do quality work. For the firm, the result can be high Associate turnover and high Associate development costs, partner stress, and in extreme situations, lost clients, grievances, and errors that lead to malpractice suits.

Additionally, not all attorneys should be Mentors. Many lawyers have good skills to teach, but are unwilling to take sufficient time to do so. Others who truly want to mentor may not have good legal skills to share, good mentoring ability, or an effective personality type.

To be effective, firms must design a Mentoring SYSTEM that includes:

- An objective Mentor selection and qualification system based on:
 - o Personality profile
 - o Practice quality
 - § Legal skills
 - § Management skills
 - § Revenues
 - § Practice systems & procedures
 - o Mentoring training & skills
 - o Attitude
 - o Time availability
- A Mentor Roles, Responsibilities and Requirements handbook
- Attorney compensation for Mentoring
- A Mentor training program
- A Mentor reporting, monitoring, supervision and quality control system
- A (safe) Mentee feedback and evaluation system
- A Mentor resource person or committee for Mentor support

Another inadequacy of most systems is that associates cease to have Mentors after two or three years, when they are deemed "trained." This often leaves

them without ongoing, long-term guidance or support.

Without strong, continuing mentoring, good associates often get off track, or do not build allegiance to the firm and end up leaving, taking the firm's prodigious investment with them, and often leaving other matters in disarray. This creates a significant risk of error, client dissatisfaction, and malpractice claims.

Inadequate mentoring can result in:

- Potentially valuable associates being lost from the firm
- Associates and partners being trained and operating with inconsistent, inadequate, or even erroneous information
- Attorneys operating their practices in radically different manners
- High firm cost for associate turnover
- No real ability to quality control work due to dozens or hundreds of different operating styles and procedures
- Higher malpractice risk

A second, and often more expensive gap in firm Mentoring, is that those who produce the highest revenues for the firm often have even less STRUCTURED support than Associates, resulting in major financial and legal risks for the firm.

Lack of structured support can mean missed revenue opportunities from partners who may not be at risk, but who have lagging or minimally adequate revenues.

Another type of unsupported attorney is the high revenue producer. Most of these client development experts could be producing dramatically more, but they are already working at the top of their current practice management skill set.

Therefore, firms must establish outside support, training, and skill development resources that are available to partners on a confidential basis, to help them retain their most valuable assets,

reduce risk of malpractice, and dramatically expand revenues.

6. Insufficient leverage

A disturbing and financially limiting trend in law firms over the past few years has been limiting the amount of staff support available to attorneys, ostensibly for the purpose of reducing overhead. The result has been the reverse: limiting the revenues of a high percentage of attorneys and therefore firms.

The primary reason firms have moved in this direction is not the inefficiency of staff, but the lack of attorney training in using staff effectively. This trend has been more the result of firm failure to impart new management skills and innovate client management techniques than from any inherent weakness in the concept of staff support.

A key component of this problem is that firms have traditionally viewed staff as "overhead." When viewed as potential profit centers, the equation rapidly shifts. For instance, a skilled paralegal should be able to bill three to four times their direct costs, producing a profit for the firm. Further, when work is effectively delegated to associates and paralegals, it reduces client costs. At the same time, since the attorney is a lower percentage of the client's total bill, the attorney can increase his or her rates. The result is a team, all producing profit for the firm, and an attorney who is now freed up to work with a larger group of clients at a higher rate.

To be maximally efficient and profitable, attorneys must have an efficient team to support their work. They must be able to delegate down any work that does not require their expertise to the lowest level where it can be accomplished competently. The attorney can then concentrate on their highest-leveraged activities: client relations, case strategy and planning, team supervision, and most importantly, marketing. Inadequate leverage has several negative effects:

- It significantly reduces an attorney's ability to increase their rev-

enues because he or she must work extra hours doing associate-level, paralegal-level, or even secretary-level work.

- Work suited to a secretary or paralegal may take longer when done by the attorney.
- Work that is not attorney-level is being inappropriately billed at attorney rates.
- There is too often only one set of eyes doing and reviewing work, increasing the likelihood of errors.

