

State Bar of Michigan Releases Report on Building Renovation OVERRUNS

A report to the Board of Commissioners of the State Bar of Michigan released July 31 concluded that a cost overrun of \$600,000 occurred in the \$4.6M renovation of the State Bar's headquarters in Lansing. The renovation of the first floor and lower level of the Michael Franck building, which was completed in January, offers members greatly enhanced meeting space and technological capability.

The report attributed the cost overrun primarily to frequent, costly changes in the design of the project. The report also makes recommendations concerning future capital projects, including stronger budgetary controls and clearer definition of responsibilities. John T. Berry, the State Bar's new executive director, said that these and other changes have already been implemented to tighten control and accountability of capital projects.

The report's cost overrun figure is considerably less than some early estimates. The report concluded that the initial budget for the project of \$3M did not adequately cover construction elements that should have been considered from the outset, including furnishings, asbestos removal costs, and technology.

Thomas J. Ryan, president of the State Bar, said that the board is relieved to have the final chapter on this renovation closed. He observed that although the cost has been controversial, the renovation itself was long overdue and the new update of the headquarters has been warmly received.

The report was requested by the State Bar from two former presidents of the State Bar, George A. Googasian and Robert B. Webster. Mr. Ryan praised the report's authors for their service to the membership of the Bar. "Bob and George took on a thankless task with their typical dedication and thoroughness, and did not pull punches. The report is rightfully critical of the management and oversight of this project."

Ryan characterized the revelation of the total cost of the renovation in February of 2000 as a "wake-up call" for the organization. In the 17 months since the disclosure of the cost overrun, the board has overhauled its oversight processes, established direct reporting responsibilities and cost control measures, and hired both a new executive director and general counsel, he said. The board has also undertaken an extensive membership study and organizational assessment. An ad hoc advisory group of commissioners and leaders in the profession will be convened in mid-August to make recommendations to the board. Ryan said that the overall aim is to continue the progress that has been made on fiscal accountability while sharpening the focus of the Bar on the needs of its members and the public.

The report follows:

Report on Cost Overrun— State Bar Building Renovation

Note: Report exhibits are not included. Please contact the State Bar of Michigan to obtain copies.

Assignment:

We have been asked to review documents, financial data, and interview participants to determine why the renovations of the State Bar building exceeded estimated cost and to determine, to the extent possible, actual cost.

We were further asked to review and advise the Board of Commissioners whether any affirmative action should be considered by the State Bar of Michigan relative to any aspect of the building renovation project.

Investigation:

We have reviewed all of the relevant contracts, financial documents, correspondence, various memoranda and pertinent minutes of the State Bar of Michigan Board of Commissioners. We have interviewed the following individuals: Jeffrey S. Smith, former Assistant

Executive Director—Administration—SBM; Danial Kim, former Assistant Executive Director—SBM; Gene Carrol, Architect, Neumann Smith & Associates; David M. Lick, Attorney, Loomis, Ewert, Parsley, Davis & Gotting; Mary J. Schafer, CPA, Plante & Moran, L.L.P.; various State Bar officers and members of the Board of Commissioners; and various current employees of the State Bar of Michigan.

Conclusions:

From our investigations, we have reached these conclusions:

- (1) The initial budget for the renovation project of \$3M, as adopted by the Board of Commissioners on April 24, 1998, was underestimated and did not include reasonable estimates of costs that would have inevitably resulted in total expenditures of \$4M.
- (2) There were excessive costs incurred, primarily related to design of the project and constant changes of design, that resulted in costs that we considered to be excessive over a reasonably estimated budget of \$4M, increasing the total cost of the project to its currently projected cost of approximately \$4,600,000.
- (3) Future capital expenditure projects must have professional management, a clear definition of responsibilities and effective budget controls.
- (4) No affirmative action should be taken against any individuals or companies involved in the renovation project.

