



Board of Commissioners

Agenda and Materials

April 20, 2018

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
FRIDAY, APRIL 20, 2018
MICHAEL FRANCK BUILDING
LANSING, MI
9:30 A.M.
AGENDA**

State Bar of Michigan Statement of Purpose

“...The State Bar of Michigan shall aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.”

Rule 1 of the Supreme Court Rules Concerning the State Bar of Michigan

Finance Committee Meeting.....	Room 1
Professional Standards Committee Meeting.....	Hudson Room
Communications and Member Services Meeting.....	Room 3
Public Policy Meeting.....	Room 2

- I. Call to Order.....Donald G. Rockwell, President

CONSENT AGENDA

II. **Minutes**

- A. January 26, 2018 Board of Commissioners*
- B. January 9, 2018 Executive Committee meeting*
- C. February 13, 2018 Executive Committee meeting*
- D. March 20, 2018 Executive Committee meeting*

- III. **President’s Activities**.....Donald G. Rockwell, President

- A. Recent Activities*

- IV. **Executive Director’s Activities**.....Janet K. Welch, Executive Director

- A. Recent Activities*

- V. **Finance**.....Dana M. Warnez, Chairperson

- A. FY 2018 Financial reports through February 2018*
- B. 2017 Report of the State Bar of Michigan Retirement Plans*

- VI. **Professional Standards**Robert J. Buchanan, Chairperson

- A. Client Protection Fund Claims*
- B. Unauthorized Practice of Law Claims**

- VII. **Public Policy**.....Jennifer M. Grieco, Chairperson

- A. Model Criminal Jury Instructions*

- VIII. **Section Dues Amendments**.....Darin Day, Director of Outreach &

Constituent Development

- A. Business Law Section Dues Amendment*

COMMISSIONER COMMITTEES

- IX. **Finance**.....Dana M. Warnez, Chairperson
 - A. FY 2018 Financial Update
 - B. SBM Proposed Investment Policy*

- X. **Audit Committee**.....Dana M. Warnez, Chairperson
 - A. Proposed Auditor Selection and Rotation Policy*
 - B. Auditor Selection Recommendation*

- XI. **Professional Standards** Robert J. Buchanan, Chairperson
 - A. Proposed Ethics Opinion R-25 on For-Profit Online Matching Services*
 - B. House of Delegates Appointment**

- XII. **Communications and Member Services**Dennis M. Barnes, Chairperson
 - A. 50 Year Honorce Resolution*
 - B. 2018 John W. Cumiskey Award*
 - C. 2018 SBM Awards Committee Recommendations*

- XIII. **Public Policy**.....Jennifer M. Grieco, Chairperson
 - A. Court Rules**
 - B. Legislation**

SBM STRATEGIC PLAN - STEERING COMMITTEES

- XIV. **Strategic Plan Update**
 - A. Communications and Member Services Steering Committee.....Dennis M. Barnes, Chairperson
 - B. Implementation and Innovation Steering CommitteeDana M. Warnez, Chairperson
 - C. Professional Standards Steering Committee Robert J. Buchanan, Chairperson
 - D. Public Policy Steering CommitteeJennifer M. Grieco, Chairperson

LEADERSHIP REPORTS

- XV. **President’s Report**.....Donald G. Rockwell, President
 - A. Board Officer Election Procedure, Matrix, and 2018 Timeline*

- XVI. **Executive Director’s Report**Janet K. Welch, Executive Director
 - A. FY 2019 Budget Process, Roles, and Calendar*
 - B. Meeting with Michigan Supreme Court
 - C. Receivership Initiative
 - D. Annual Reports from SBM Committee and Work Groups**

- XVII. **Representative Assembly (RA) Report**.....Joseph P. McGill, Chairperson
 - A. April 21, 2018 RA Meeting Calendar*

OTHER REPORTS

- XVIII. **American Bar Association (ABA) Report**Delegates
- XIX. **Young Lawyers Section Report**Syeda F. Davidson, Chairperson

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- XX. **Comments or questions from Commissioners**
- XXI. **Comments or questions from the public**
- XXII. **Adjournment**

***Materials included with agenda,**

**** Materials delivered or to be delivered under separate cover or handed out**

#Materials that can be found on the confidential Connect Page.

President Rockwell called the meeting to order at 9:50 a.m. on January 26, 2018 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson

David C. Anderson

Dennis M. Barnes, Vice-President

Aaron V. Burrell

Joseph J. Baumann

Robert J. Buchanan, Secretary

Hon. Clinton Canady III

B.D. "Chris" Christenson

Richard L. Cunningham

Shauna L. Dunning

Andrew F. Fink III

Robert C. Gardella

Jennifer M. Grieco, President Elect

Edward L. Haroutunian

Krista L. Haroutunian

Michael S. Hohaus

Kara R. Hart-Negrich

E. Thomas McCarthy Jr.

Joseph P. McGill

Hon. Maureen M. McGinnis

Shenique A. Moss

Jules B. Olsman

Hon. David A. Perkins

Daniel D. Quick

Victoria A. Radke

Hon. Michael J. Riordan

Donald G. Rockwell, President

Brian D. Shekell

Gregory L. Ulrich

Dana M. Warnetz, Treasurer

Erane C. Washington

Commissioners absent and excused:

Syeda F. Davidson

James W. Heath

State Bar Staff present:

Janet Welch, Executive Director

Margaret Bossenbery, Executive Coordinator

Nancy Brown, Director, Member and Communication Services Division

Gregory Conyers, Director, Diversity

Candace Crowley, Senior Consultant

Peter Cunningham, Assistant Executive Director and Director, Governmental Relations

Darin Day, Director, Outreach and Constituent Development

Cliff Flood, General Counsel

Danon Goodrum-Garland, Director, Professional Services Division

Kathryn Hennessey, Public Policy Counsel

Nkrumah Johnson-Wynn, Assistant General Counsel

James Horsch, Director, Finance and Administration Division

Robert Mathis, Pro Bono Service Counsel

Samantha Meinke, Communications Manager

Alecia Ruswinckel, Assistant Counsel, CPF/Ethics

Jeanette Socia, Human Resources Manager

Kari Thrush, Assistant Division Director, Member Services

Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, Institute for Continuing Legal Education

Consent Agenda

Mr. Rockwell asked the Board if there were any items that needed to be removed from the consent agenda. There were none.

The Board received the minutes from November 17, 2017 Board of Commissioners meetings.
The Board received the minutes from the November 8 and January 12, 2017 Executive Committee meetings.

The Board received the recent activities of the President.

The Board received the recent activities of the Executive Director.

The Board received the FY 2017 Audited Financial Report.

The Board received the FY 2018 Financial Reports through December 2017.

The Board received a Bylaw Amendment from the Judicial Section.

A motion was offered and supported to approve the consent agenda. The motion was approved.

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Ms. Warnez reported that the Audit Committee met with the auditors on December 15, 2017 and reviewed the fiscal reports for FY 2017. She introduced Mr. Jeffrey Fineis, Audit Partner, from Andrews, Hooper, Pavlik, PLC who reviewed the auditor's letter, the annual financial report, and answered questions from the Board. The auditors provided an "unmodified" (clean) audit opinion and had no audit recommendations.

Mr. Fineis reported that there are new reporting standards included in the report due to GASB 74 reflecting new accounting standards including disclosure of retiree health care costs. He stated that additional reporting will be needed next year due to GASB 75, to reflect the other post-employment benefit net liability reporting requirement.

Ms. Warnez informed the Board that the SBM would be issuing an RFP to solicit bids and proposals for audit services. She indicated that the SBM is not dissatisfied with the current auditors, but that the committee is following SBM policy and best practices in seek bids at this time for audit services.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial reports through December 2017.

Mr. Warnez indicated that a work group had been established to review the investment policy as is consistent with SBM policy.

Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes reported that there was no new business to come before the Board.

Professional Standards, Robert J. Buchanan, Chairperson

Mr. Buchanan noted the background information about the Payee Notification System that was in the Board's materials. He reported that legislation had been enacted in other states in an effort to eliminate fraud in settlement proceedings and foster greater client trust in the legal profession. Mr. Buchanan asked Ms. Ruswinckel to provide the Board with an overview of the legislation contemplated for Michigan that has passed in other states. A discussion followed her remarks about whether this issue should be sent to the Representative Assembly for their consideration.

A motion was offered and supported to authorize SBM to advocate for Payee Notification legislation with the elements listed in the memo of the work group recommendations provided in the Board materials, and to also refer this proposal to the Representative Assembly for their consideration. The motion was approved.

Roll Call Vote taken:

Ayes: Anderson, Danielle, Anderson, David, Barnes, Buchanan, Burrell, Christenson, Cunningham, Dunning, Fink, Gardella, Grieco, Haroutunian, Edward, Haroutunian, Krista, Hart-Negrich, Hohaus, McCarthy, Moss, Olsman, Quick, Radke, Riordan, Warnez, Washington, and Rockwell

Nays: Baumann, McGill, Shekell, and Ulrich

Absent and Excused: Canady, Davidson, Heath, McGinnis, Perkins

Public Policy, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

Court Rules

ADM File No. 2017-19: Proposed Amendment of Rules 2.410 and 2.411 and Proposed Addition of Rule 3.970 of the Michigan Court Rules

The proposed amendments of MCR 2.410 and MCR 2.411 and adoption of the new MCR 3.970 would provide explicit authority for judges to order mediation in child protection proceedings.

A motion was offered and supported to adopt the position of the Access to Justice Policy Committee and authorize the Alternative Dispute Resolution Section to advocate its position of support, while also notifying the Section that it cannot oppose any of the amendments proposed by the State Bar position. The motion was approved.

ADM File No. 2015-26: Proposed Addition of Rule 3.808 of the Michigan Court Rules

The proposed addition of Rule 3.808 is consistent with § 56 of the Michigan Adoption Code, MCL 710.56. This new rule arises out of *In re JK*, 468 Mich 202 (2003), and *In re Jackson*, 498 Mich 943 (2015), which involved cases where a final order of adoption was entered despite pending appellate proceedings involving the adoptee children. Although the Michigan Court of Appeals has adopted a policy to suppress in its register of actions and online case search tool the names of children (and parents) who are the subject of appeals from proceedings involving the termination of parental rights, this information remains open to the public. Therefore, in order to make the determination required of this new rule, a trial court may contact the clerk of the Michigan Court of Appeals, the Michigan Supreme Court, or any other court where proceedings may be pending.

A motion was offered and supported to support the proposed addition and recommend an amendment to expedite these cases for the best interest of the children be included in the letter to the Court. The motion was approved.

ADM File No. 2016-13: Proposed Addition of Rule 3.810 of the Michigan Court Rules

The proposed new rule would require a court to provide an indigent putative father whose rights are terminated under the Adoption Code with transcripts for the purposes of appeal, similar to the requirement in MCR 3.977(J) for putative fathers whose rights are terminated under the Juvenile Code.

A motion was offered and supported to support the proposed addition with this amendment: **Rule 3.810 Transcripts for the Purposes of Appeal. In appeal following the involuntary termination of the parental rights of a putative father, if the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.** The motion also included that the letter to the Court should make it clear that the term “respondent” encompasses all persons with standing to appeal. The motion was approved.

ADM File No. 2017-18: Proposed Amendment of Rule 3.903 of the Michigan Court Rules

The proposed amendment of MCR 3.903 would make juvenile guardianship information public. This change would resolve the conflict between the child protective proceeding social file (which is considered nonpublic) and the juvenile guardianship file (which is public) and would make the rule consistent with current court practices.

A motion was offered and supported to support the proposed amendment. The motion was approved.

ADM File No. 2017-08: Proposed Amendment of Rules 3.977 and 6.425 of the Michigan Court Rules

The proposed amendments of MCR 3.977(J) and MCR 6.425(G) were submitted by the Court of Appeals. The proposed amendments would require the production of the complete transcript in criminal appeals and appeals from termination of parental rights proceedings when counsel is appointed by the court. The proposed amendments would codify existing practice in many courts, and the Court of Appeals believes they would promote proper consideration of appeal issues and eliminate unnecessary delays to the appellate process.

