

A Message from the President and Executive Director



Reginald M. Turner



John T. Berry

As a follow-up to our January column, we are publishing a copy of the proposal that the Representative Assembly will consider at its February 22 meeting concerning changes in the dues and fees paid by Michigan attorneys. Also published here is the news release describing the proposed changes. Additional supporting materials are on the State Bar website at www.michbar.org under the News from the Bar column. As this issue goes to press, the Representative Assembly is holding public hearings around the state to receive comments from our members prior to its February meeting. The Assembly Special Issues Committee invites you to comment on the following recommendation by sending an e-mail to speakingout@mail.michbar.org.

Recommendation in Support of Funding for Implementation of the State Bar of Michigan Strategic Plan

Proponent: Representative Assembly Special Issues Committee

Introduction

The Strategic Plan of the State Bar of Michigan represents a comprehensive review of existing State Bar policy, rules, obligations and programs and presents a blueprint for the future. Its aim is to implement the structure and programs that will enable the State Bar to fulfill its fundamental mission in a cost-effective, fiscally responsible manner. It is a document that is under continual review.

Upon review of the Strategic Plan and State Bar revenue and expenditure trends, the Special Issues Committee has concluded that, absent significant changes in policies, goals,

and directives previously passed by the Representative Assembly and Board of Directors, State Bar revenues must be increased. The Committee recommends that the Assembly first endorse the Strategic Plan in its current form, recognizing that the Plan is subject to review and will evolve as future changes in State Bar policy and member needs require. To permit the Plan to be implemented in a fiscally responsible manner, the Committee also recommends several adjustments to membership dues and fees:

1. Increase in the assessment for late payment of dues, establishment of an administrative reinstatement fee and establishment of an inactive status dues assessment to better reflect administrative costs and to encourage timely payment of dues.
2. Establishment of a dues structure that does not discriminate on the basis of age.
3. Establishment of a separate annual assessment for the Client Protection Fund, to stabilize the seriously depleted fund¹ and to bring Michigan's maximum payouts in line with the national average.
4. Increase in general membership dues, as follows:
 - a. If all the dues structure and fee proposals are adopted, the annual membership dues shall be increased by \$40, from \$160 to \$200.
 - b. If the administrative fee and inactive membership dues changes described in Resolution Three are not adopted, in addition to the \$40 recommended increase, the annual membership dues shall be increased by an additional \$5.
 - c. If the age-neutral dues structure described in Resolution Four is not adopted, in addition to the \$40 recommended increase, the annual membership dues shall be increased by an additional \$5.

- d. If the separate assessment for the Client Protection Fund is not adopted, in addition to the \$40 recommended increase, the annual membership dues shall be increased by an additional \$15.

To these ends, the Representative Assembly's Special Issues Committee places the following interrelated resolutions before the Assembly as a whole, and recommends their adoption as an integrated package.

Recommendation to the Representative Assembly

Upon adoption by the Representative Assembly on February 22, 2003, the following resolutions shall be forwarded to the Michigan Supreme Court with the Assembly's request that the Court facilitate their implementation:

Resolution One

Because the State Bar Strategic Plan generally outlines programs and implementation steps that will further the Bar's purpose to serve individual attorneys, the profession, and the justice system in a more effective and fiscally responsible manner, consistent with policies adopted by the Representative Assembly, the Assembly supports implementation of the State Bar Strategic Plan as presented to the Representative Assembly on April 27, 2002.

Resolution Two

In response to increases in the costs associated with the administration of the licensing process, and to reflect the principle that costs of the administrative process should be borne by those most directly affected, the Assembly recommends the adoption of the following changes in administrative fees and inactive member dues assessment:

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Attorney Dues on State Bar Representative Assembly Agenda

The Representative Assembly of the State Bar will be considering a proposal recommending changes in the dues and fees paid by Michigan attorneys at its February 22 meeting in East Lansing. The Assembly has not considered dues and fees since 1993 when the current membership dues rate was set. Under Michigan Supreme Court rule, petitions to the Court for an increase in State Bar dues must be authorized by the Representative Assembly.

The proposal advocates a \$40 increase in the basic membership rate and an annual assessment of \$15 for the Client Protection Fund program. The Client Protection Fund is used to reimburse clients who have been victimized by attorneys who violate ethical standards and misappropriate client funds. Although such misappropriation is rare, in the last few years the size of the claims has increased dramatically.

Thomas Rombach, chair of the Representative Assembly and a member of the Special Issues Committee advancing the proposal, said that the proposed dues increase is not simply a response to the impact of inflation over the last 10 years, but is based on a Strategic Plan developed after extensive member input and study. "The Strategic Plan refocuses the State Bar's activities on its core mission—improving the justice system, enhancing relations between the legal profession and the public, and promoting the interests of Michigan lawyers. The Strategic Plan aims to help attorneys at their desks, which is where their service to the public begins. Because the dues proposal is based on the Strategic Plan, the State Bar can be held accountable and lawyers are assured that their dues will support programs that benefit their profession and the public."

