

Addressing the Needs of Twenty-First Century Lawyers and Their Clients



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“Change is the law of life. And those who look only to the past or present are certain to miss the future.”

—John F. Kennedy¹

The future of the mandatory State Bar of Michigan—governed by a popularly elected Representative Assembly and Board of Commissioners, and featuring voluntary sections and vibrant nonpartisan public policy advocacy—is still uncertain.

Perhaps even more uncertain is the future of the legal profession itself.

Many challenges are arising which will soon pull us into a vortex of change. As lawyers and judges, we may not be comfortable with all the changes on the horizon, but we must plan for change and accept its inevitability. By planning for the challenges ahead, I believe we can convert problems into opportunities. Otherwise, we will have a future thrust upon us that will further endanger the public and become increasingly hostile for lawyers.

Therefore, my emphasis during my State Bar presidency will be on addressing the needs of twenty-first century lawyers and their clients.

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There will be some difficult conversations: unbundled legal services, attorney licensing and regulatory reforms, legal education reforms, alternative billing methods, electronic filing, limited license legal technicians, pro se litigation—there's something to make every practitioner uncomfortable. We need to tackle these issues now, because the legal marketplace is changing with the speed of the Internet. Entrepreneurs, accountants, realtors, consultants, planners, and unlicensed scoundrels from parts unknown are exerting significant pressures on the traditional practice of law. The avalanche of alternative sources for legal information and assistance is threatening the livelihood of many lawyers and disheartening many more.

To serve the public interest, we need to be more nimble and more creative than we are now. We need to preserve our ethical traditions while offering legal services our clients will want—and can afford—to purchase. We must be most vigilant of our core mission of protecting the public.

The State Bar is prepared to undertake a systematic assessment of our profession's future. At the June 2013 State Bar Leadership Forum, incoming leaders of state, local, and affinity bar associations listened to a presentation by world-renowned legal futurist Richard Susskind. We have already

begun a dialogue with the Michigan Supreme Court, with whom we need to partner to make any significant changes to our state's legal profession.

The idea of planning for our profession's future is nothing new. All the State Bar presidents with whom I have served as an officer championed our organization as a leader for change:

- Tony Jenkins prepared us for a future in which the increasing diversity of a mandatory bar becomes a strength in dealing with an increasingly diverse world.
- Julie Fershtman prepared us for a future in which technology brings greater productivity and efficiency, and value to clients, particularly for solo and small practitioners.
- Bruce Courtade prepared us for a future in which successive generations of practitioners become more capable than we are.
- Brian Einhorn prepared us for a future in which change comes abruptly and unexpectedly, and lawyers need to act swiftly to survive.

Now is the time to develop a comprehensive plan to help Michigan lawyers and citizens adapt to the rapid and profound

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transformation in the delivery of legal services. We must collaborate with other stakeholders in our legal system to maximize our impact.

On November 10, 2014, the State Bar convened a forum titled, "The Future of Legal Services: Changes and Challenges in the Delivery of Legal Services" at the Michael Franck Building in Lansing.² American Bar Association President William Hubbard headlined the event in conjunction with the work of the ABA's Commission on the Future of Legal Services. He explained why the legal profession is at an "inflection point" and why we must develop a new model to meet the needs of the underserved.

"If we don't change, the profession as we know it will go away," Hubbard warned. "We have to deliver legal services with more accessibility and less complexity using the tools available to us, or we put ourselves at risk of becoming obsolete."

Michigan Supreme Court Chief Justice Robert Young emphasized the Court's commitment to improving the judicial system's service to its citizens. He lauded the State Bar for its leadership in developing the Judicial Crossroads Task Force Report in 2011, which evaluated critical evolutionary issues facing our judicial system.

"When it comes to Crossroads, our message is simple: promises made, promises kept," Chief Justice Young said. He also challenged the 70 lawyers and judges in attendance to solve the problem of newly licensed attorneys being poorly prepared to meet client demands, particularly as solo practitioners.

Justice Bridget McCormack, speaking on an optimistic note, focused on some of the technological solutions—including mobile apps—that are ready to be deployed in our

court system. And former justice and past ABA President Dennis Archer inspired the audience with his vision of a more diverse and inclusive legal profession better positioned to meet client needs.