A motion was offered and supported to support the proposed amendment. The motion was approved.

ADM File No. 2016-25: Proposed Amendment of Rule 7.212 of the Michigan Court Rules

The proposed amendment of MCR 7.212 was submitted by the Court of Appeals. Proposed amendments of MCR 7.212 would require an appellant to file an appendix with specific documents within 14 days after filing the appellant’s principal brief. The proposal is intended to identify for practitioners the key portions of the record that the Court deems necessary for thorough and efficient review of the issues on appeal.

A motion was offered and supported to support the proposed amendment as drafted and to authorize the sections and committees to submit their comments to the Court. The motion was approved.

MIDC Standard 8

Attorneys must have the time, fees, and resources to provide the effective assistance of counsel guaranteed to indigent criminal defendants by the United States and Michigan Constitutions. The MIDC Act calls for a minimum standard that provides: "Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided." MCL 780.991(2)(b). Fair compensation for assigned counsel may optimally be achieved through a public defender office, and the MIDC recommends an indigent criminal defender office be established where assignment levels demonstrate need, together with the active participation of a robust private bar. MCL 780.991(1)(b). In the absence of, or in combination with a public defender office, counsel should be assigned through a rotating list and be reasonably compensated. Contracted services for defense representation are allowed, so long as financial disincentives to effective representation are minimized. This standard attempts to balance the rights of the defendant, defense attorneys, and funding units, recognizing the problems inherent in a system of compensation lacking market controls.

A motion was offered and supported to support the standard as written. The motion was approved.

Model Criminal Jury Instructions

M Crim JI 10.9, 10.9a, 10.9b, 10.9c and 10.9d

The Committee proposes new instructions, M Crim JI 10.9, 10.9a, 10.9b, 10.9c and 10.9d, for the organized retail crime statutes found at MCL 752.1083 and 752.1084.

A motion was offered and supported to support the jury instructions as written. The motion was approved.

M Crim JI 11.39, 11.39a and 11.39b

The Committee proposes new instructions, M Crim JI 11.39, 11.39a and 11.39b, for the "explosives" statutes found at MCL 750.204, 750.204a, 750.207 and 750.212.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 15.11a and 15.12a

The Committee proposes amendments to M Crim JI 15.11a and 15.12a, the instructions for driving with Schedule 1 or 2 substances causing death or serious injury under MCL 257.625(4), (5) and (8). The amendments are intended to correct over-broad language in paragraph (4) that included all Schedule 2 substances, where only certain of those substances are included within the purview of the statute. Deletions are in strike-through; new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 17.20 and 17.20c

The Committee proposes an amendment to M Crim JI 17.20 and a new instruction, M Crim JI 17.20c, instructions for violations of MCL 750.136b(3), second-degree child abuse. The amendment to M Crim JI 17.20 is intended to conform the instruction to statutory language that was omitted in the original instruction and to make technical corrections; deletions are in strike-through; new language is underlined. The new instruction, M Crim JI 17.20c, is for second-degree child abuse charges that were committed by a child care organization where there has been a violation of MCL 722.111 et seq.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 17.33

The Committee proposes an amendment to M Crim JI 17.33, the instruction for violations of MCL 750.145n, which was amended to expand the scope of the statute, and to make technical corrections to the first and third paragraphs. Deletions are in strike-through; new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

M Crim JI 36.5

The Committee proposes an amendment to M Crim JI 36.5, the instruction that provides the aggravating factors found in MCL 750.462f that apply to the human trafficking instructions. The amendment accommodates an amendment to that statute. The new language is underlined.

A motion was offered and supported to support the jury instruction as written. The motion was approved.

Legislation

Competency Evaluation

HB 5244 (Kesto) Mental health; other; time limitation on completion of examination to evaluate issue of incompetence to stand trial; implement. Amends sec. 1028 of 1974 PA 258 (MCL 330.2028).

HB 5246 (Kesto) Mental health; facilities; examination to evaluate issue of incompetence to stand trial; modify process and expand certain resources. Amends sec. 1026 of 1974 PA 258 (MCL 330.2026).

A motion was offered and supported that this legislation is *Keller*-permissible because it affects the availability of legal services to society. The motion was approved.

A motion was offered and supported to support the concept of improving the speed and accuracy of competency evaluations, but to also note that these bills are not the vehicle in which to improve these due to lack of deadlines, funding, and standards. The motion was approved. Mr. Shekell abstained.

HB 4433 (Neeley) Juveniles; criminal procedure; automatic record expungement of nonviolent juvenile offenses; provide for. Amends sec. 18e, ch. XIA of 1939 PA 288 (MCL 712A.18e).

A motion was offered and supported that this legislation is *Keller*-permissible because it improves the functioning of the courts. The motion was approved.

A motion was offered and supported to support the position of the Access to Justice Policy Committee. The motion was approved.

HB 4728 (Geiss) Criminal procedure; defenses; legal aid for individuals in deportation proceedings; establish. Creates new act.

Action on this legislation was tabled.

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson

Mr. Barnes reported that the next steering committee meeting is scheduled on February 7 and as such there is not an update for the Board at this time.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson

Ms. Warnez reported that the I & I committee met via conference call on January 23 and received reports from all of the different initiatives out the delivery program as well as a Diversity and Inclusion update. She stated that the committee specifically talked about the Access to Justice proposal for a consistent fee waiver, the Modest Means pilot program, which continues moving forward, the Diversity and Inclusion work group that is looking into working with communities regarding a grant supported by the Kellogg Foundation, and the Lawyer Referral pilot program, which is also moving forward.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson

Mr. Buchanan reported that the Regulatory Objectives work group met and agreed on core values and is continuing its work on preparing regulatory objectives based on the core values. The work group hopes to develop proposals to bring before the Board for consideration soon. He stated that a work group on multi-disciplinary practices is being formed with the help of SBM Member Jeffrey Paulsen and SBM staff, and that SBM staff is in the process of collecting data and developing a work group plan as well as identifying names of attorneys who might be interested in serving on a receivership program work group.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the Timely & Responsive Public Policy and the Communicating Public Policy Issues to Members sub groups met via conference calls in January and stated that some really good ideas came out of both conference calls. She informed the Board that there is a full steering committee meeting call in February and they expect to have some suggestions and proposals to bring before the Board at a future meeting including one which would allow the Board to react to legislation in a more timely fashion in between Board meetings.

President's Report, Donald G. Rockwell, President

Mr. Rockwell recognized Ms. Welch for receiving the Carolyn A. Stell Award from the mid-Michigan chapter of the Women Lawyers Association of Michigan and Ms. Grieco for being one of the Notable Women Lawyers in 2017 as awarded by Crain's Detroit Business.

Structure and Governance Meeting

Mr. Rockwell informed the Board that the officers of the Board and the RA, Mr. Herrmann, Mr. Quick Ms. Welch, Mr. Cunningham, Ms. Hennessey and Ms. Sharlow met yesterday for a brainstorming retreat about the governance of the State Bar, specifically how and what the Board and the RA do relative to public policy decisions. Mr. Rockwell stated that two sub-committees were formed and will meet in the upcoming months and report back to the Board with recommendations.

Mr. Rockwell informed the Board that he and Ms. Welch received an email from a colleague who mentioned that a SBM member, who was the defense attorney in a local case, received death threats because of a client he was representing. After listening to comments and suggestions from Board members, Mr. Rockwell stated that he and Ms. Welch will discuss the immediate request from their colleague and then in broader terms talk about how the SBM can aid in the process of educating the public about our system of justice.

Executive Director's Report, Janet K. Welch, Executive Director

SBM Year in Review

Ms. Welch provided the Board with a review of the key accomplishments of the SBM during 2017.

SBM Building closure update

Ms. Welch reported that during the SBM holiday closure there were minimal phone calls and that she responded to all of them.

Economics of Law Practice

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the Economics of Law Practice survey. Ms. Vrooman reported that over 5,000 members responded, which is an increase of 60% from the last survey, and described the collection process that was used. She reported that once the results are in they will be analyzed and compiled, posted on the website, and available in hard copy to any board member who would like one.

Lawyer Referral Services Update

Ms. Welch asked Ms. Vrooman to provide the Board with an update on the ongoing work of the Lawyer Referral Services Steering committee. Ms. Vrooman reported that the committee is continuing to make progress with the building of the Lawyer Referral Services platform, developing the administrative tools for tracking, monitoring, automated notices, and generating reports. Ms. Vrooman informed the Board that the next steps will focus on the administrative and attorney side of the platform and then the consumer's side.

Ms. Welch reported that ZeekBeek, which has changed its name to CloudLaw, is now a public benefit corporation. She informed the Board that in addition to the state bars of Ohio, Indiana, and Illinois, the state bars of Georgia and South Carolina have recently joined the CloudLaw Consortium. She also reported that the American Bar Association (ABA) has entered into an agreement with CloudLaw to help promote individual state bar directories which will be available for ABA members, and to develop a national lawyer to lawyer service.

Mr. Flood then summarized SBM's financial arrangement with CloudLaw. Mr. Flood reported that the agreement with CloudLaw provided the SBM with a twenty percent stock interest in CloudLaw as compensation for our "sweat equity" contribution to product development, subject to meeting certain vesting requirements, all of which have now been met. The stock is non-voting, and the SBM's percentage will likely be diluted as additional stock grants are issued, for example to investors or as more states participate. Ms. Welch emphasized that the focus of the bar in our participation with CloudLaw has always been on the product we are helping develop as a tool to aid SBM members and the public and not on the potential for revenue.

Florida Bar Association Request

Ms. Welch asked Mr. Flood to provide the Board with a review of the request from the Florida Bar Association for the emails or addresses of SBM members in Florida.

Mr. Flood stated that there is a new emeritus rule in Florida that allows lawyers who are not members of the Florida Bar to practice law in Florida pro bono with a recognized legal aid corporation or program. The Florida Bar association is interested contacting emeritus or retired SBM members who reside in Florida to advise them of the new rule.

A motion was offered and supported to allow the SBM to provide SBM members who are inactive, retired, or on emeritus status and have provided SBM with a Florida address with the information about this program that Florida provided. The motion was approved.

Representative Assembly (RA) Report, Joseph P. McGill, Chairperson

Mr. McGill reported that preparation is underway for the April 21 Representative Assembly meeting where he indicated the primary focus will be on the proposal dealing with amendments to the civil discovery rules. He updated the Board on the Assembly's review process of the civil discovery rule proposal aimed at providing feedback on the proposal in advance of the April meeting.

Mr. McGill reported that the RA Nominations committee has been busy filling vacancies and that all but thirteen seats have been filled and stated that there are contested races in two of the circuits which results in a need for a special election to take place.

Mr. McGill informed the Board that he, along with Mr. Peter Cunningham and Ms. Hennessey, were working on a work flow document that lists the tasks for each RA committee and provides the chairs with specific objectives and goals to meet during the upcoming year.

Mr. McGill reported on his perspective on the governance and board retreat and stated that he wanted the retreat in an effort to refocus and repurpose the RA to meet its mission. He reported that at the conclusion of the retreat, two sub committees were formed, one on governance composition and the other on process. Once those groups meet and have recommendations the entire group will meet again. Mr. McGill stated that there is conflict between the policy roles of the Board and the RA and what exactly the term, "final policy making body" means, which governance group gets what content and when, and who has veto power.

American Bar Association (ABA) Report

Mr. Ulrich reported to the Board that the mid-year meeting is taking place in Vancouver in February. He mentioned that he had been notified about the possibility that attorney's electronic devices may be subjected to scrutiny when crossing the border and that an attorney may be required to provide passwords if requested.

Young Lawyers Section (YLS) Report, Syeda F. Davidson, Chairperson

In Ms. Davidson absence, Ms. Hart-Negrich, Chair Elect, updated the Board on the activities of the YLS. She reported that the YLS Annual Summit is taking place at Bay Harbor Inn on June 15-17 and that they are holding an Expungement Fair on February 24 in Detroit.

