



To: Members of the Representative Assembly

From: Nathan A. Triplett, Director of Governmental Relations

Date: August 19, 2025

Re: Representative Assembly Legal Deserts Recommendations & Strategies

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## **The *Keller* Standard**

The State Bar of Michigan is a unified bar association—one in which membership is required for any individual wishing to practice law in this state—and, as such, special care must be taken when assessing the appropriate use of compulsory licensing fees in order to protect the constitutional speech and association rights of Bar members. The standard that must be used to differentiate between permissible and impermissible activities undertaken by an integrated bar association was set forth by the United States Supreme Court in *Keller v State Bar of California*.<sup>1</sup> The Court held that Bar activities must be “necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of the legal service available to the people of the State.”<sup>2</sup> The Court acknowledged that “[p]recisely where the line falls . . . will not always be easy to discern.”<sup>3</sup>

The Michigan Supreme Court provided further guidance to the Bar on the scope of permissible activities when it adopted Administrative Order 2004-1. Among other things, that order clarifies that permissible Bar activities must be reasonably related to one of five issue areas, including improvement of the functioning of the courts and the availability of legal services to society.

In short, before the State Bar of Michigan may engage in an activity—in this case public policy advocacy—it must first determine whether that activity is at least reasonably related to a permissible purpose.

## ***Keller* Considerations**

Generally speaking, addressing “legal deserts”—those geographic areas of the state that suffer from an acute shortage of lawyers, which significantly impedes access to justice—presents an archetypal example of a *Keller*-permissible activity, because it is necessarily related to the availability of legal services. From its inception, the charge given to the Legal Deserts Workgroup was to develop recommendations and strategies designed to improve the availability of legal services in Michigan, specifically in those areas that are inadequately served today.

Based on SBM’s past *Keller* practice, it is not sufficient for the Bar to simply say that anything pertaining to legal deserts is therefore a permissible activity. For example, improving the median income in a particular area might make it easier for individuals in need of legal services to afford an attorney and such demand might then attract more attorneys to serve that area. While true, it does

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<sup>1</sup> 496 US 1; 110 S Ct 2228; 110 L Ed 2d 1 (1990).

<sup>2</sup> *Id.* at 14 (quotations omitted).

<sup>3</sup> *Id.* at 15.

not follow that it would be *Keller*-permissible for SBM to advocate for a universal basic income or an increased minimum wage, because the connection between the public policy proposal in question and the permissible purpose (improving the availability of legal services) is too attenuated to be considered reasonably related.

Upon closer examination, each of the reports of the three Legal Deserts Sub-Workgroups, and the recommendations and strategies contained therein, satisfy the reasonable relationship standard for one or more of the permissible purposes. Specifically:

Sub-Workgroup #1 – “Expanding Attorney Pathways” is reasonably related to improving the availability of legal services. Student loan forgiveness that specifically targets and incentivizes attorneys to practice in legal deserts, strengthening professional development, implementing an apprenticeship pathway to licensure, permitting emeritus attorneys to engage in pro bono practice, etc. are all public policy proposals with a direct, discernable connection to increasing the number of attorneys practicing in underserved areas. In addition, Administrative Order 2004-1 also establishes the regulation of the legal profession, including legal education, as a permissible area of activity. Many of Sub-Workgroup #1’s recommendations are also reasonably related to this additional purpose.

Sub-Workgroup #2 – “Leveraging Technology for Broader Access” is reasonably related to both improving the availability of legal services and improvement of the functioning of the courts. Supporting virtual and remote court hearings and expanding access to technology that enhances access to legal information are all issue areas that the Bar has previously determined to be *Keller*-permissible and where the Bar has adopted and advocated policy positions. Expanding broadband infrastructure and digital literacy satisfy the reasonable relationship standard as long as the advocacy is tied only to advocating for those policies to the extent necessary and in a manner designed specifically to address legal deserts.