The proposal submitted to the Representative Assembly is a package of resolutions addressing both general membership dues and administrative fees. The proposal does not address the disciplinary system dues component, which was separated from general membership dues in 1993 by the Supreme Court. Among the resolutions is a recommendation to assess membership dues for all practicing lawyers. Currently, attorneys over age 70 are exempted. In place of the exemption, the proposal advocates granting emeritus status upon retirement to lawyers who have been in practice for at least 40 years. Emeritus status would allow the members to continue to receive the membership services benefits of State Bar membership, at no cost. Attorney Allyn Kantor, who chairs the Special Issues Committee presenting the proposal, said that while he expects the Representative Assembly to support the package of proposals overall, the proposed elimination of the over-70 exemption might generate some discussion. "The intent of the proposed change is two-fold: first, to create a bright line that applies the financial obligation of attorney membership to all practicing attorneys regardless of

age, and second, to honor those who have served the profession for decades at the end of their careers." Kantor said that the debate will be a philosophical one between members who feel that Bar dues should be paid by all practicing lawyers without regard to age, and those who feel that members who have paid dues for several decades have earned the right to an exemption.

The Representative Assembly will hold hearings in Lansing, southeast Michigan, Grand Rapids, and Gaylord to gather input from members about the proposal package. Times and locations will be announced next week and will be posted, along with the text of the proposal, on the State Bar website, www.michbar.org.

John Berry, executive director of the State Bar since November, 2000, said he is impressed by the process that is in place to develop the proposal and receive feedback. "As a long-time consultant to state bars throughout the country, I have never seen a state bar association prepare so thoroughly for consideration of a membership dues increase. The standard approach is usually just 'it's been a long time and it's time for an increase.' Michigan is going about this the right way, with an emphasis on membership value."

Reginald Turner, president of the State Bar, said that consideration of a dues increase comes on the heels of extensive cuts in State Bar programs and staff consistent with the Bar's Strategic Plan. Turner observed that while some of the operational changes the Bar has undergone in the last few years were long overdue, other cutbacks were painful. "We've learned important lessons over the last few years about being good fiscal managers, and the need to keep programs operated by the bar on budget, on task, and within our core mission. Like state and municipal government, in our public service programs we've had to find ways to do more with less, while continuing to provide quality services to our members and the public." Turner said that members would not see a return to the number and variety of programs operated in the past. Rather, a dues increase will allow the State Bar to stay in sound fiscal condition, and to continue to improve its programs to keep pace with a rapidly changing profession. Turner is optimistic that Michigan lawyers will accept the need for an increase, noting that while dues are never popular, it is helpful that Michigan's membership dues have remained at the same level for a decade, and that the proposed dues compare favorably not only with other state bar association dues but also with association dues of other professions.

If the proposal is adopted by the Representative Assembly, it will be forwarded to the Michigan Supreme Court for consideration. Attorney dues are payable on October 1 of each year.

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1. An administrative reinstatement fee of \$100 following suspension for nonpayment of dues to reflect higher administrative costs, including certified mail and records processing, incurred in handling payment delinquencies that extend to the point of suspension. (This fee would be in addition to possible costs for filing for reinstatement after a disciplinary suspension.)
2. A late payment fee of \$50 in place of the current 10 percent late fee assessment, to better reflect the costs of records maintenance, late payment processing, handling costs, and certified mail notices.
3. An inactive status dues assessment of 50 percent of active status membership dues. Members who choose the option of inactive status for up to three years without having to become re-certified² currently pay no dues, although the Bar incurs administrative costs in maintaining an active/inactive licensing system. Inactive members also continue to be eligible for almost all membership services benefits during their period of inactive membership. Michigan is currently one of the few unified state bars without an inactive status charge.³

Resolution Three

Because the general operating costs of carrying out the functions and responsibilities of the State Bar should be borne equally by all practicing attorneys, the Assembly recommends the adoption of the following age-neutral dues structure, in place of the current dues exemption for lawyers over the age of 70:

Active Membership Status, full membership dues.

All active members will pay the full dues amount, without regard to age.

Resignation, no membership dues or fees.

Members who resign from membership will receive no benefits, but could be reinstated within three years without re-certification⁴ upon payment of inactive dues for each year or partial year of non-membership, plus the administrative reinstatement fee. Cur-

rently, there is no resignation option for State Bar members.

Emeritus Status, no membership dues.

In place of the current system which allows any member over the age of 70, retired or practicing, to remain a member without paying dues, retired members with 40+ years of active membership in good standing in the State Bar of Michigan who no longer practice law could choose emeritus status. No dues would be assessed. Emeritus members would be provided with the *Bar Journal*, listing in the emeritus section of the *Journal* directory, e-Journal, Senior Lawyer section membership, and membership endorsed services (e.g., MBNA, travel discounts, insurance, etc.). An emeritus member who chose to return to active status could do so within three years of the date of his or her last active practice.