Ms. Hart-Negrich reminded the Board that the annual YLS Executive Council v Board of Commissioners bowling challenge would take place after the April 20 Board meeting and that more details will follow.

Comments from Commissioners

There were none.

Adjournment

The meeting was adjourned at 12:50 p.m.

State Bar of Michigan
Executive Committee Conference Call
Tuesday, January 9, 2018
3:30 p.m.

Call to Order: President Rockwell called the meeting to order at 3:33 p.m.

Members Present: President Donald G. Rockwell, President-Elect Jennifer M. Grieco, Vice President Dennis M. Barnes, Secretary Robert J. Buchanan, Treasurer Dana M. Warnez, Representative Assembly Chair Joseph P. McGill, Representative Assembly Vice-Chair Richard L. Cunningham, and Commissioners Shauna L. Dunnings and E. Thomas McCarthy Jr.

Members Absent: Commissioner James W. Heath

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Nancy Brown, Director of Member & Communication Services; Gregory Conyers, Director of Diversity; Candace Crowley, Assistant Executive Director and Director of External Development; Peter Cunningham, Assistant Executive Director and Director of Governmental Relations; Cliff Flood, General Counsel; Danon Goodrum-Garland, Director of Professional Standards; James Horsch, Director of Finance & Administration; and Anne Vrooman, Director of Research & Development.

Approval of December 12, 2017 meeting minutes

A motion was made and seconded to approve the December 12, 2017 Executive Committee meeting minutes. The motion passed.

President's Report

President Rockwell reported on his activities over the holidays.

Representative Assembly Chair's Report

Representative Assembly Chair McGill reported on the conference calls with the Nominating/Awards Committee and Hearings Committee. The RA is filling vacancies, with some difficulty in the smaller counties. He also reported on the status of the civil discovery rules project, and on his conference call with the RA officers in preparation for the SBM governance issues workshop on January 25.

Executive Director's Report

Ms. Welch reported that the holiday building closure went well with only a few calls each day and fewer distress calls from the public this year. She also reported that the law school dean's meeting for January was cancelled and is being rescheduled.

Ms. Vrooman reported on the Economics of Law Practice Survey. The survey data collection is completed and more detail will be provided at the BOC meeting. She reported a 64% increase in the participation rate that will yield more robust results. A total of 5,900 members participated in this year's survey.

Ms. Welch reported that the dues pre-suspension notices have been mailed this week and that we are meeting with the Supreme Court counsel in February to discuss possible court rule changes to the late fee and dues suspension process. Ms. Welch also reported on the LRS modernization and that the modest means pre-launch is being finalized which is a significant step in the project. She also reported on a significant upgrade to the ATJ Fund donation web page.

Ms. Welch reviewed the upcoming schedule for BOC meeting dates. Currently there is a meeting tentatively scheduled for March 9, 2018 and a meeting scheduled for April 20, 2018. Because of the large number of proposed rule changes with deadlines prior to the April meeting, one option would be to convene a March meeting instead of the April meeting. After discussion, and after reviewing the court rule requirements for BOC meetings, it was decided to hold the April 20 BOC meeting as planned, and to use the EC to decide court rule and public policy proposals between board meetings.

Mr. Flood provided the details of a request from The Florida Bar to provide names and contact information (e-mail addresses) of retired and inactive members in order to contact them to request their assistance in performing pro bono legal work in Florida, under the supervision of a licensed Florida attorney, that would promote greater access to justice. He reviewed the current policy and options to handle the information request. Ms. Welch noted that the SBM is on record in supporting emeritus members to perform pro bono work under licensed attorney supervision. Since this request is not time sensitive, and because of the unique circumstances of this request, after further discussion a motion was made and seconded to bring this matter to the BOC at the January 26, 2018 meeting for discussion. The motion passed.

Ms. Crowley reported that the deadline for requesting volunteers to serve on committees for the 2018-2019 bar year is approaching. There were about 130 members who requested to serve on a committee last year that did not receive an appointment, and there is a lot of work underway about communicating the message for this year's call for volunteers.

Strategic Plan Update

Steering committee chairs provided a brief update:

Communications and Member Services Steering Committee – Mr. Barnes reported that the next steering committee meeting will be held on February 7, 2018.

Implementation and Innovation Steering Committee - Ms. Warnez reported the dates and topics of upcoming committee and workgroup meetings. Ms. Crowley provided additional detail on new workgroups formed.

Professional Standards Steering Committee - Mr. Buchanan reported that a multi-disciplinary practice workgroup has been formed and a conference call is being scheduled.

Public Policy Steering Committee - Ms. Grieco reported on upcoming meetings of the workgroups in January.

2018 Equal Justice Conference Attendance

Ms. Crowley requested the EC to approve the expenses for an SBM committee member (to be identified) to attend the 2018 Equal Justice Conference that will be held May 10-12, 2018 in San Diego. The expenses are budgeted for \$1,300. After discussion, a motion was made and seconded to approve the expenses for the committee member's attendance at the conference. The motion passed.

January 26, 2018 Board of Commissioners Meeting Agenda

Ms. Bossenbery reviewed the proposed BOC agenda. After discussion, several additions were made to the public policy section and the ED report section. A motion was made and seconded to approve the amended agenda. The motion passed.

Other

None

Adjournment

There being no further business for the Executive Committee, President Rockwell adjourned the meeting at 4:31 p.m.

Submitted by James C. Horsch
February 7, 2018

State Bar of Michigan
Executive Committee Conference Call
Tuesday, February 13, 2018
3:30 p.m.

Call to Order: President Rockwell called the meeting to order at 3:34 p.m.

Members Present: President Donald G. Rockwell, President-Elect Jennifer M. Grieco, Vice President Dennis M. Barnes, Secretary Robert J. Buchanan, Treasurer Dana M. Warnez, Representative Assembly Chair Joseph P. McGill, Representative Assembly Vice-Chair Richard L. Cunningham, and Commissioners Shauna L. Dunnings, James W. Heath, and E. Thomas McCarthy Jr.

Members Absent: None

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Gregory Conyers, Director of Diversity; Candace Crowley, Senior Consultant; Peter Cunningham, Assistant Executive Director and Director of Governmental Relations; Cliff Flood, General Counsel; Danon Goodrum-Garland, Director of Professional Standards; James Horsch, Director of Finance & Administration; and Anne Vrooman, Director of Research & Development.

Approval of January 9, 2018 meeting minutes

A motion was made and seconded to approve the January 9, 2018 Executive Committee meeting minutes. The motion passed. Mr. Heath abstained.

President's Report

President Rockwell reported on the ABA mid-year meeting he attended in Vancouver B.C. along with Ms. Grieco and Ms. Welch, including attendance at the National Conference of Bar Presidents and ABA House of Delegates meetings.

Executive Director's Report

Ms. Welch reported on her attendance at the National Association of Bar Executives meeting in conjunction with the ABA mid-year meeting in Vancouver. She outlined a summary of recent changes to some mandatory bars and a challenge to the mandatory status of the Wisconsin Bar. She also noted a presentation conducted by the ABA Center for Innovation regarding an online court dispute resolution application in British Columbia, and reported that Mr. Conyers presented the SBM's Face of Justice program at the National Conference of Bar Presidents meeting.

Ms. Welch reported on the recent suspensions for non-payment of dues and an upcoming meeting with Anne Boomer, Supreme Court Administrative Counsel, to discuss possible changes to the dues process, late payment fee, reinstatement fee, and related court rules.

Ms. Welch asked Mr. Flood to review a request from a member that the State Bar file an amicus brief in a matter pending at the Sixth Circuit Court of Appeals. Among other issues, the appeal raises the question as to whether an attorney who previously represented a party in a state court proceeding may file a federal lawsuit in which the attorney is now the plaintiff, raising the same or similar issues disposed of in the state court action. During discussion on the request, it was noted that the Bar had recently learned that the due date for timely filing an amicus brief in the case had passed. After discussion, a motion was made and seconded to not file an amicus brief because the filing deadline had already passed. The motion passed.

Finally, Ms. Welch reported that the election notice will be published in the March Bar Journal, and noted the open seats on the BOC that will be up for election.

Fleck v. Wetch 868 F. 3d 652 – Court of Appeals, 8th Circuit 2017

Ms. Welch provided the background of this case concerning the challenge to the mandatory bar status of the State Bar Association of North Dakota (SBAND), and other bars considering filing an amicus brief in support of SBAND if this case is heard by the U.S. Supreme Court. After discussion, a motion was made and seconded to file an amicus brief in this case. Ms. Grieco suggested waiting until it is affirmed by the U.S. Supreme Court that they will hear the case. The motion did not pass.

Representative Assembly Chair’s Report

Representative Assembly Chair McGill reported that preparations are being made for the April RA meeting and that the agenda items for the September meeting are taking shape.

Strategic Plan Update

Communications and Member Services Steering Committee – Mr. Barnes reported that a steering committee meeting was held on February 7, 2018.

Implementation and Innovation Steering Committee - Ms. Warnez reported that Lakeshore Legal Aid will be taking the Michigan Free Legal Answers program to the Detroit area. Also, as a reminder, this Friday is the deadline for the Cummiskey Award.

Professional Standards Steering Committee - Mr. Buchanan reported that the next steering committee meeting will be held on March 8, 2018, and provided a brief status update on the activities of several workgroups and committees.

Public Policy Steering Committee - Ms. Grieco reported that the next steering committee meeting will be held on February 15, 2018.

ADM File No. 2016-23: Proposed Amendment of Rule 2.105 of the Michigan Court Rules

Ms. Grieco reviewed the background of this proposed rule change and the recommendation of the Public Policy Committee to support the proposed amendment. A motion was made and seconded to support the proposed amendment. The motion passed.

ADM File No. 2016-09: Proposed Amendments of Rules 3.804, 3.971, 3.977, and Addition of Rule 3.809 of the Michigan Court Rules

Ms. Grieco reviewed the background of these proposed rule changes and the recommendation of the Public Policy Committee to support the proposed amendments. A motion was made and seconded to support the proposed amendments. The motion passed.

ADM File No. 2014-36: Proposed Amendment of Rule 6.425 of the Michigan Court Rules

Ms. Grieco reviewed the background of this proposed rule change and the recommendation of the Public Policy Committee to support the proposed amendment and to include a note to the Court that should it choose to adopt both ADM 2014-36 and ADM 2017-08, that the Court should ensure that the rule language is consistent. A motion was made and seconded to support the proposed amendment with the language addition. The motion passed.

ADM File No. 2016-07: Proposed Amendments of Rules 6.310, 6.428, 6.429, 6.431, 7.205, 7.211, and 7.212 of the Michigan Court Rule

Ms. Grieco reviewed the background of these proposed rule changes and the recommendation of the Public Policy Committee to support the proposed amendments. A motion was made and seconded to support the proposed amendments. The motion passed.

ADM File No. 2016-20: Proposed Amendment of Rule 8.119 of the Michigan Court Rules

Ms. Grieco reviewed the background of this proposed rule change and the recommendation of the Public Policy Committee to support the proposed amendment. A motion was made and seconded to support the proposed amendment. The motion passed.

Federal Bar Association New Lawyer Seminar and SBM Involvement – December 5, 2018

Mr. Barnes reviewed a request from the Federal Bar Association: Eastern District of Michigan Chapter for SBM leaders to make presentations at their new lawyer seminar. Mr. Rockwell suggested Ms. Grieco or Mr. Barnes as SBM presenters. Mr. Flood noted that the U.S. Courts committee can work to strengthen the relationship between the federal bar, courts, and SBM. Mr. Barnes will reach out to Federal Bar Association and U.S. Courts committee, and will offer Ms. Grieco or himself as presenters for this seminar.

Michigan Indigent Defense Grants: FY 2019 Executive Recommendation

Ms. Grieco reviewed the Governor's FY 2019 budget recommendation for the MIDC for \$61.3 million. Ms. Dunning noted that this budget recommendation includes \$46 million in General Fund dollars and \$15.3 million in reimbursements from partially indigent defendants. The Public Policy committee supported the Governor's budget recommendation. A motion was made and seconded for the Board of Commissioners to vote on its support via e-mail, including a Keller vote. The motion passed. Mr. Cunningham reported that Monday, February 26, 2018 would be the likely date of the e-mail for the vote, allowing 48 hours for voting.