Discussion:

I. Development of Budget for Building Renovation

On April 24, 1998, the Executive Director of the State Bar of Michigan, Larkin Chenault, recommended to the Board of Commissioners that it adopt a budget for

the renovation of the lower and first floors of the State Bar building of \$3M. It was explained to the Board that a task force had studied the matter and had come to the conclusion that the project could be completed for \$2,800,000 and that the recommendation of \$3M was derived from that \$2,800,000 figure. The files we have examined indicate that Mr. Chenault had also indicated in writing to the House and Fiscal Committees of the Board of Commissioners that his own independent examination, apart from that of the task force that had been formed to develop plans for the renovation, indicated that the project could be accomplished for substantially less than the \$2,800,000 figure.

Our examination of the files and memoranda involving this project does not reveal substantial information relative to the thought processes of the task force that developed an estimated budget of \$2,800,000. There appear to be no definitive records of the meetings of this group, and no breakdown of the constituent elements of cost that are a part of that budget estimate. A part of the working group responsible for development of the budget and design of the proposed renovations consisted of a design development team, identified as Christy Associates, Neuman Smith and Associates, and Granger Construction Company. There is a document dated in November, 1997, developed by Granger Construction Company, that projects a total cost for the construction of the renovations for the entire building, not just the so-called Master Plan—Level 1 renovations ultimately adopted by the Board of Commissioners. That estimate indicated a projected cost of \$2,700,000. It is possible that the Granger Construction Company projections played a part in development of a budget of \$2,800,000, but this is not clear.

At its April 24, 1998 meeting, the Board of Commissioners adopted a budget of \$3M for the renovation project. It also appropriated a capital expenditure of \$203,500 to complete the design development phase of the project. These monies were understood to be included within the \$3M budget adopted, as per a report by Larkin Chenault to the House Committee, in a letter dated April 9, 1998. The Board had previously approved the sum of \$60,000 for initial design work,

and accordingly, as of April 24, 1998, it had approved a total of \$263,500 for design.

One year later, on April 30, 1999, after a report by David Lick, attorney for the State Bar of Michigan, that he had been negotiating a contract for a construction manager, and had been working with the Fiscal and House Committees of the Board of Commissioners regarding building renovation, the Board adopted a motion to approve contracts for Construction Manager Services, Architecture Services, Interior Design Services and General Conditions.

On May 17, 1999, a contract for Construction Manager Services with Nielsen Commercial Construction Company was executed on behalf of the State Bar of Michigan by the President of the State Bar. The General Conditions of this contract indicated an approximate cost for construction of the project of \$2,300,000. That construction contract did not include other constituent elements of the project that would necessarily be expended. It covered only the actual construction phase of the project.

We are satisfied that as of May 17, 1999, when the contract was executed, the costs indicated in column one of the attached Exhibit A would be incurred as a reasonable projection as of that date. We are satisfied that the first five items in Column I on that Exhibit, totaling \$2,857,000, were known to all persons involved in development of the cost estimates for this project, and had in fact been approved by the Board of Commissioners. Thus, a total of \$2,800,000 was incurred as of the date of execution of the contracts, without taking into account the remaining items in Column I, which would necessarily be incurred as reasonably estimated. It is obvious that the building would have had to have been furnished, that there was elaborate technology contemplated to be installed that was not included within the construction contract, as well as its wiring. The remaining costs are standard costs that would have been incurred in any project, but were not projected, so far as we can tell.

The figures represented in column two of Exhibit A are the actual costs known to us as of the date of this report. We should comment that the signed change orders for Nielsen Construction do not appear to be

exorbitant, in our judgment, for a project of this size. Obviously, the principal elements of excess cost relate primarily to the design work performed by Christy and Associates (“Christy”), as discussed below. In our judgment, it should have been apparent to the management of the State Bar of Michigan, as of the date of execution of the contract with Nielsen, that this project could not be accomplished for the budget of \$3M, and that information should have been reported to the Board of Commissioners at that time.

As we have stated above, we have concluded that the project was inevitably over budget from its inception, and the budget recommendation of \$3M to the Board was clearly erroneous. We believe that a reasonable estimate of the cost of renovation as of the date of execution of the contract, and for that matter, as of the date of adoption of the budget, should have been approximately \$4M.