Sub-Workgroup #3 – “Enhancing Access to Physical Courthouses” is reasonably related to both improving the availability of legal services and improvement of the functioning of the courts. Language access services are another area that the Bar has previously determined to be *Keller*-permissible and where the Bar has adopted and advocated policy positions as recently as this year. Expanding transportation assistance—similar to some of the technology recommendations above—satisfies the reasonable relationship standard as long as the advocacy is tied only to advocating for transportation to and from courts to the extent necessary and in a manner designed specifically to address legal deserts.

### **Staff Recommendation**

Taken together as a whole, or examined individually, the proposed Legal Deserts Recommendations & Strategies are *Keller*-permissible. At a minimum, each recommendation is reasonably related to availability of legal services to society, improvement in the functioning of the courts, and/or the regulation of the legal profession. As such, the Legal Deserts Recommendations & Strategies may be considered on their merits by the Representative Assembly.

**STATE BAR OF MICHIGAN POSITION**  
**By vote of the Representative Assembly on September 19, 2025**

Should the Representative Assembly find the Legal Deserts Recommendations & Strategies *Keller*-permissible in affecting the availability of legal services to society, important in the functioning of the courts, and/or the regulation of the legal profession?

- (a) Yes
- or
- (b) No

# Legal Deserts Recommendations & Strategies

Should the State Bar of Michigan adopt the Recommendations 1 through 5 as presented below?

## Proponents

The Legal Deserts Workgroup Co-Chairs:

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## Synopsis

The Legal Deserts Workgroup was convened in September 2024 to confront the urgent challenge of limited access to legal services in Michigan's underserved regions, or "legal deserts." More than one-third of Michigan's counties have fewer than one attorney for every 1,000 residents, leaving many communities without meaningful access to essential legal assistance. The workgroup's charge has been to develop practical and comprehensive recommendations to expand and strengthen access to the legal system in Michigan's legal deserts. The Representative Assembly's approval of the recommendations below will authorize the State Bar to advocate for their adoption and implementation.

### Sub-Workgroup #1 - Expanding Attorney Pathways

Co-Chairs: Kristina Bilowus & Philip Strom

Recommendations 1-5

#### 1. Expand Student Loan Forgiveness Programs

- Advocate for expanded federal and state funding to support student loan forgiveness programs for attorneys practicing in legal deserts.
- Promote a tiered loan forgiveness system that offers increased benefits to attorneys who commit to longer-term service in legal deserts (e.g. 5-10 years).
- Foster collaboration between the State Bar of Michigan, legal services organizations, law schools, and other stakeholders to promote awareness of loan forgiveness opportunities and ensure current and prospective law students are well-informed about the benefits of practicing in legal deserts.
- Explore opportunities to implement a program for attorneys practicing in legal deserts similar to the [Michigan State Loan Repayment Program \(MSLRP\)](#), which helps employers recruit and retain healthcare providers by providing loan repayment to those entering into MSLRP service obligations.

#### 2. Collaborate with Law Schools, Experienced Rural Practitioners, Law Firms, Legal Aid Programs, Rural Courts, and Bar Associations to Strengthen Professional Development and Expand Legal Access in Underserved Rural Areas

- Partner with law schools and other stakeholders to establish paid, credit-eligible internships and externships for students willing to work in legal deserts under the supervision of attorneys, law firms, or legal aid programs.
- Support providing housing support for interns placed in rural areas, recognizing that students may reside there for 8–12 weeks and that short-term housing options may be limited or unavailable.
- Provide paid fellowships for law graduates who commit to working in legal deserts for a minimum of 36–60 months, under the supervision of legal professionals or organizations, with or without a permanent job offer.
- Connect attorneys looking to establish practices in rural communities with mentorship from seasoned rural practitioners, local courts and judges, and local and affinity bar associations. Participants should commit to remaining in the area for at least 36–60 months.
  - Advocate for incentives for these attorneys, including cash stipends, scholarships, grants, tuition waivers, student loan forgiveness, loan repayment assistance, and/or guaranteed employment opportunities.
  - Mentorship should be provided through local courts or bar associations when available in legal deserts without local law firms, legal aid programs, or experienced legal professionals.