2018 Wolverine Bar Association – Barristers' Ball – April 7, 2018

Ms. Bossenbery reviewed the Barristers' Ball information. Based on the projected attendance by SBM, she recommended that tickets for one table be purchased for the event. A motion was made and seconded to purchase tickets for one table for the Barristers' Ball. The motion passed.

Other

None

Adjournment

There being no further business for the Executive Committee, President Rockwell adjourned the meeting at 4:39 p.m. The next Executive Committee conference call will be held at 3:30 p.m. on March 20, 2018.

Submitted by James C. Horsch
March 15, 2018

State Bar of Michigan
Executive Committee Conference Call
Tuesday, March 20, 2018
3:30 p.m.

Call to Order: President Rockwell called the meeting to order at 3:34 p.m.

Members Present: President Donald G. Rockwell, President-Elect Jennifer M. Grieco, Vice President Dennis M. Barnes, Secretary Robert J. Buchanan, Treasurer Dana M. Warnez, Representative Assembly Chair Joseph P. McGill, Representative Assembly Vice-Chair Richard L. Cunningham, and Commissioners James W. Heath and E. Thomas McCarthy Jr.

Members Absent: Commissioner Shauna L. Dunnings

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Nancy Brown, Director of Member & Communication Services; Gregory Conyers, Director of Diversity; Candace Crowley, Senior Consultant; Peter Cunningham, Assistant Executive Director and Director of Governmental Relations; Cliff Flood, General Counsel; Danon Goodrum-Garland, Director of Professional Standards; James Horsch, Director of Finance & Administration; and Anne Vrooman, Director of Research & Development.

Approval of February 13, 2018 meeting minutes

A motion was made and seconded to approve the February 13, 2018 Executive Committee meeting minutes. The motion passed.

President's Report

President Rockwell reported on his visits to several county bar associations, and the MDTC dinner and program where Judge Riordan was named the recipient of the MDTC 2018 Judicial Award.

Representative Assembly Chair's Report

Representative Assembly Chair McGill reported that the RA is gearing up for the April meeting, conducting several RA committee meetings, and reviewing the civil discovery rules. He reported on the nominee for the Unsung Hero award and that there is no nominee for the Michael Franck Award. He also reported that the RA leadership is finishing work on governance task force issues.

Executive Director's Report

Ms. Welch and Mr. Horsch reported on the potential for using space at the University of Detroit Mercy School of Law for an SBM satellite office in Detroit. Mr. Horsch toured the proposed space that has three offices and a small conference area, includes parking, and provides access to additional meeting space in the law school. We are working with UDM Law staff to negotiate an agreement. Ms. Welch added that this effort resulted from her outreach with Dean Crocker and that we will be looking at other potential sites for satellite offices at other law schools, including Wayne State. There was support from EC members on the concept of a Detroit satellite office.

Mr. Horsch reported on the latest statistics for collection of late fees and suspensions for non-payment of dues and the meeting held on February 21, 2018 with Anne Boomer, Supreme Court Administrative Counsel, Rob Buchanan, and State Bar staff to explore possible changes to the dues process, late payment fee, reinstatement fee, and related court rules. Mr. Rockwell expressed concern with increasing reinstatement fees, and suggested benchmarking other professions regarding late fees and license reinstatement fees.

Ms. Crowley reported on progress toward an MSBF-funded Professionalism Summit sometime this fall, and a recent planning meeting to develop the concept. The first summit will focus on civility and professionalism, including changing the culture on civility and discourse, and will focus on outcomes. Respected bar leaders, judges and attorneys will be on the program. Ms. Welch added that the Florida Bar requires all lawyers to participate in a one day professionalism seminar, and will provide the materials to the EC.

Ms. Welch reported that she was invited to meet with the Supreme Court justices after next week's administrative hearing for about 20 minutes, and will be providing an update on current business and the strategic plan. She asked for feedback on any issues to emphasize.

Fleck v. Wetch 868 F. 3d 652 – Court of Appeals, 8th Circuit 2017

Ms. Welch reviewed the latest update on this case involving an appeal to the U.S. Supreme Court on a challenge the mandatory status of the North Dakota State Bar. She continues to recommend waiting to see if the Supreme Court grants a hearing of this case.

TIKD Services LLC V. the Florida Bar, Et Al

Ms. Welch reviewed the background and issues related to the TIKD case in Florida involving a civil infraction ticket application and potential UPL issues. She provided the link to the EC, and will be keeping updated on the proceedings of this case.

ABA State & Local Government Section Law Conference Sponsorship - Renaissance in Detroit, 2018 State and Local Government Law Spring Conference - 32nd Annual Land Use Seminar

Ms. Welch reported that this ABA section is requesting the SBM to be a co-sponsor in name only and with no financial commitment to help publicize these two events to our members. After discussion, a motion was made and seconded to approve the SBM sponsorship for the two events. The motion passed.

“Lean Lawyering” Workshop

Ms. Welch reported on a half day seminar on process improvement for lawyers that will be held at the State Bar on Friday, March 23, 2018. This event is sponsored by LegalRnD - The Center for Legal Services Innovation at Michigan State University College of Law. Members of the EC are invited to attend.

Approval of Contract for New Phone System

Mr. Flood reported on a contract being negotiated with a new phone service provider, Evolve IP, and provided a memo. This agreement involves payments greater than \$100,000 and requires approval by the Board of Commissioners. Pursuant to Bylaw Article III, section 9, the Executive Committee entertained a motion for approval by the EC to be able to take advantage of a \$12,000 discount if the contract is signed this week. This vendor had the lowest bid including the discount of three vendors reviewed. After discussion, a motion was made and seconded to approve the contract. The motion passed.

Strategic Plan Update

Communications and Member Services Steering Committee – Mr. Barnes reported that the next steering committee meeting will be held on March 26, 2018, and the Awards Committee has met today for award recommendations.

Implementation and Innovation Steering Committee - Ms. Warnez reported that the next steering committee meeting will be held on April 17, 2018, and there is a Delivery Committee meeting on April 6, 2018. She also reported on the activities of committees and workgroups, and reviewed the dates of other upcoming meetings.

Professional Standards Steering Committee - Mr. Buchanan reported that the steering committee met on March 8, 2018 and the next steering committee meeting will be held on April 16, 2018. He provided a brief status update on the activities of several workgroups and committees.

Public Policy Steering Committee - Ms. Grieco reported that the steering committee meeting scheduled for yesterday was not held, and will be rescheduled.

ADM File No. 2016-19/2016-28 - Proposed Amendment of MCR 5.125 and 5.409

Ms. Grieco reviewed the background of this proposed rule changes and the recommendation of the Public Policy Committee to support the proposed amendment of MCR 5.125, with the recommendation that “adult child” is defined in MCR 5.125(C)(1). A motion was made and seconded to support the proposed amendment of MCR 5.125 with the recommendation that “adult child” is defined in MCR 5.125(C)(1). The motion passed. Ms. Grieco also reviewed the Public Policy Committee recommendation to take no position on the amendments to MCR 5.409 as currently drafted and recommend that it be amended for clarification and correction. A motion was made and seconded to support the Public Policy Committee recommendation to take no position on MCR 5.409, and recommend that it be amended for clarification and correction. The motion passed.

ADM File No. 2016-08 - Proposed Amendment of MCR 6.610

Ms. Grieco reviewed the background of the proposed rule change and the recommendation of the Public Policy Committee to support the proposed amendment. A motion was made and seconded to support the proposed amendment. The motion passed.

ADM File No. 2016-42 - Proposed Amendments of MCR 6.310, 6.429, and 6.431

Ms. Grieco reviewed the background of the proposed rule changes and the recommendation of the Public Policy Committee to support the proposed amendments with corrections. A motion was made and seconded to support the proposed amendments with the noted corrections. The motion passed.

ADM File No. 2016-30 - Proposed Amendments of MCR 9.112 and 9.131

Ms. Grieco reviewed the background of these proposed rule changes and the recommendation of the Public Policy Committee to support the proposed amendments and to provide suggestions from the Professional Ethics Committee that the Court consider expanding the rule to include other relations, such as domestic partners, significant others, and adult relatives. After discussion and clarification of some concerns with the recommendation, a motion was made and seconded to support the proposed amendments and to provide the suggestions from the Professional Ethics Committee that the Court consider expanding the rule to include other relations, such as domestic partners, significant others, and adult relatives. The motion passed.

ADM File No. 2016-45 - Proposed Amendment of MCR 9.122

Ms. Grieco reviewed the background of this proposed rule change and the recommendation of the Public Policy Committee to support the proposed amendment with the recommendation from the Professional Ethics Committee to extend the deadline from 56 days to 180 days. A motion was made and seconded to support the proposed amendment with the recommendation from the Professional Ethics Committee to extend the deadline from 56 days to 180 days. The motion passed.

ADM File No. 2016-31 - Alternative Proposed Amendments of MRPC 1.16

Ms. Grieco reviewed the background of this proposed rule change and the recommendation of the Public Policy Committee to oppose the proposed amendments, and recommend that the rule be amended to follow the ABA Model Rule, and include language proposed by the Criminal Jurisprudence & Practice Committee. A motion was made and seconded to oppose the proposed amendments, and recommend that the rule be amended to follow the ABA Model Rule, and include language proposed by the Criminal Jurisprudence & Practice Committee. The motion passed.

Other

Commissioner Cunningham reported on a retirement celebration for Judge Michael J. Talbot, Chief Judge of the Court of Appeals, on April 13, 2018 at the University of Detroit Mercy School of Law.

Adjournment

There being no further business for the Executive Committee, President Rockwell adjourned the meeting at 5:09 p.m. The next Executive Committee conference call will be held at 3:30 p.m. on April 10, 2018.

Submitted by James C. Horsch
April 5, 2018

III. President's Activities

**President Donald G. Rockwell
Calendar of Events
January 26 through April 21, 2018**

Date	Event	Location
January 31 – February 6	National Council of Bar Presidents meeting American Bar Association Mid-Year meeting ABA House of Delegates meeting	Vancouver, BC
February 15	Downriver Bar Association Annual Hon. Kaye Tertzag Tribute dinner	Dearborn
February 22	Midland County Bar Association meeting	Midland
February 22	Saginaw/Bay City Bar Association meeting	Saginaw
February 26	Genesee County Bar Association meeting	Flint
March 8	Michigan Defense Trial Counsel Second Annual Legal Excellence Awards	Detroit
March 9	Michigan State Bar Foundation Access to Justice Steering Committee meeting	Lansing
March 22	8 th Annual Michael K. Lee Second Celebrating Our Diverse Bar Mixer	Detroit
March 28	Investiture Ceremony for Justice Beth Clement	Lansing
April 6	Tuscola County Bar Association	Caro
April 7	Wolverine Bar Association Barristers' Ball	Detroit
April 8	SBM Brunch for Bars	Detroit
April 13	Michigan Judicial Council meeting	Lansing
April 13	Michigan Probate Judges Association meeting	Lansing
April 17	Rochester Bar Association meeting	Rochester
April 19	Michigan Supreme Court Historical Society Annual meeting	Detroit
April 20	State Bar of Michigan Board of Commissioners meeting	Lansing
April 20	LRS Work Group meeting	Lansing
April 20	SBM Board of Commissioners v Young Lawyers Section Executive Council Bowling Challenge	Lansing
April 20	Davis-Dunnings Bar Association Scholarship Banquet	Lansing
April 21	Representative Assembly meeting	Lansing

