



Scott S. Brinkmeyer

Lawyers' Lament

He has the right to criticize who has the heart to help.

—Abraham Lincoln

As I have traveled around Michigan these past several months speaking to local Bar Associations, sections, and meeting with lawyers, I am frequently asked the question: "What is the State Bar going to do about . . . ?" The topics raised cover a wide spectrum of political, economic, and professional matters, but the questioners typically have two characteristics in common. First, most of my questioners have not been involved in State Bar activities of any kind. As a result, there is frequently a remarkable disconnect between their understanding and the reality of our organization's structure and governance. This becomes particularly frustrating when their questioning evolves into a criticism that the Bar is somehow derelict in its duty for not actively supporting a particular issue near and dear to their hearts. In response, I often remind the complaining member that diverse viewpoints and active participation in State Bar activities are welcome and they might consider running for election to the Board of Commissioners, the Representative Assembly, or volunteering for an appointment to a State Bar committee.¹

The views expressed in the President's Page, as well as other expressions of opinions published in the *Bar Journal* from time to time, do not necessarily state or reflect the official position of the State Bar of Michigan, nor does their publication constitute an endorsement of the views expressed. They are the opinions of the authors and are intended not to end discussion, but to stimulate thought about significant issues affecting the legal profession, the making of laws, and the adjudication of disputes.

The second characteristic my interrogators frequently have in common is that many are unaware, or have forgotten, that as an "integrated" Bar,² we are precluded by the U.S. Supreme Court decision in *Keller v State Bar of California*³ from advocating most political and ideological causes or beliefs. The Michigan Supreme Court expressly limits our ideological activities to

- "the regulation and discipline of attorneys;
- the improvement of the functioning of the courts;
- the availability of legal services to society;
- the regulation of attorney trust accounts; and
- the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession."⁴

Within these constraints, we can only be strengthened as a profession by the inclusion of many diverse points of view and perspectives. In our efforts to promote the broad interests of our members, within the constraints imposed by the courts, our staff historically has identified all proposed legislation, court rule changes, and other legal issues that appear to be of importance to the profession. The Board's Public Policy, Image and Identity Committee (PPII) then sifts through the information, solicits comments from sections and committees, and determines whether the subject is "*Keller*-permissible," i.e., whether a position can be advanced by the Bar under *Keller* or AO 2001-4. If so, PPII recommends to the Board what, if any, position should be taken, e.g., support, opposition, or no position at all, or whether sections or committees should be free to advocate individually. In the last two years, this longstanding process has been made significantly more efficient and productive by the use of electronic communication and the creation of a Public Policy Resource Center on the State Bar website.

Another fundamental change has further clarified and improved our public policy process. Sections, councils, committees, and other State Bar entities have always been precluded by our bylaws from representing the State Bar in virtually any forum without Board authorization, and, until recently have been precluded from taking policy positions inconsistent with those previously adopted by the State Bar. Confusion and controversy sometimes resulted when they took independent policy positions without consulting with Bar leadership and/or following the bylaw requirements. Having learned that this was of great concern to the Supreme Court and the legislature in dealing with advocates and lobbyists in the past, two years ago PPII began to formulate a strategy intended to expedite and better coordinate communications with other Bar entities and to introduce greater flexibility in dealing with issues and initiatives of concern to our members.

Amendments and revisions to the Bar's internal operating procedures were submitted for consideration by the Supreme Court. These changes were later implemented, with modifications⁵ added by the Supreme Court, in AO 2004-1. Importantly, the Order permits publication and notice regarding legislative positions to be accomplished electronically.

Having updated our internal operating policies, including those related to public advocacy by committees, the Bar is now positioned to better coordinate communications with sections, and to respond expeditiously to legislative initiatives and other issues. Moreover, the establishment last year of the Public Policy Resource Center,⁶ which is now available as a benefit of Bar membership, provides another tool assisting Bar entities in the promotion of their interests and positions as voluntary entities not subject to *Keller* restrictions.



Admittedly, one objective in implementing these changes was to allow our staff and PPII to focus our efforts more sharply and effectively on public policy issues of greatest significance and interest to the membership as a whole, at the same time freeing up the energy of sections, and empowering individual members by making public policy information more easily accessible to them. This has necessarily elevated the responsibility of sections, committees, and other Bar entities that may wish to advocate positions.

Under our Strategic Plan,⁷ the Bar's public policy role is to minimize divisiveness, focus on achievable objectives, and support our statement of purpose. I understand and appreciate that there is a seemingly endless list of challenges affecting our profession and the judicial system in which we practice. I am proud of the hard work and dedicated efforts of the Board, the Assembly, and especially our Bar staff over these past few years in developing a vastly improved process for dealing with so many of the problems associated with law practice today. We are better positioned to coordinate with our sections, committees, and other Bar entities in our joint efforts to improve the profession. The leadership of the State Bar is committed to achieving the goals of the Strategic Plan. Success will require hard work, creative thinking, and continuing participation by committed Bar members, and I urge your consideration of greater involvement in that process and the activities of the State Bar. With your help, complaints and criticism will be fewer and further between, and we can endeavor together to enhance the prospects for our future.⁸ ◆

FOOTNOTES

1. It just so happens that President-Elect Nancy Diehl will be making appointments to the State Bar committees in July. There are 26 such committees and most have at least a few vacancies each year. Contact Sections & Committees Coordinator Susan McMann at the State Bar (517-346-6367 or smcmann@mail.michbar.org).
2. I.e., an association of attorneys in which membership and dues are required as a condition of practicing law. The State Bar of Michigan is the fifth largest of the 28 integrated Bar Associations in the U.S.
3. 496 US 1 (1990).
4. Supreme Court Administrative Order 2004-1, Sec. I(A)-(E).
5. Among other things, the Supreme Court established technical requirements and restrictions upon sections engaging in ideological activities on their own behalf.

These largely involve disclosures differentiating from the State Bar of Michigan and identifying the source and nature of the process used and support for the particular position. AO 2004-1, Sec. II(F). The Supreme Court also authorized sanctions for violation of the Order or the State Bar's Bylaws.

6. This service is accessible via the State Bar website, or through e-journal by scrolling to the home page. It contains a current list of pending legislation and proposed Court Rule changes, indexed by practice specialty, including related information and Bar positions.
7. Members will recall that the Strategic Plan was developed with input and recommendations from lawyers

and judges, including the Supreme Court, throughout Michigan. It was then unanimously approved by the Representative Assembly and the Board of Commissioners and constitutes the "agenda" of the State Bar of Michigan, which your leadership is obligated to follow and implement.

8. By the time this article is published, the deadline for filing for elected positions in the State Bar will have passed. However, there are frequently vacancies in the circuits of the Representative Assembly and interested members should check with Assembly Clerk Lori Buiteweg of Ann Arbor to see if that may be the case in their circuit.