II. Factors Causing an Increase in the Cost of Renovation over a More Reasonably Estimated Budget of \$4,000,000

While we have concluded that this project in any event would have cost at least \$4M, there remains the necessity of explaining why the project ultimately resulted in the total current expenditure of approximately \$4,600,000. Exhibit A to this report clearly indicates that the principal item of cost overrun above a reasonably estimated \$4M budget involves design work. This work was performed by Christy, principally, at the request of Larkin Chenault, Executive Director of the State Bar of Michigan. Our interviews with professional staff at the State Bar indicated that Mr. Chenault was inordinately involved in micro-managing the design phases of this project, and was constantly ordering changes and redesign work that caused Christy’s time expended on the project to exceed any reasonable estimate. The situation involving Mr. Chenault became sufficiently exacerbated that the assigned architect from Neuman and Associates indicated that he could no longer participate in the design sessions and he withdrew. This left the entire function of design to Christy, who were described as being more patient with Mr. Chenault than personnel from the

Neuman firm. Chenault was described as constantly dominating meetings for discussion of the renovation project by becoming directly involved in the design and shape of minute details of the project and constantly ordering changes. We are satisfied that these activities caused the \$254,000 cost overrun indicated on Exhibit A relative to design.

We note that there was no contract with Christy until approximately August 17, 1999. The actual agreement is undated, but has an attached memo dated August 17, 1999 indicating that Christy estimated only \$11,400 of additional work to be done as of the date of execution of her contract. Our point being that substantially all design work was supposed to have been done as of August, 1999. It did continue at Chenault's request for some time thereafter.¹ Obviously, other items contributed to the approximately \$680,000 of overrun over a reasonably estimated budget as indicated on Exhibit A. As we have stated, we do not consider the \$192,681 of change orders to have been excessive for a project of this size. Other cost items would appear to be caused primarily by delays in the project that would cause increases in many of the items listed. The reason for the increase in technology costs have not become readily apparent to us and we can make no comment on them.

We have concluded, with regard to the relationship of Christy to this project, that there is no viable relief that could be sought

by the State Bar as to the Christy organization. Factors leading to this conclusion are that Larkin Chenault ordered work that was done by Christy, even though in excess of budget. And, Ms. Christy, at one point, complained of excessive changes being costly. She indicated that budget projections were established on the basis of a one-time design and not constant changes.

We are dissatisfied with the Christy organization's refusal to furnish all original back-up records of time expended, which we have requested. Some original back-up materials have been given to us, but we are satisfied that we have not received all such time records and other documentation. We do not feel that seeking legal relief against Christy is warranted under all of the circumstances. The work performed by Christy was done by the request of Chenault, who acted with apparent authority. The bulk of Christy's work was performed before the Bar executed a contract with her, and was accepted and paid for contemporaneously with its performance. This being the case, we did not feel that there is a probability of recovery of significance, and that at best, the Bar would only receive a more thorough accounting. We, therefore, advise against litigation as to Christy.

We have found no evidence of misconduct on the part of any supplier or contractor that would warrant consideration of legal action. The causes of the costs of this project relate primarily to internal lack of controls as stated herein.

III. Factors that Allowed These Cost Overruns to Occur

A. Cost Estimating

Inappropriate cost estimating, obviously, is a major factor. In this regard, we do not feel that the tasking of the costing of the renovation project at its inception was appropriately directed. From the few records that are available, it would appear that the primary emphasis of the development of the renovation project was based on developing the needs of the Bar staff and the use of the building for Bar activities. Very little attention was paid to the actual costs, other than the estimates that were produced by Granger, that certainly were not all inclusive estimates of future costs. There does not appear to have been any

single manager experienced in construction projects with the authority to pull this project together. Mr. Chenault's role appeared to be particularly ineffective in this regard.

B. Fiscal Controls

We could find no evidence of any cost controls over the project from its inception. There is no indication of any reports issued on a definitive, periodic basis, i.e., weekly or monthly, to the Executive Director, or to the House or Fiscal Committees of the Board of Commissioners. Because there was no breakdown of the budget into constituent elements, there was no way to compare costs as they occurred to the authorized elements for those costs. In other words, there was only a gross budget, and therefore, no possible way to effect adequate cost accounting during the course of the project.