**IV. Executive Director's
Activities**

**Executive Director Janet K. Welch
Calendar of Events
January 27 through April 21, 2018**

Date	Event	Location
January 28 – February 6	National Association of Bar Executives meeting National Council of Bar Presidents meeting ABA House of Delegates meeting	Vancouver
February 1	Meeting with Jack Newton, CEO of Clio	Vancouver
February 12	Public Policy Committee conference call	Lansing
February 8	Cloud Law conference call	Lansing
February 12	Public Policy Committee conference call	Lansing
February 12	International Institute of Law Association Chief Executives (IILACE) 2018 program committee conference call	Lansing
February 13	Meeting with Justice Elizabeth Clement	Lansing
February 14	Meeting with Robert Gillett, Executive Director Michigan Advocacy Program	Lansing
February 15	Public Policy Steering Committee conference call	Lansing
February 15	Integrated Technology Committee meeting	Lansing
February 15	Conference call with John Phelps Executive Director, Arizona State Bar	Lansing
February 15	Policy and Governance Retreat Committee conference call	Lansing
February 15	Conference call with Milt Mack State Court Administrator	Lansing
February 16	Meeting with Alan Gershel Attorney Grievance Commission	Lansing
February 16	Conference call with Joan Howarth MSU College of Law, Dean Emeritus	Lansing
February 18	Design Think Tank seminar at MSU Law School	East Lansing
February 20	ICLE Executive Committee meeting	Ann Arbor
February 21	Meeting with Anne Boomer on Dues Rules Administrative Counsel Michigan Supreme Court	Lansing

Date	Event	Location
February 21	House Appropriations Committee meeting	Lansing
February 21	Cloud Law Consortium meeting	Lansing
February 22	International Institute of Law Association Chief Executives (IILACE) 2018 program committee conference call	Lansing
February 23	Conference call with Rule 6 Group, Policy and Government Retreat	Lansing
February 26	Meeting with Justice Brian Zahra	Lansing
February 27	Senate Judiciary Appropriations Committee meeting	Lansing
February 27	Conference call with Minnesota State Bar Association	Lansing
February 27	Meeting with Mark Armitage, Executive Director Attorney Discipline Board	East Lansing
March 1	Cloud Law conference call	Lansing
March 5	Meeting with Jennifer Bentley, Executive Director Michigan Bar Foundation	Lansing
March 6	Meeting with David Watson, Executive Director ICLE	Lansing
March 7	Meeting with John Nevin, Communication Director Michigan Supreme Court	Lansing
March 8	Professional Standards Steering Committee conference call	
March 9 - 10	ABA Tech Show	Chicago
March 9	Legal Talk Network podcast	Chicago
March 12	Public Policy Committee conference call	Lansing
March 13 -14	NABE Chief Executive Officers retreat	Chicago
March 17	John Wesley Reed Memorial service	Ann Arbor
March 19	Civility Summit Planning committee meeting	Lansing
March 20-21	Budget review meetings with SMT	Lansing
March 21	Conference call with Washington State Bar Association regarding Master Lawyers	Lansing
March 22	Meeting with Justice Kurtis J. Wilder	Novi
March 23	Lean Lawyering: An Introduction to Process Improvement Seminar	Lansing
March 26	Meeting with Justice Brian Zahra	Lansing

Date	Event	Location
March 26	International Institute of Law Association Chief Executives (IILACE) 2018 program committee conference call	Lansing
March 28	Michigan Supreme Court Administrative Hearing	Lansing
March 28	Meeting with Michigan Supreme Court	Lansing
March 28	Investiture Ceremony of Justice Beth Clement	Lansing
March 29	Policy and Governance Retreat Committee conference call	Lansing
March 30	University of Michigan Law School Tech Forum	Ann Arbor
April 1	Capitol Club	East Lansing
April 5	Cloud Law conference call	Lansing
April 6	Delivery Committee meeting	Lansing
April 7	Wolverine Bar Association Barristers' Ball	Detroit
April 8	Brunch for Bars	Detroit
April 9	Meeting with Jennifer Grieco, Lori Buiteweg, and SBM Staff, to review Public Policy webpage	Lansing
April 10	International Institute of Law Association Chief Executives (IILACE) 2018 program committee conference call	
April 11	Meeting with State Bar Board Officers	Brighton
April 12	Cloud Law conference call	Lansing
April 13	Judicial Council Meeting	Lansing
April 13	Probate Court Judges Association meeting	Lansing
April 16	Professional Standards Steering Committee meeting	Lansing
April 16	Capitol Club	East Lansing
April 17	Integrated Technology Committee meeting	Lansing
April 19	Supreme Court Historical Society Annual Meeting	Detroit
April 20	State Bar of Michigan Board of Commissioners Board Meeting	Lansing
April 20	LRS Committee Meeting	Lansing
April 20	Board of Commissions v Young Lawyers Executive Council Bowling Challenge	Lansing

Date	Event	Location
April 20	Davis-Dunnings Bar Association Otis T. Smith Scholarship Dinner	Lansing
April 21	SBM Representative Assembly meeting	Lansing

FY 2018 Financial Dashboard

Results as of the five months ended February 28, 2018

	FY 2018		FY 2018 Budget		Last Year		Actual vs last yr		Comments
	Year-to-Date	YTD Budget	YTD Variance	YTD Actual	YTD Actual	Variance			
<u>Administrative Fund</u>									
Operating Revenue	\$4,038,997	\$4,159,875	(\$120,878)	\$4,041,484	\$4,041,484	(\$2,487)			Worse than budget; lower than last year - less late fees
Operating Expense	\$4,187,413	\$4,355,769	(\$168,356)	\$3,952,539	\$3,952,539	\$234,874			Better than budget; higher than last year
Investment Income	\$70,145	\$54,167	\$15,978	\$45,455	\$45,455	\$24,690			Better than budget; higher than last year
Change in Net Position	(\$78,271)	(\$141,727)	\$63,456	\$134,400	\$134,400	(\$212,671)			Better than budget; lower than last year
Net Position	\$12,199,604	\$12,136,148	\$63,456	\$12,731,174	\$12,731,174	(\$531,570)			Better than budget; lower than last year
Cash & Investments (Excluding Sections and CPF)	\$12,542,396	N/A	N/A	\$12,937,919	\$12,937,919	(\$395,523)			Decrease from last year
Investment Rate of Return	1.21%	N/A	N/A	0.80%	0.80%	0.41%			Better than last year - higher rates and fund mgt
<u>Client Protection Fund</u>									
Change in Net Position	(\$195,485)	N/A	N/A	(\$54,282)	(\$54,282)	(\$141,203)			Lower than last year - higher claims
Net Position	\$2,044,097	N/A	N/A	\$2,370,419	\$2,370,419	(\$326,322)			Decrease from last year - higher claims
<u>SBM Retiree Health Care Trust</u>									
Change in Net Position	\$124,946	N/A	N/A	\$166,108	\$166,108	(\$41,162)			Decrease over last year - timing
Net Position	\$2,896,123	N/A	N/A	\$2,610,603	\$2,610,603	\$285,520			Increase over last year - Investment performance
<u>Membership</u>									
Members in Good Standing									
- Active	41,888	N/A	N/A	41,655	41,655	233			0.6% Active Member growth
- Inactive	1,161	N/A	N/A	1,242	1,242	(81)			(6.5%) Inactive Member growth
- Emeritus	2,207	N/A	N/A	1,998	1,998	209			10.5% Emeritus Member growth
- Total	45,256	N/A	N/A	44,895	44,895	361			0.8% Total Member growth
Active members as a percent of total	92.6%	N/A	N/A	92.8%	92.8%	-0.2%			Decrease from last year
New Members	592	N/A	N/A	570	570	22			Increase over last year

State Bar of Michigan Financial Results Summary

5 Months Ended February 28, 2018

Fiscal Year 2018

Administrative Fund

Summary of YTD February 28, 2018 Actual Results

For the five months ended February 28, 2018, the State Bar had an Operating Loss of \$148,416 and Non-Operating Income of \$70,145, for a decrease in Net Position of \$78,271 so far in FY 2018. Net Position as of February 28, 2018 totaled \$12,199,604.

YTD Variance from Budget Summary:

YTD Operating Revenue - \$120,878 unfavorable to YTD budget, or 2.9%

YTD Operating Expense - \$168,356 favorable to YTD budget, or 3.9%

YTD Non-Operating Income - \$15,978 favorable to YTD budget, or 29.5%

YTD Change in Net Position - \$63,456 favorable to YTD budget

YTD Key Budget Variances:

YTD Operating Revenue variance - \$120,878 unfavorable to budget:

- Operating revenue was unfavorable to budget in Member & Communication Services by \$33,156, or 9.3%, due primarily to the Directory sales and Bar Journal advertising, and to a lesser extent, Print Center, Endorsed Services revenue, and other; in Professional Standards by \$53,469, or 20.7%, due primarily to C&F fees (due to delay of the C&F fee increase) and LRS fees; and in Dues & Related (due to lower late fees) and Other Revenue totaling \$34,253, or 1.0%.

YTD Operating Expense variance - \$168,356 favorable to budget:

- Salaries and Employee Benefits/ Payroll Taxes - \$53,383 favorable - (2.0%)
 - Underage in salaries and benefits due to vacancies and salary reductions. Additionally, health care expenses are under due to timing.
- Non-Labor Operating Expenses - \$114,973 favorable - (6.8%)
 - Exec Offices - \$35,080 favorable - (10.6%) - Primarily Executive Office, JI programs, Outreach, General Counsel, R&D and HR – some timing.
 - Finance & Admin - \$19,986 unfavorable - (3.3%) – Primarily Financial Services due to credit card fees with higher online dues payments, partially offset by Facilities Services and to a lesser extent Administration – some timing.

- Member & Communication Services - \$83,547 favorable - (12.4%) - Primarily IT, Bar Journal and Internet; and to a lesser extent Member & Endorsed Services, e-Journal and Print Center – some timing.
- Professional Standards - \$16,332 favorable - (25.1%) - Primarily C&F; and to a lesser extent all other – some timing.

YTD Non-Operating Revenue Budget Variance - \$11,913 favorable to budget

- Investment income is 29.5% higher due to higher interest rates and more favorable cash management opportunities than planned.

Cash and Investment Balance – Admin Fund

As of February 28, 2018, the cash and investment balance in the State Bar Admin Fund (net of “*due to Sections and Client Protection Fund*”) was \$12,542,396.

Capital Budget – Admin Fund

Through February 28, 2018, YTD capital expenditures totaled \$88,498 which is 3% over the YTD capital budget. We are forecasting at fiscal year-end to be about \$20,000 over the Capital budget at this time due to IT project costs higher than planned.

Administrative Fund FY 2018 Year-End Financial Forecast

Based on our latest year-end financial forecast, we are projecting to meet the FY 2018 budget due primarily to expense savings net of lower late fees, lower non-dues revenue, and higher operating expenses (credit card fees and depreciation).

Client Protection Fund

The Net Position of the Client Protection Fund as of February 28, 2018 totaled \$2,044,097, a decrease of \$195,485 since the beginning of the fiscal year. There are authorized but unpaid claims totaling \$75,000 awaiting signatures for subrogation agreements that will reduce the fund to \$1,969,097 once the funds are disbursed.

Through February 28, 2018, claims payments of \$412,032 and administration expenses of \$83,475 were disbursed from the Client Protection Fund; offset by member dues assessments of \$268,905 (earned equally throughout the year) and other revenue of \$31,117.

SBM Retiree Health Care Trust

As of February 28, 2018, the SBM Retiree Health Care Trust had a fund balance of \$2,896,123 which is an increase of \$124,946 so far in FY 2018, due primarily to investment earnings.

SBM Membership

As of February 28, 2018, the total active, inactive and emeritus membership in good standing totaled 45,256 attorney members, for a net decrease of 60 members so far in FY 2018 due to the February suspensions for non-payment of dues. A total of 592 new members have joined the SBM so far during FY 2018.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
February 28, 2018**

FY 2018

Note: Dues revenue is recognized and budgeted as earned each month throughout the year.