### **3. Implement a Lawyer Apprenticeship Pathway to Licensure**

- Advocate for an alternative licensure pathway for law graduates who narrowly miss passing the bar exam by a set number of points (e.g., within 4), using Michigan’s pass score of 268—compared to Indiana’s 264 and Wisconsin’s 260—as a comparative benchmark<sup>1</sup>.
- Incorporate best practices from successful programs such as the [Arizona Lawyer Apprenticeship Program](#), which provides an alternative pathway for licensure after a minimum of two years of supervised practice under a licensed attorney in rural and underserved areas.
- Establish clear standards and oversight mechanisms for supervising attorneys to ensure accountability and effective mentorship.

### **4. Support Expanded Access to Legal Help Through Non-Lawyer Support**

- Support the Justice for All (JFA) Commission's Paralegal Licensing Pilot, which will assess if qualified paralegals, under the supervision of a licensed Michigan attorney, can provide specific legal services that promote access to justice by increasing affordability without increasing the potential for harm to the public.
- Support the JFA's Associated Professionals Pilot and its primary objective to train nonlawyer professionals and volunteers who work with vulnerable populations to identify legal issues and offer law-related assistance (not legal advice) in clearly defined areas like debt collection, housing, family law, civil infractions, expungements, and public benefits.
- Support the JFA's ongoing efforts to promote appropriate regulatory changes that enable responsible legal services to individuals requiring access to justice while

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<sup>1</sup> Per Michigan Board of Law Examiners Rule 5, an attorney licensed to practice in another U.S. state, territory, or the District of Columbia who has actively practiced law as their principal occupation for three of the five years preceding their application—and who intends to practice law in Michigan—may be eligible for admission without examination.

adapting successful approaches from other jurisdictions to fit Michigan's unique needs and regulatory framework.

- Ensure the public understands the distinction between lawyers and non-lawyers.

**5. Expand Pro Bono Opportunities for Emeritus Attorneys**

- Amend Michigan practice rules to allow emeritus attorneys to provide pro bono legal services under the auspices of eligible programs, including public and nonprofit defender offices and civil legal aid programs and clinics that provide legal assistance to indigent people.
- Reduce license renewal fees to incentivize emeritus attorneys to provide pro bono legal services and increase access to the justice system in rural and underserved communities.

**STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 19, 2025**

Should the State Bar of Michigan adopt the Recommendations 1 through 5?

(a) Yes

or

(b) No

Should the State Bar of Michigan adopt the Recommendations 6 through 8 as presented below?

**Sub-Workgroup #2: Leveraging Technology for Broader Access**

**Co-Chairs: Nicole Evans & Hon. Christopher Ninomiya**

**Recommendations 6-8**

**6. Support Virtual and Remote Court Hearings**

- Promote Zoom and other user-friendly remote and hybrid hearing platforms—with recording and transcription capabilities—to enhance access to justice by reducing logistical barriers for clients and attorneys in legal deserts.
- Maintain and expand virtual court proceedings to minimize travel burdens, improve court attendance, reduce barriers for participants with limited transportation or mobility issues, and encourage more timely and consistent participation in legal proceedings.
- Support expanding remote hearings for appropriate proceedings, such as civil cases and procedural matters, while reserving in-person hearings for matters where they are more appropriate, such as most criminal proceedings and trials.
- Support expanding access to real-time technical support and resources to ensure smooth and efficient hybrid hearings and that nothing is lost for those participating virtually. These include reliable tech support, clear sound and visuals, and access to different perspectives of the courtroom when applicable.
- Address cultural and procedural concerns by engaging with judges and court staff to develop guidelines that maintain courtroom decorum, professionalism, and formality while incorporating remote technology.