The Executive Director of the State Bar reported to the Board of Commissioners in November, 1999 that the project was proceeding on budget. From our investigation, we can determine no way that the Executive Director could have verified the accuracy of that statement, in view of the absence of any cost controls. One month later, on December 17, 1999, at a meeting of staff of the State Bar, including Larkin Chenault, Danial J. Kim, Dean P. Tucker, and Jeffrey Smith, a renovation cost analysis was prepared that indicated that the then current projected actual cost of the project was \$3,800,000. (Exhibit D)

This memorandum was prepared by Jeffrey S. Smith who resigned as Assistant Executive Director of the State Bar almost immediately thereafter. The numbers in Mr. Smith's report, or memorandum, were apparently developed from a computerized program that pulled together the various costs of the project. We cannot find any evidence that this computerized program, called Buildomatic, was utilized in any effective way until December, 1999, to estimate the costs incurred or to be incurred by the project. After the December 17, 1999 meeting, in which it was reported to Chenault that the cost of the project would exceed the \$3,000,000 budget by approximately \$800,000, Chenault reported to the Board of Commissioners at their January meeting that, while the project completion would be delayed by one month,

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it was still within the budget. It was not until February 23, 2000 that Chenault informed the President of the State Bar that the cost of the project would be over budget by, according to him, approximately \$500,000.

We feel compelled to state that our interviews of the various members of the staff of the State Bar indicated that they did not feel free to communicate with the Fiscal Committee, the House Committee, or the officers of the State Bar relative to any observations that they might have had during the course of this project, during the time that Mr. Chenault was Executive Director. It was stated to us by at least two of the staff members that they felt an urgent need to cause Mr. Chenault to stop interfering with the design development, and avoid the consequent delays resulting from his action. They indicated, however, that they did not feel free to communicate the concerns that they had in any effective way to the volunteer leadership of the State Bar. Mr. Chenault's style of leadership was intimidating to these persons, who feared for their job tenure if they spoke out. Accordingly, the constant changes directed to Christy by Mr. Chenault continued and delayed the project, both in its design, and in the execution of construction after its commencement. These delays inevitably increased the ultimate cost of the project and, we suspect, caused the contractor to have a diminished profit. In that regard, we should note that Neilson Construction completed the project within budget, as authorized by change orders.

We have concluded that the oversight of this project by the Board of Commissioners could have been more effective. It is our feeling, clearly by hindsight, that the House and Fiscal Committees should have been more persistent in questioning of the Executive Director as to the causes of delay of the project, and should have pressured him for more adequate financial information during the course of the project. A part of this problem is simply the failure of imposition of cost controls that would have given notice to these Committees that there were problems developing.

Recommendations:

- A. A building renovation and/or major capital expenditure should have a spe-

cific manager with knowledge, expertise, and background in the particular project. Unless State Bar staff have the requisite background, an outside project manager should be retained to overview any building renovation or major capital expenditure. The project manager should report directly to the executive director, the appropriate oversight committee of the Board of Commissioners and the President of the State Bar of Michigan.

- B. A clear definition of responsibilities for the project manager, executive director, appropriate committees and officers of the Board of Commissioners should be in place before the commencement of any building renovation or capital expenditure project. Lines of communication, reporting and responsibility should be clearly drawn.

- C. **Budget Controls.** Budgetary controls should be in place. These controls

would include accurate reports as to estimated costs, actual costs to date and final projected costs. Reports should be distributed to all of the appropriate individuals at regular intervals during the project so that any deviations from estimated and actual expenditures can be reviewed, analyzed and remedied.

Respectfully submitted,

George A. Googasian (P14185)

Robert B. Webster (P22082)

Dated: July 10, 2001 ◆

FOOTNOTE

1. We attach as Exhibits B and C memos dated November and December, 1999, well into the construction phase of this project. They exemplify that, at this late date, design changes were still ongoing.