State Bar of Michigan
Administrative Fund
Statement of Net Position
For the Months Ending February 28, 2018 and January 31, 2018

	Jan 31, 2018	Feb 28, 2018	Increase (Decrease)	%
ASSETS AND DEFERRED OUTFLOWS				
Assets				
Cash	5,965,676	5,570,270	(395,406)	(6.6%)
Investments (CDARS and CD's)	10,155,000	10,155,000	0	0.0%
Accounts Receivable	199,826	180,223	(19,603)	(9.8%)
Due from (to) CPF	(63,980)	(58,140)	5,840	9.1%
Due from (to) Sections	(3,230,519)	(3,124,735)	105,784	3.3%
Inventory	13,420	29,996	16,576	123.5%
Prepaid Expenses	258,996	253,923	(5,073)	(2.0%)
Retiree Health Care Trust Asset	170,221	170,221	0	0.0%
Capital Assets, net	4,135,089	4,119,609	(15,480)	(0.4%)
Total Assets	\$17,603,729	\$17,296,368	(\$307,361)	(1.8%)
Deferred Outflows of Resources	43,353	43,353	0	0.0%
TOTAL ASSETS AND DEFERRED OUTFLOWS	\$17,647,082	\$17,339,721	(\$307,361)	(1.7%)
LIABILITIES, DEFERRED INFLOWS AND NET POSITION				
Liabilities				
Accounts Payable	25,822	28,269	2,447	9.5%
Accrued Expenses	470,783	552,629	81,846	17.4%
Unearned Revenue	4,801,400	4,289,912	(511,489)	(10.7%)
Net Pension Liability	269,288	269,288	0	0.0%
Total Liabilities	\$5,567,294	\$5,140,097	(\$427,196)	(7.7%)
Deferred Inflows of Resources	20	20	0	N/A
Total Liabilities and Deferred Inflows	\$5,567,314	\$5,140,117	(\$427,196)	(7.7%)
Net Position				
Invested in capital assets, net of related debt	4,135,089	4,119,609	(15,480)	(0.4%)
Unrestricted	7,944,680	8,079,994	135,315	1.7%
Total Net Position	\$12,079,769	\$12,199,604	119,835	1.0%
TOTAL LIABILITIES, DEFERRED INFLOWS AND NET POSITION	\$17,647,082	\$17,339,721	(\$307,361)	(1.7%)

NOTE: Cash and investments actually available to the State Bar Administrative Fund, after deduction of the "Due to Sections" and "Due to CPF" is \$12,542,396 (See below):

CASH AND INVESTMENT BALANCES	2/28/2018
Cash	5,570,270
Investments	10,155,000
Total Available Cash and Investments	\$15,725,270
Less:	
Due to Sections	3,124,735
Due to CPF	58,140
Due to Sections and CPF	\$3,182,874
Net Administrative Fund Cash and Investment Balance	\$12,542,396

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
For the five months ending February 28, 2018
YTD FY 2018 Revenue

	YTD Actual	YTD Budget	Variance	Percentage
Revenue				
Finance & Administration				
Dues & Related	3,346,345	3,381,750	(35,405)	(1.0%)
Investment Income	70,145	54,167	15,978	29.5%
Other Revenue	163,628	162,476	1,152	0.7%
Finance & Administration Total	<u>3,580,118</u>	<u>3,598,393</u>	<u>(18,275)</u>	<u>(0.5%)</u>
Member & Communication Services				
Bar Journal Directory	46,480	59,950	(13,470)	(22.5%)
Bar Journal 11 issues	94,764	100,904	(6,140)	(6.1%)
Print Center	29,050	32,783	(3,733)	(11.4%)
e-Journal and Internet	35,300	36,667	(1,367)	(3.7%)
BCBSM Insurance Program	41,667	41,667	0	0.0%
Credit Card Program	10,857	13,000	(2,143)	(16.5%)
Annual Meeting	(451)	0	(451)	N/A
Labels	962	1,667	(705)	(42.3%)
Upper Michigan Legal Institute	364	100	264	N/A
Bar Leadership Forum	0	400	(400)	N/A
Practice Management Resource Center	10	1,292	(1,282)	(99.2%)
Other Member & Endorsed Revenue	65,636	69,365	(3,729)	(5.4%)
Member & Communication Services Total	<u>324,639</u>	<u>357,795</u>	<u>(33,156)</u>	<u>(9.3%)</u>
Professional Standards				
Ethics	5,475	5,500	(25)	(0.5%)
Character & Fitness	134,755	172,438	(37,683)	(21.9%)
Lawyer Referral Service	45,997	59,083	(13,086)	(22.1%)
Lawyers and Judges Assistance Program	18,158	20,833	(2,675)	(12.8%)
Professional Standards Total	<u>204,385</u>	<u>257,854</u>	<u>(53,469)</u>	<u>(20.7%)</u>
Total Revenue	4,109,142	4,214,042	(104,900)	(2.5%)
Less: Investment Income	<u>70,145</u>	<u>54,167</u>	<u>15,978</u>	<u>29.5%</u>
Total Operating Revenue	4,038,997	4,159,875	(120,878)	(2.9%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the five months ending February 28, 2018
YTD FY 2018 Expenses

Expenses	YTD Actual	YTD Budget	Variance	Percentage
Executive Offices				
Executive Office	14,971	26,312	(11,341)	(43.1%)
Representative Assembly	3,931	3,667	264	7.2%
Board of Commissioners	30,946	31,892	(946)	(3.0%)
General Counsel	1,745	7,633	(5,888)	(77.1%)
Governmental Relations	22,296	21,724	572	2.6%
Human Resources (incl. empl benefits)	802,927	826,340	(23,413)	(2.8%)
Outreach, Local Bar & Section Support	105,791	112,988	(7,197)	(6.4%)
Research and Development	5,111	9,483	(4,372)	(46.1%)
Standing Committee on Justice Initiatives	792	4,042	(3,250)	(80.4%)
Resource Development Initiative	76,306	75,625	681	0.9%
Pro Bono Initiative	2,972	5,700	(2,728)	(47.9%)
Justice Policy Initiative	47	125	(78)	(62.4%)
Equal Access Initiative	3,900	7,267	(3,367)	(46.3%)
Criminal Issues Initiative	227	1,033	(806)	(78.0%)
Salaries	590,276	597,750	(7,474)	(1.3%)
Executive Offices Total	1,662,238	1,731,581	(69,343)	(4.0%)
Finance & Administration				
Administration	12,541	15,806	(3,265)	(20.7%)
Facilities Services	157,776	170,288	(12,512)	(7.3%)
Financial Services	457,269	421,506	35,763	8.5%
Salaries	171,473	177,348	(5,875)	(3.3%)
Finance & Administration Total	799,059	784,948	14,111	1.8%
Member & Communication Services				
Bar Journal Directory	2,258	700	1,558	222.6%
Bar Journal 11 Issues	214,016	239,339	(25,323)	(10.6%)
Print Center	21,799	26,968	(5,169)	(19.2%)
Internet Department	70,735	84,875	(14,140)	(16.7%)
e-Journal	12,438	18,429	(5,991)	(32.5%)
Media Relations	32,118	34,917	(2,799)	(8.0%)
Member & Endorsed Services	58,927	66,372	(7,445)	(11.2%)
Annual Meeting	3,889	2,500	1,389	55.6%
Bar Leadership Forum	210	0	210	N/A
Practice Mgt Resource Center (PMRC)	1,849	2,896	(1,047)	(36.2%)
UMLI	2,968	2,500	468	18.7%
Information Technology Services	168,904	194,162	(25,258)	(13.0%)
Salaries	659,786	668,485	(8,699)	(1.3%)
Member & Communication Services Total	1,249,897	1,342,143	(92,246)	(6.9%)
Professional Standards				
Character & Fitness (C&F)	10,997	24,025	(13,028)	(54.2%)
Client Protection Fund Dept	4,144	4,321	(177)	(4.1%)
Ethics	5,098	6,913	(1,815)	(26.3%)
Unauthorized Practice of Law (UPL)	6,755	8,317	(1,562)	(18.8%)
Lawyer Referral Service	8,004	6,538	1,466	22.4%
Lawyer & Judges Assistance Program	13,742	14,958	(1,216)	(8.1%)
Salaries	427,479	432,025	(4,546)	(1.1%)
Professional Standards Total	476,219	497,097	(20,878)	(4.2%)
Total Expense	4,187,413	4,355,769	(168,356)	(3.9%)
Human Resources Detail				
Payroll Taxes	133,161	142,580	(9,419)	(6.6%)
Benefits	641,721	659,091	(17,370)	(2.6%)
Other Expenses	28,045	24,669	3,376	13.7%
Total Human Resources	802,927	826,340	(23,413)	(2.8%)
Financial Services Detail				
Depreciation	198,083	198,083	0	0.0%
Other Expenses	259,186	223,423	35,763	16.0%
Total Financial Services	457,269	421,506	35,763	8.5%
Salaries				
Executive Offices	590,276	597,750	(7,474)	(1.3%)
Finance & Administration	171,473	177,348	(5,875)	(3.3%)
Member Services & Communications	659,786	668,485	(8,699)	(1.3%)
Professional Standards	427,479	432,025	(4,546)	(1.1%)
Total Salaries Expense	1,849,014	1,875,608	(26,594)	(1.4%)
NonLabor Summary				
Executive Offices	297,080	332,160	(35,080)	(10.6%)
Finance & Administration	627,586	607,600	19,986	3.3%
Member Services & Communications	590,111	673,658	(83,547)	(12.4%)
Professional Standards	48,740	65,072	(16,332)	(25.1%)
Total NonLabor Expense	1,563,517	1,678,490	(114,973)	(6.8%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the five months ending February 28, 2018
YTD FY 2018 Increase (Decrease) in Net Position Summary

	Actual YTD	Budget YTD	Variance	Percentage	Last Year Actual YTD
Operating Revenue					
- Dues and Related	3,346,345	3,381,750	(35,405)	(1.0%)	3,368,250
- All Other Op Revenue	692,652	778,125	(85,473)	(11.0%)	673,234
Total Operating Revenue	4,038,997	4,159,875	(120,878)	(2.9%)	4,041,484
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	1,849,014	1,875,608	(26,594)	(1.4%)	1,762,425
Benefits and PR Taxes	774,882	801,671	(26,789)	(3.3%)	736,114
Total Labor-related Operating Expenses	2,623,896	2,677,279	(53,383)	(2.0%)	2,498,539
- Non-labor Operating Expenses					
Executive Offices	297,080	332,160	(35,080)	(10.6%)	231,842
Finance & Administration	627,586	607,600	19,986	3.3%	545,150
Member & Communication Services	590,111	673,658	(83,547)	(12.4%)	638,060
Professional Standards	48,740	65,072	(16,332)	(25.1%)	38,948
Total Non-labor Operating Expenses	1,563,517	1,678,490	(114,973)	(6.8%)	1,454,000
Total Operating Expenses	4,187,413	4,355,769	(168,356)	(3.9%)	3,952,539
Operating Income (Loss)	(148,416)	(195,894)	47,478	N/A	88,945
Nonoperating Revenue (Expenses)					
Investment Income	70,145	54,167	15,978	29.5%	45,455
Net Nonoperating revenue (expenses)	70,145	54,167	15,978	29.5%	45,455
Increase (Decrease) in Net Position	(78,271)	(141,727)	63,456	N/A	134,400
Net Position - Beginning the Year	12,277,875	12,277,875	0	0.0%	12,596,774
Net Position - Year-to-Date	\$12,199,604	\$12,136,148	\$63,456	0.5%	\$12,731,174

Revenues, Expenses and Net Assets
FY 2018 - Year-End Forecast
Updated April 10, 2018