**7. Encourage Investment in Rural Broadband Infrastructure & Digital Literacy**

- Advocate for increased federal, state, and private funding to expand broadband access in rural communities and facilitate increased participation in virtual legal services, court proceedings, and e-filing systems.
- Support initiatives providing affordable internet options for low-income rural residents.
- Advocate for implementing digital literacy programs to support residents who need assistance in navigating online legal resources, virtual court services, and other digital justice tools, like chatbots and virtual assistants.
- Partner with local universities and community colleges to expand digital access for rural residents by providing technology resources, digital literacy training, and ongoing support.

**8. Leverage Technology to Enhance Access to Legal Information**

- Advocate for improving digital tools that expand access to legal information for underserved and limited English proficient users, such as Michigan One Court of Justice, SBM Lawyer Referral Service, and Michigan Legal Help, modeled after language access innovations in New Jersey, Hawai'i, Washington, and Minnesota.
- Establish oversight mechanisms to monitor AI-generated content with input from diverse stakeholders, limiting its use to legal information and translation services rather than legal advice, while also improving access to legal resources by encouraging investment in AI-driven tools such as self-help websites and virtual legal guidance platforms.

- Support Michigan Legal Help's use of AI technologies, such as chatbots, to assist individuals in legal deserts.
- Encourage the development of digital tools that expand the range of legal topics and issues available through self-help resources and legal education.

**STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 19, 2025**

Should the State Bar of Michigan adopt the Recommendations 6 through 8?

(a) Yes

or

(b) No



Should the State Bar of Michigan adopt the Recommendations 9 through 11 as presented below?

**Sub-Workgroup #3: Enhancing Access to Physical Courthouses**

**Co-Chairs: Syeda Davidson & David Gilbert**

**Recommendations 9-11**

**9. Advocate for Expanded Transportation Assistance to Improve Court Access**

- Advocate for increased federal, state, and private funding to support initiatives such as parking fee subsidies, public transit assistance, and ADA-compliant physical access improvements to reduce transportation-related barriers and promote equitable access to the courts.
- Offer bus passes and ride-share discounts and develop partnerships with local transportation providers to provide reliable transportation options to individuals in underserved or rural communities.
- Collaborate with funding partners—including the Michigan State Bar Foundation, the State of Michigan, and United Way—to support transportation initiatives and work with courts to assess community needs and effectively distribute resources like gas cards.

**10. Strengthen Language Access Services in Courthouses**

- Promote regular, statewide training for all court staff—at least every three years—to ensure legal compliance, cultural competency, effective use of language access tools, and ensure court staff are trained to support non-English speakers
- Expand remote interpretation services, develop community-based interpreter pipelines, train bilingual staff, and advocate for fair compensation in line with national standards to increase interpreter availability.
- Expand interpretation and translation services across all court-mandated programs and materials to guarantee equitable language access for victims and all participants in both civil and criminal proceedings.
- Support ongoing needs assessments and data reviews led by language access coordinators, and advocate for updated court rules that ensure free, consistent language services for all court users.
- Utilize cost-effective translation technologies (e.g. real-time translation earbuds) as they are developed and become widely available to supplement interpreter services in appropriate court settings.

**11. Deploy Justice Buses for Expanding Legal Services Delivery**

- Review and learn from successful Justice Bus models in states like Ohio, Louisiana, and Tennessee—use their experiences to guide planning, operations, and partnership development.
- Identify and pursue funding opportunities through bar foundations, the United Way, USDA rural development grants, and other federal, state, and private sources to support launch and long-term sustainability.
- Develop and deploy justice buses to provide legal services in underserved and rural communities—ensure the buses maintain a consistent and predictable schedule and include private consultation spaces, legal professionals, and technology access.
- Design mobile legal clinics that include brief advice sessions and limited-scope representation. To expand capacity, consider coordinating efforts with legal aid organizations and incorporating pro bono attorneys and law student volunteers.

- Outfit the justice buses with essential technology, including Wi-Fi, laptops, printers, and access to legal tools such as Michigan Legal Help and vLex.

**STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 19, 2025**

Should the State Bar of Michigan adopt the Recommendations 9 through 11?

(a) Yes

or

(b) No