Indeed, the entire state of Michigan has thrived when its leaders have created and innovated. Today's information age is no different fundamentally than the past century's industrial age. As Michiganders, we know the thrill of being at the cutting edge of technology in the automotive industry. When we anticipated changes in the marketplace, we became the birthplace of the automobile and the arsenal of democracy. When we were slow to react, we suffered population decline and economic depression.

Michigan is well-positioned to be a national leader in the legal marketplace. Our state is home to the world's busiest international border crossing.

"We have been the world's automotive leader and are now in a slow process of reinvention," SBM Executive Director Janet Welch said at last month's forum. "We know how to do hard things well, as well as the perils of not acting in the face of market transformation. The Michigan Supreme Court and the State Court Administrative Office are showing what it means to increase accountability. We have five very different law schools and they are laboratories for testing legal education reform. The State Bar has the willingness and capacity to lead the effort."

Notably, the State Bar has recently achieved some long-overdue successes. Thanks to the governor's office and the Michigan legislature, we and our partners in the local and affinity bar associations were able to convene the Michigan Indigent Criminal Defense Commission. The

commission is assessing the needs of local communities in designing and providing a cost-effective criminal justice system which fulfills its constitutional guarantees to our residents. Of particular concern is protecting the rights of the overwhelming number of criminal defendants who are too poor to pay their own way. Inevitably, more money needs to be allocated to the courts, prosecutors, and court-appointed defense attorneys.

The Michigan Supreme Court has also broken new ground by creating court rules to safeguard the rights of a growing class of Michigan residents who primarily speak a foreign language. Michigan Court Rules 1.111 and 8.127 mandate providing qualified translators in civil and criminal trials to litigants and witnesses with limited English proficiency.

The State Bar must build on these and other successes to plan for our future. Among our most acclaimed accomplishments is the Judicial Crossroads Task Force Report. Although some of the solutions proffered in the report have yet to be fully implemented, the State Bar generally gained consensus on the innovations needed in our courts.

We can use a similar model to help address the unprecedented challenges we face today. With the support of the State Bar Board of Commissioners, I have created the 21st Century Practice Task Force and appointed two of the most talented and dedicated lawyers in the state to lead this endeavor: former SBM presidents Bruce Courtade and Julie Fershtman. I am seeking volunteers for this task force who can work collaboratively to brainstorm solutions for the legal profession's most perplexing problems. The 21st Century Practice Task Force will build on the ideas and innovations envisioned at the "Future of Legal Services" forum. All issues will be on the table, and groups of task force members and other creative-minded practitioners will be assigned major challenges to explore.

As Chief Justice Young suggested at the forum, one group of task force volunteers will look at bridging the gap between successful law school performance and the successful practice of law ("Law School to Practice" group). Educators from all five Michigan law schools have pledged their support, and

anyone with a particular interest in this topic is invited to apply for membership.

A second group will propose a new paradigm to allow people with low and moderate means to access legal services ("Access to Legal Services" group). Activists in the State Bar's Justice Initiatives and Access to Justice committees and other imaginative attorneys will play a vital role in this group.

Another group will consider the opportunities available to modernize our attorney discipline system and accommodate innovations in the legal marketplace, such as limited scope representation ("Discipline System Advisory" group). This group will be populated with ethics experts, cutting-edge

practitioners, and legal futurists. One of their tasks will be designing engagement agreements for common practice areas such as family and criminal law, which include different types of billing arrangements and nonrefundable engagement fees.

The 21st Century Practice Task Force will examine other obstacles and opportunities, including accommodating and enlisting the skills of older and retiring attorneys and leveraging technology to accomplish our primary goals. If you have more ideas and innovations, I would love to hear from you. I can be reached by e-mail at tomrombach@aol.com, on LinkedIn at <http://www.linkedin.com/pub/tom-rombach/11/5b/5a/>, or on Twitter @tomrombach.

By addressing the needs of twenty-first century lawyers and their clients, the State Bar aims to advance a justice system which properly protects the public—a system in which legal rights and responsibilities are equitably balanced and disputes are fairly resolved, if not prevented. ■

ENDNOTES

1. President John F. Kennedy Jr., address at the Paulskirche Assembly Hall in Frankfurt, West Germany (June 25, 1963).
2. A seven-page summary report of the forum is available at <http://www.michbar.org/generalinfo/pdfs/FutureReport.pdf> (accessed December 5, 2014). Additional information on the future of the legal profession is compiled on the State Bar's futures web page at <http://www.michbar.org/generalinfo/futurelaw.cfm> (accessed December 5, 2014).

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