	FY 2018 Year-End Forecast	FY 2018 Budget	Variance	Percentage	FY 2017 Actual
Operating Revenue					
- Dues and Related	7,765,460	7,795,460	(30,000)	(0.4%)	7,754,415
- All Other Op Revenue	1,612,291	1,691,291	(79,000)	(4.7%)	1,635,365
Total Operating Revenue	<u>9,377,751</u>	<u>9,486,751</u>	<u>(109,000)</u>	<u>(1.1%)</u>	<u>9,389,780</u>
Operating Expenses					
- Labor-related Operating Expenses					
Salaries	4,809,553	4,922,153	(112,600)	(2.3%)	4,625,399
Benefits, PR Taxes, and Ret HC Exp	1,812,038	1,808,038	4,000	0.2%	1,670,745
Total Labor-related Operating Expenses	<u>6,621,591</u>	<u>6,730,191</u>	<u>(108,600)</u>	<u>(1.6%)</u>	<u>6,296,144</u>
- Non-labor Operating Expenses					
Executive Offices	756,340	765,840	(9,500)	(0.8%)	629,999
Finance & Administration	1,292,775	1,237,775	55,000	7.2%	1,075,682
Member & Communication Services	1,843,975	1,868,475	(24,500)	(1.3%)	1,676,544
Professional Standards	170,825	170,825	0	0.0%	152,009
Total Non-labor Operating Expenses	<u>4,063,915</u>	<u>4,042,915</u>	<u>21,000</u>	<u>0.5%</u>	<u>3,534,234</u>
Total Operating Expenses	<u>10,685,506</u>	<u>10,773,106</u>	<u>(87,600)</u>	<u>(0.8%)</u>	<u>9,830,378</u>
Operating Income (Loss)	(1,307,755)	(1,286,355)	(21,400)	N/A	(440,598)
Nonoperating Revenue (Expenses)					
Capital Contributions	0	0	0	N/A	112,863
Investment Income	155,000	130,000	25,000	19.2%	8,836
Net Nonoperating revenue (expenses)	<u>155,000</u>	<u>130,000</u>	<u>25,000</u>	<u>19.2%</u>	<u>121,699</u>
Increase (Decrease) in Net Position	<u>(1,152,755)</u>	<u>(1,156,355)</u>	<u>3,600</u>	<u>N/A</u>	<u>(318,899)</u>
Net Position - Beginning the Year	<u>12,277,875</u>	<u>12,277,875</u>	<u>0</u>	<u>0.0%</u>	<u>12,596,774</u>
Net Position - End of the Year	<u>\$11,125,120</u>	<u>\$11,121,520</u>	<u>\$3,600</u>	<u>0.0%</u>	<u>\$12,277,875</u>

Operating Revenue forecast

- Late fees - \$30,000 under
- Directory revenue - \$20,000 under and Bar Journal revenue - \$11,000 under
- C&F fee Revenue - \$45,000 under
- LRS fees (net) - \$7,000 favorable
- Member services (discontinuance of credit card contract) & PMRC - \$10,000 under

Labor forecast:

- Vacancies - LRS FT - part year, IT part time - part year; Gen Counsel and Outreach (less vac payout) reduced salaries - \$112,600
- Payroll taxes and unemployment net of higher net retiree health care - over by \$4,000

Nonlabor forecast:

- Executive Offices - \$9,500 under (Pro Bono, JI, CII)
- Finance & Administration - Facilities \$5,000 under, Financial Services \$25,000 over - higher credit card fees net of other savings, and higher depreciation due to early retirement of phone system - \$35,000
- Member Services & Communications - \$24,500 under (MS, BLF, Internet, Media, other, net of higher IT)
- Professional Standards - On target at this time

Non-Operating Income forecast:

- Investment Income - will be better than budget by \$25,000

Other forecast issues not reflected in the forecast:

- Potential additional savings in other operating expenses not reflected
- Potential cost of Detroit Satellite Office not reflected
- Potential legal expenses exceeding budgeted amount

State Bar of Michigan
Administrative Fund
Capital Expenditures vs Budget
For the five months ending February 28, 2018

	YTD Actual	YTD Budget	YTD Variance	Variance Explanations	Total Approved FY 2018 Budget	FY 2018 Year-End Forecast	Projected Year-end Variance
Building security enhancements	0	0	0		10,000	10,000	0
Security audit appliance (PCI)	0	0	0	Was expensed and not capitalized	20,000	0	(20,000)
Update /redesign of pro hac vice site	6,425	6,500	(75)		20,000	20,000	0
E-commerce upgrades	11,414	11,400	14		20,000	20,000	0
Web services tool for courts	0	0	0		10,000	10,000	0
Investigations/C&F software	2,333	0	2,333	Forecast - Scope more that planned	0	10,000	10,000
Bar applicant online form to replace NCBE server transition	34,829	35,000	(171)	Forecast - Scope more that planned	25,000	35,000	10,000
e-service application for court e-filing (e-mail addresses)	0	0	0		20,000	20,000	0
Dues billing enhancements for firms	0	0	0		10,000	10,000	0
Lawyer referral portal	17,887	17,900	(13)	Forecast - Higher expense than planned	20,000	40,000	20,000
Database application for soliciting volunteers for committees and work groups	1,090	1,000	90		10,000	10,000	0
SBM website functionality enhancements	14,519	14,500	19		40,000	40,000	0
Meeting Room Technology Upgrades	0	0	0		23,000	23,000	0
Total	\$88,498	\$86,300	2,198		\$228,000	\$248,000	\$20,000

**STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
February 28, 2018**

FY 2018

Note: Dues revenue is recognized and budgeted as earned each month throughout the year.

State Bar of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Months Ending February 28, 2018 and January 31, 2018
FY 2018

	<u>Jan 31, 2018</u>	<u>Feb 28, 2018</u>	<u>Increase (Decrease)</u>	<u>%</u>
Assets				
Cash	796,903	795,525	(1,378)	(0.2%)
Investments (CD's & CDARS)	1,556,307	1,556,307	0	0.0%
Accounts Receivable	0	0	0	N/A
Due from (to) Administrative Fund	63,979	58,140	(5,839)	(9.1%)
Accrued Interest Receivable	2,437	3,201	764	31.4%
Total Assets	<u>\$ 2,419,626</u>	<u>\$ 2,413,173</u>	<u>(\$6,453)</u>	<u>(0.3%)</u>
Liabilities				
Accounts Payable	0	0	0	N/A
Unearned Revenue	412,723	369,075	(43,648)	(10.6%)
Total Liabilities	<u>\$ 412,723</u>	<u>\$ 369,075</u>	<u>(\$43,648)</u>	<u>(10.6%)</u>
Net Position				
Net Position at Beginning of Year	2,239,582	2,239,582	0	0.0%
Increase (Decrease) in Net Position	(232,679)	(195,485)	37,194	(16.0%)
Total Net Position	<u>2,006,903</u>	<u>2,044,097</u>	<u>37,194</u>	<u>1.9%</u>
Total Liabilities and Net Position	<u>\$ 2,419,626</u>	<u>\$ 2,413,172</u>	<u>(\$6,454)</u>	<u>(0.3%)</u>

* Note: In addition, there are authorized but unpaid claims totaling \$75,000 awaiting signatures of subrogation agreements.

State Bar of Michigan
Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets
For the five months ending February 28, 2018
FY 2018

	YTD
Revenue	
Contributions Received	6,132
Membership Dues Assessment	268,905
Pro Hac Vice Fees	5,010
Claims Recovery	13,781
Miscellaneous Income	0
Total Revenue	293,828
 Expense	
Claims Payments	412,032 * See Note Below
Administrative Fee	83,475
Litigation and Miscellaneous Expense	0
Total Expense	495,507
 Operating Income (Loss)	 (201,679)
 Investment Income	 6,194
 Increase (Decrease) in Net Position	 (195,485)
 Net Position - Beginning of the Year	 2,239,582
 Net Position - End of the Period	 2,044,097

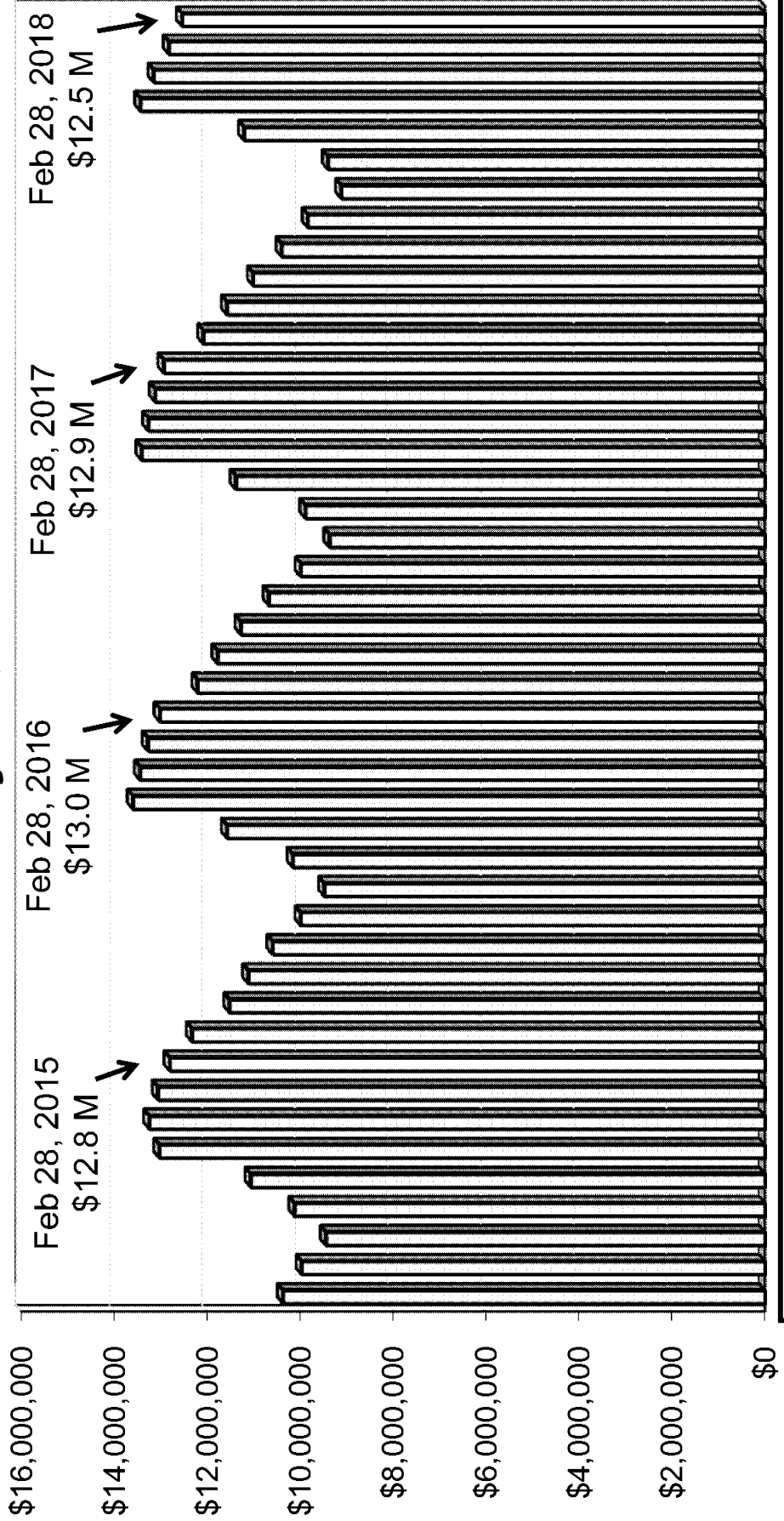
* Note: In addition, there are authorized but unpaid claims totaling \$75,000 awaiting signatures of subrogation agreements.

