

# Big News: The 21st Century Practice Task Force Report is Out!



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**M**y last column talked about why leaders are driven to lead: intrinsic reasons rooted in a desire to make the world a better place. We are being reminded via the presidential elections that “what makes the world a better place” is an opinion-based set of ideals that vary from person to person, depending on the issue. Fortunately, at the State Bar, we deal with a limited scope of issues aimed at making the world a better place—issues that protect and serve the public through improvements to the administration of justice; access to quality, affordable legal services; and education about the rule of law. But even within that limited scope, there are varied ideologies. This is particularly true when talking about the future because it inherently involves the unknown.

When the State Bar's immediate past president, Tom Rombach, proposed to the Board of Commissioners the creation of a 21st Century Practice Task Force and the Board approved the proposal in January 2015, Tom and the Board took a leap of faith that a large group of legal thought leaders could eventually agree on ways to not only preserve

our profession for future generations, but also make it better.

Some may bristle at the intimation that our profession is not as good as it can be. Aloud, we may say, “What’s wrong with the way things are? The rule of law requires stare decisis. So should the way we practice law.” To ourselves, we may admit, “Every time I see or hear of a change in the legal profession, I fear my ‘expiration date’ as a lawyer is approaching and my law practice is near extinction.”

It takes courage to admit there are problems in any system, be it family units, places of worship, academic institutions, or branches of government. The members of the Bar's 21st Century Practice Task Force had the courage during the past year to look under the proverbial rug and examine the problems facing the legal profession. Rather than just point out the problems, the task force also figured out ways to fix them.

I've paraphrased below some of the problems the task force identified:

- A “dysfunctional” legal marketplace, meaning, for example:
  - Too many lawyers unable to get jobs in some geographic regions, and not enough lawyers to serve the public in others

- Billions of dollars of legal work needing to be done, but lawyers operating under traditional service delivery models unable to do it because those who need it cannot afford (or think they cannot afford) the rates lawyers must charge to cover their debt load and overhead
- Courthouses overwhelmed with people representing themselves who do not know what they are doing, and court staff who cannot help
- Consumers needing lawyers or legal help with no credible source of information regarding their options
- Shortcomings in attorney education:
  - Law school graduates with plenty of doctrinal knowledge setting up solo practices without mentors, having never interviewed a client, billed an hour, filed a brief, or argued a motion
  - New lawyers with so much undergraduate and graduate school debt they cannot do pro bono work, live where they want, purchase homes, or start families
  - Experienced attorneys hoping to invigorate their practices, unmotivated by continuing legal education they do not perceive as beneficial

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It takes courage to admit there are problems in any system. Members of the Bar's 21st Century Practice Task Force examined the problems facing the legal profession and figured out ways to fix them.

Through our task force report and its follow-up work, Michigan can humbly show other states how to discuss our profession's shortcomings, build consensus on addressing challenges, and implement ideas for improvement.

- Experienced attorneys so busy practicing law they do not take time to incorporate new technology into their work or examine the security and other risks of availing themselves of technology
- Inefficiencies in the legal process:
  - Discovery processes run amok in civil cases
  - Limited options for issues that cannot be fully and finally resolved in a courtroom by a single judge
  - Law firms with little insight into the improvements they could make in their practice management systems (if they have such systems)
  - Requirements to go to court when a judicial decision or physical appearance may be unnecessary
- Regulations slow to adapt in the face of the evolution of business practices and technology worldwide
- Provide self-evaluative tools for attorneys to select customized, self-directed CLE coursework, specialty certification, and tech competency
- Modify court rules to reduce the expense and burden of litigation, further promote mediation and other ADR, implement business process analysis in courts, encourage problem-solving courts, and streamline and simplify court forms and processes
- Reorient State Bar resources toward greater focus on technological expertise; provide more responsive ethical guidance in the face of rapidly changing technology; and support interpretations of the rules of professional conduct that promote new models of service delivery (e.g., limited-scope representation and guidance on fee agreements)
- Develop clearer ethical guidance concerning online marketing

I've summarized below a few of the task force's recommendations for fixing the problems and challenges facing today's legal marketplace:

- Improve credible resources for the public to find legal information and attorneys through a single online platform with multiple access points and a legal triage module
  - Establish legal help centers with lay navigators in every circuit
  - Strengthen and expand the law-school-to-practice gap with more clinical and skills-based training opportunities and an admissions testing process that includes practice readiness
- To see the task force's work, unveiled last month, visit <http://www.michbar.org/future>.
- Where to from here? These recommendations will receive additional attention and feedback from relevant stakeholders, all of whom were represented on the task force, including the Board of Law Examiners, the Law School Deans Committee, and the Supreme Court Administrative Office. Proposed policy changes within the permissible scope of the State Bar's review will make their way to the Representative Assembly and the Board of Commissioners. I have formed special ad hoc committees to review some of the proposals and make further recommendations. The State Bar will soon delve into the task force recommendation to create a Justice Innovations Committee to address future ongoing issues

(e.g., technology) and serve as a think tank on topics needing more study, including multidisciplinary practices and alternative business structures. And finally, the Board of Commissioners will take a fresh look at its strategic plan in June to incorporate recommendations into the day-to-day work of Bar staff and volunteers.

These recommendations are the product of more than 3,000 hours of work by an impressive and diverse group of participants (see <http://www.michbar.org/generalinfo/futurelaw>). Bar leaders nationwide are looking to Michigan as a model for guiding their associations, members, and the profession on a path toward greater relevance, accessibility, affordability, and efficacy. Through our task force report and its follow-up work, Michigan can humbly show other states how to discuss our profession's shortcomings, build consensus on addressing challenges, and implement ideas for improvement.

My advice to other bar associations reading our task force report: do not under-emphasize the power of open, honest, collaborative leadership in the face of need. If the need for improvement is openly admitted, even reluctantly, lawyers will back those efforts because that is what we do. We help fix problems. I have unbounded hope that many states will follow our lead and tackle tough issues, just as Michigan continues to look to other states' efforts to improve our profession.

I extend my undying gratitude to our task force members, State Bar staff, and volunteer bar leaders for their support in making this report a reality, and anticipate their continued input, guidance, and care in implementing future changes.

**Note to attorneys from the twenty-second century reading this article (as if!):**

Today, we marvel at how we functioned before smartphones, e-mail, Skype, text messaging, remote desktop control, social media, malware protection, and encryption. I cannot imagine what technology you have in your practices. Please remember, no matter what the century, our primary purpose as attorneys will always be the same as it has been from day one: serving and protecting the public. ■