Resolution Four

Because Michigan is one of only 15 states whose attorneys do not pay a separate annual assessment for the Client Protection Fund, and because claims submitted to the client protection fund program have increased so dramatically in the last few years that if current trends continue the Fund is projected to be bankrupt in the year 2004, the Assembly recommends the establishment of an annual Client Protection Fund assessment of \$15 for all active and inactive status members.

Resolution Five

Recognizing that despite recent cost-cutting measures and significant program adjustments, revenues generated by the \$160 dues rate established in 1993 will not enable the State Bar to carry out its obligations under Supreme Court rule, state law, and State Bar of Michigan bylaws in the manner called for in the Strategic Plan, the Assembly recommends that annual membership dues be increased by \$40, from \$160 to \$200, effective in the 2003–04 fiscal year (October 1 through September 30), subject to the following adjustments:

1. If the administrative fee and inactive status dues changes described in Resolution Two are not adopted, in addition to the \$40 recommended increase, the annual membership dues shall be increased by an additional \$5.

2. If the age-neutral dues structure described in Resolution Three is not adopted, in addition to the \$40 recommended increase, the annual membership dues shall be increased by an additional \$5.
3. If the separate assessment for the Client Protection Fund described in Resolution Four is not adopted, in addition to the \$40 recommended increase, the annual membership dues shall be increased by an additional \$15.
4. To reduce the inefficiencies and uncertainties of the past “boom and bust” dues cycles by which members are assessed an amount initially exceeding the needs of the institution, thereby building up large reserves but eventually ending in deficit spending, beginning with the 2005 fiscal year, dues shall be automatically increased or decreased based on the Consumer Price Index for the Midwest Class A urban wage earners and clerical workers, unless otherwise ordered by the Supreme Court.⁵

Reasons in Support of the Resolutions Proposed

The ability of the State Bar to fulfill its various obligations under Supreme Court rule, state law, State Bar of Michigan bylaws, and to carry out the policies adopted by the Representative Assembly and implemented by the Board of Commissioners, cannot be maintained beyond the current fiscal year based upon the 1993 membership dues rate of \$160.⁶

Fiscal Impact of the Resolutions

The proposal would permit the State Bar to maintain and improve core programs, restore the seriously depleted Client Protection Fund, and maintain an appropriate fund balance at a financially responsible level.⁷ The adoption of an inflationary/deflationary adjustment mechanism would protect against fluctuations in the State Bar's capacity to maintain services and appropriate cash reserves.

Staffing Impact of the Resolutions

The proposal would allow the State Bar to retain the staff remaining in core services after the personnel and program reductions of the FY 00–01 and 01–02 State Bar budgets, and

to phase-in additional staffing as needed to implement the Strategic Plan, with concentration in the following critical areas:

- “Help at your desk” law practice management assistance, including e-filing, technology assistance, and Ethics Hotline support
- Practice of Law standards and Unauthorized Practice of Law enforcement
- Content rich, interactive web-based communications.

Prior Assembly Action

The Representative Assembly last addressed State Bar general membership dues in April, 1993, when the Assembly recommended to the Supreme Court that membership dues be bifurcated and that the general membership dues amount be set at \$175, effective October 1, 1993. An increase to \$160 was subsequently authorized by the Supreme Court.

Respectfully submitted,

Representative Assembly Special Issues Committee: Allyn D. Kantor, Chair; Bruce A. Barton; Michael J. Blau; Hon. Daniel A. Burrell; Cynthia A. Lane; Frederick A. Neumark; Barry R. Powers; Michael J. Riordan; Marcia C. Ross; Jason S. Schnellker; Dennis M. Taubitz

Thomas C. Rombach, Chair, Representative Assembly; Daniel M. Levy, Vice Chair, Representative Assembly; Elizabeth A. Jamieson, Clerk, Representative Assembly

Lori A. Buiteweg, Chair, Rules & Calendar Committee; Francine Cullari, Chair, Drafting Committee; Edward J. Haroutunian, Chair, Hearings Committee; William R. Knight, Jr., Chair, Assembly Review Committee; Christopher S. Ninomiya, Chair, Nominating Committee ◆

FOOTNOTES

1. See Attachment A for supporting details.
2. Character and fitness and bar examination recertification.
3. Currently, 26 of the 33 unified bars assess dues for inactive members. Fifteen state bar associations assess inactive members amounts equal to or greater than one-half of active membership dues. See Attachment B for supporting details.
4. Character and fitness and bar examination recertification.
5. The adjustment would be calculated based upon the cumulative percentage inflationary or deflationary change from the fiscal year of the last dues increase

(base year). To the extent that the change from the base year on a cumulative basis exceeds $\pm 2.5\%$, then the increase would be calculated by multiplying the existing dues amount by the inflationary or deflationary change percentage, rounded to the nearest \$5.00. If the change from the base year on a

cumulative basis did not exceed $\pm 2.5\%$, dues would not be adjusted.

6. The specific dues changes in the Proposed Resolution reflect the costs of implementing the Strategic Plan of the State Bar of Michigan, Attachment C.
7. See Attachment D for supporting details.