The result of increased leverage is:

- Greater ability for attorneys to market and expand their practice
- A stronger team producing client work more efficiently, accurately, and quickly
- Increased client communication and client satisfaction from working with a larger team
- Increased revenues at several levels, generated from a larger client base
- Decreased risk of grievances, errors, and malpractice claims

7. Inadequate initial client education

In most cases, initial client education consists of a few minutes of casual conversation and the mailing of a retainer agreement with a note to "read and sign." Such a procedure literally sets a client up for frustration and dissatisfaction. "A" clients become "D" clients over expectations that don't match the lawyer's performance, and too many potentially positive client relationships end up in attorney firings or even grievances and malpractice claims.

The reason is that many clients have had little or no previous experience in working with a lawyer, and have only the expectations generated by television or their friends. Others have had negative experiences. Add to this the fact that every attorney-client relationship begins with the client in some degree of

fear or concern, and every mismatched expectation is a reason for the client to increase their level of fear, and decrease their level of trust in the attorney. At the beginning of the relationship, there is seldom any attempt by the attorney to educate the client how the relationship will work, and to set clear expectations on both sides.

The way that can best be accomplished is through a planned and careful initial client education process. This is where the attorney "sets the stage" for the relationship, and therefore sets the client's understanding and expectations concerning how the relationship will work. It is also where the attorney builds a foundation for an "A" level relationship.

The Client Education process should accomplish the following:

- Introduce the team and the team concept
- Set clear, conservative expectations
- Define the client's role in the case
- Clarify specifically how the relationship will work:
 - o How calls will be handled
 - § When the attorney normally returns calls
 - § Standard for returning calls
- Lieutenant's role
- Normal client meeting times
- An explanation of how the case/process will go, with flow charts, diagrams, timelines, etc.
- Determine what communication method is preferred – letter, e-mail, phone, etc.
- Review of the retainer agreement
- Financial specifics
 - o Billing rates of various team members
 - o How hours are billed for various types of work (meetings, phone calls, court appearances, e-mails, etc.)

- o What other items are billed, and how
- o When billings are sent
- o When payment is expected, when it is late
- o What happens if payment is not received

All materials are physically reviewed and discussed with the client to facilitate client understanding and retention, then placed in a folder for the client to take home.

The client education process not only creates clarity for the client, it also creates a new level of accountability on both sides. The client now knows the details of how the attorney will operate and how they are expected to respond, and if the client gets off track, they can be gently reminded of the discussion and pointed to the materials provided.

Conversely, the attorney has now set standards for their own operation and performance, and the client can hold the attorney accountable for those standards as well.

Just as with delegation, the time spent setting the client's expectations and getting on "common ground" with the client will save endless hours of explanation from you, major stress on the part of the client, and quite possibly will avoid a client fiasco.

Making the Transformation

How does an attorney, department, or firm begin to address this list of inter-related and complex issues and start moving toward higher profit and greater satisfaction? One step at a time. The most effective first step is to address basic productivity, time management, and delegation skills (issues 3 and 4). Focusing here first creates time savings and increased billable hours.

A focus on the attorney's busy week to make it better organized, more efficient, and less stressful will produce a quantum leap in productivity, client service, and operational excellence.

However, attorneys left to their own devices will seldom implement more than a few of the pieces. The firm aiming for consistently higher productivity within a short period of time should seek the services of an experienced coach who can devise a results-oriented training program.

Once new levels of productivity are established, a high percentage of attorneys who are experiencing the benefits of new ways of operating their practices are now "on the bandwagon" for the next steps in the process. Firms can then move forward to address other issues.

Dustin Cole is president of Attorneys Master Class, a company that helps firms maximize revenues by enhancing attorney practice management and marketing skills. For more information go to www.attorneysmasterclass.com or contact Cole at (407) 830-9810 or via e-mail at dustin@attorneysmasterclass.com.

Interested in Writing an Article for the Newsletter?

Articles should be 500-1500 words in length. Suitable topics of interest include those that assist attorneys in improving their understanding of the economics of law practice; that promote the effective use of non-lawyer personnel and technology in order to render legal services more economically and efficiently; any topic that assists attorneys to improve their service to their clients, or serves the public interest.

PUBLICATION DEADLINE FOR THE UPCOMING ISSUE:

March 30, 2005 for Spring Issue

Submissions should be sent to Joan Bullock at joan.bullock@famu.edu

SBM

STATE BAR OF MICHIGAN

MICHAEL FRANCK BUILDING
306 TOWNSEND STREET
LANSING, MI 48933-2083

www.michbar.org

FIRST CLASS MAIL
U.S. POSTAGE PAID
LANSING, MI
PERMIT NO.191