SBM Cash & Investment Balances

SBM Cash & Investment Balances

Excluding Sections, Client Protection Fund & Fiduciary Funds

February 28, 2018 - \$12.5 M



FY 2015

FY 2016

FY 2017

FY 2018

Note: The State Bar has no bank debt outstanding

Summary of Cash and Investment Balances by Financial Institution
2/28/2018

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary
		SBM Chase Checking \$ 714,685.17		Client Protection Fund \$ 2,351,831.51
		SBM Chase Credit Card \$ 98,926.50		State Bar Admin Fund \$ 15,725,270.14
		SBM Chase Payroll \$ (165.93)		(including Sections)
		SBM Chase Savings \$ 470,851.46	0.18%	Attorney Discipline System \$ 5,569,638.13
		ADS Chase Checking \$ 41,577.02		SBM Retiree Health Care Trust \$ 2,896,123.10
		CPF Chase Checking \$ 17,134.32		ADB Retiree Health Care Trust \$ 825,934.91
		CPF Chase Savings \$ 9,094.05	0.18%	AGC Retiree Health Care Trust \$ 2,908,341.47
\$2.15 Trillion	4 stars	Chase Totals \$ 1,352,102.59		Total \$ 30,277,139.26
		Chase Total w/CD \$ 3,052,102.59 ****		
		ADS Bank of America Petty Cash \$ 1,515.08	0.00%	
	4 stars	Bank of America Totals \$ 1,515.08		
		SBM Fifth Third Commercial Now \$ 16,133.62	0.00% ***	
\$138.7 Billion	4 stars	Fifth Third Totals \$ 16,133.62		
		Grand River Bank Money Market \$ 743,238.73	1.00%	
\$209.8 Million	4 stars	Grand River Bank Totals \$ 743,238.73		
		Grand River Bank Total w/CD \$ 988,238.73		
		Community Shores Bank Savings \$ 12,482.28	0.75%	
\$192 Million	3 stars	Community Shores Bank Savings Total \$ 12,482.28		
		Community Shores Bank Savings Total w/CD \$ 252,482.28		
		First Community Bank \$ 2,044.47	0.60%	
\$279 Million	5 stars	First Community Bank Total \$ 2,044.47		
		First Community Bank Total w/CD \$ 247,044.47		
		Sterling Bank \$ 2,309.50	0.40%	
\$2.4 Billion	5 stars	Sterling Bank Total \$ 2,309.50		
		Sterling Bank Totalw/CD \$ 977,309.50		
		Citizens Bank Checking \$ 100.00		
\$120 Billion	4 stars	Citizens Bank Money Market \$ 1,972,116.04	1.00%	
		Citizens Bank Totals \$ 1,972,216.04		
		Mercantile Bank \$ 1,005,426.30	1.25%	
\$3 Billion	5 stars	Mercantile Bank Total \$ 1,005,426.30		
		Main Street Bank \$ 992,120.36	1.25%	
\$220 Million	4 stars	Main Street Bank \$ 992,120.36		
		MSU Credit Union \$ 6.29	0.10%	
\$3.65 Billion	5 stars	MSU Credit Union Total \$ 6.29		
		MSU Credit Union Total w/CD \$ 940,006.29		
		SBM Flagstar Savings Account \$ 1,244,478.78	0.95%	
		SBM Flagstar CDAR - 12 month \$ 1,000,000.00	0.70%	
		ADS Flagstar Checking Account \$ 2,062.60	0.25%	
		ADS Flagstar CDARS -13 week \$ 500,000.00	0.40%	
		ADS Flagstar CDARS -12 Month \$ 1,510,000.00	0.55%	
		ADS Flagstar CDARS -12 Month \$ 810,000.00	0.70%	
		ADS Flagstar CDARS -12 Month \$ 1,000,000.00	0.70%	
		CPF Flagstar Savings \$ 769,296.51	0.95%	
		CPF Flagstar CDARS - 36 Month \$ 256,269.78	0.55%	
		CPF Flagstar CDARS - 24 Month \$ 450,036.85	0.75%	
		CPF Flagstar CDARS - 12 month \$ 500,000.00	0.55%	
		CPF Flagstar CDARS - 12 month \$ 350,000.00	0.70%	
\$15.8 Billion	4 stars	Flagstar Bank Totals \$ 8,392,144.62		
		SBM - CD Chemical Bank ** \$ 235,000.00	1.75%	
\$18 Billion	4 stars	SBM - CD Chemical Bank \$ 240,000.00	1.75%	
		SBM - CD Chemical Bank \$ 240,000.00	1.75%	
		SBM - CD Chemical Bank \$ 240,000.00	1.75%	
	4 stars	SBM - CD Chemical Bank \$ 240,000.00	1.75%	
	4 stars	SBM - CD First Community Bank \$ 245,000.00	1.00%	
\$3 Billion	4 stars	SBM - Grand River Bank \$ 245,000.00	1.15%	
		SBM-CD Horizon Bank \$ 240,000.00	1.00%	
		SBM-CD Horizon Bank \$ 245,000.00	1.30%	
		SBM-CD Horizon Bank \$ 245,000.00	1.30%	
\$1.2 Billion	4 stars	SBM-CD First National Bank of America \$ 240,000.00	1.60%	
		SBM-CD First National Bank of America \$ 240,000.00	1.60%	
		SBM-CD First National Bank of America \$ 240,000.00	1.85%	
		SBM-CD First National Bank of America \$ 240,000.00	1.85%	
\$190 Million	3 stars	SBM-CD Community Shores Bank \$ 240,000.00	1.25%	
	5 stars	SBM-CD Clarkston State Bank \$ 240,000.00	1.10%	
		SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	
		SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	
		SBM-CD Clarkston State Bank \$ 240,000.00	1.25%*****	
\$263 Million	3 stars	SBM-CD First National Bank of St. Ignace \$ 245,000.00	1.25%	
	5 stars	SBM-CD Sterling Bank \$ 245,000.00	1.55%	
		SBM-CD Sterling Bank \$ 245,000.00	1.55%	
		SBM-CD Sterling Bank \$ 245,000.00	1.55%	
		SBM-CD Sterling Bank \$ 240,000.00	1.55%	
		SBM-CD Chase \$ 1,700,000.00	0.80%	
\$383 Million	4 stars	SBM-CD The Dart Bank \$ 240,000.00	1.25%	
		SBM-CD The Dart Bank \$ 240,000.00	1.25%	
		SBM-CD The Dart Bank \$ 240,000.00	1.25%	
		SBM-CD The Dart Bank \$ 240,000.00	1.25%	
	5 stars	SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		SBM-CD MSU Credit Union \$ 235,000.00	2.05%	
		Bank CD Totals \$ 9,155,000.00		
		Total Cash & Investments (excluding Schwab) \$ 23,646,739.78		
		SBM - Charles Schwab (Ret HC Trust) \$ 2,896,123.10		Mutual Funds
		ADB - Charles Schwab (Ret HC Trust) \$ 825,934.91		Mutual Funds
		AGC - Charles Schwab (Ret HC Trust) \$ 2,908,341.47		Mutual Funds
		Charles Schwab Totals \$ 6,630,399.48		
		Grand Total (including Schwab) \$ 30,277,139.26		
		Total amount of cash and investments (excluding Schwab) not FDIC insured \$ 13,260,739.98	56.08%	

State Bar Admin Fund Summary

Cash and Investments	\$ 15,725,270.14
Less:	
Due (to)/from Sections	(3,124,734.52)
Due (to)/from CPF	(58,139.78)
	<hr/>
Due to Sections and CPF	\$ (3,162,874.30)
Net Administrative Fund	\$ 12,542,395.84

SBM Average Weighted Yield: 1.21%
ADS Average Weighted Yield: 0.47%
CPF Average Weighted Yield: 0.63%

Note: average weighted yields exclude retiree health care trusts

Notes:

- All amounts are based on reconciled book balance and interest rates as of 02/28/2018
- CDARS are invested in multiple banks up to the FDIC limit for each bank
- Funds held in bank accounts are FDIC insured up to \$250,000 per bank
- The SBM funds held with Charles Schwab in the Retiree Health Care Trusts are invested in 70% equity and 30% fixed income mutual funds
- As of 02/28/2018, the funds held by SBM attributable to ADS was \$1,704,483.43.
- * Flagstar Bank reserves the right to mature these CDARS at 12 months.
- ** Formerly Talmer West Bank
- ***Balance offsets lockbox fees by 0.35%.
- ****Actual unreconciled Chase balance per statements was \$3,058,930.93
- ***** Variable interest rate-increases to 1.75% on 6/25/18.

Maturity

11/15/18	
03/22/18	
03/01/18	
11/15/18	
11/15/18	
5/16/19*	
12/26/19*	
05/31/18	
01/03/19	

Maturity

10/28/19	
04/17/19	
04/17/19	
04/17/19	
04/17/19	
12/12/18	
05/11/18	
10/12/19	
03/14/19	
03/14/19	
10/12/19	
10/16/18	
10/16/20	
10/16/20	
10/15/19	
10/12/19	
04/25/19	
04/25/19	
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10/12/18	
03/30/19	
03/30/19	
03/30/19	
03/30/19	
04/16/18	
12/05/18	
12/05/18	
12/05/18	
12/05/18	
10/25/20	
10/25/20	
10/25/20	
10/25/20	



STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND
306 TOWNSEND ST
LANSING, MI 48933

Subject: CDARS® Customer Statement

Legal Account Title: STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND

Below is a summary of your certificate(s) of deposit, which we are holding for you as your custodian. These certificate(s) of deposit have been issued through CDARS by one or more FDIC-insured depository institutions. Should you have any questions, please contact us at **888 248-6423**.

Summary of Accounts Reflecting Placements Through CDARS

Account ID	Effective Date	Maturity Date	Interest Rate	Opening Balance	Ending Balance
1020781374	11/16/17	11/15/18	0.69757%	\$1,000,000.00	\$1,000,000.00
TOTAL				\$1,000,000.00	\$1,000,000.00

ACCOUNT OVERVIEW

Account ID: 1020781374
Product Name: 52-WEEK PUBLIC FUND CD
Interest Rate: 0.69757%
Account Balance: \$1,000,000.00

Effective Date: 11/16/17
Maturity Date: 11/15/18
YTD Interest Paid: \$0.00
Interest Accrued: \$2,008.74
Int Earned Since Last Stmt: \$536.06

The Annual Percentage Yield Earned is 0.70%.

CD Issued by CASS COMMERCIAL BANK

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$489.13	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$130.53			

CD Issued by Howard Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$489.13	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$130.53			

CD Issued by Rockland Trust Company

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$489.13	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$130.53			

CD Issued by Signature Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$489.13	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$130.53			

CD Issued by The Bank of Kremlin

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$26,000.00
Interest Accrued:	\$52.22	02/28/18	ENDING BALANCE	\$26,000.00
Int Earned Since Last Stmt:	\$13.94			

Thank you for your business.



STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND
306 TOWNSEND ST
LANSING, MI 48933

Subject: CDARS® Customer Statement

Legal Account Title: STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND

Below is a summary of your certificate(s) of deposit, which we are holding for you as your custodian. These certificate(s) of deposit have been issued through CDARS by one or more FDIC-insured depository institutions. Should you have any questions, please contact us at **888 248-6423**.

Summary of Accounts Reflecting Placements Through CDARS

Account ID	Effective Date	Maturity Date	Interest Rate	Opening Balance	Ending Balance
1020945814	01/04/18	01/03/19	0.69757%	\$350,000.00	\$350,000.00
1020255737	06/01/17	05/31/18	0.54851%	\$500,000.00	\$500,000.00
1020919066	12/28/17	12/26/19	0.74721%	\$450,036.85	\$450,036.85
1019078872	05/19/16	05/16/19	0.54851%	\$256,269.78	\$256,269.78
TOTAL				\$1,556,306.63	\$1,556,306.63

ACCOUNT OVERVIEW

Account ID: 1020255737
Product Name: 52-WEEK PUBLIC FUND CD
Interest Rate: 0.54851%
Account Balance: \$500,000.00

Effective Date: 06/01/17
Maturity Date: 05/31/18
YTD Interest Paid: \$0.00
Interest Accrued: \$2,055.50
Int Earned Since Last Stmt: \$211.21

The Annual Percentage Yield Earned is 0.55%.

CD Issued by Beneficial State Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$13,000.00
Interest Accrued:	\$53.44	02/28/18	ENDING BALANCE	\$13,000.00
Int Earned Since Last Stmt:	\$5.49			

CD Issued by TriState Capital Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$1,001.03	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$102.86			

CD Issued by United Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$1,001.03	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$102.86			

ACCOUNT OVERVIEW

Account ID: 1020945814
Product Name: 52-WEEK PUBLIC FUND CD
Interest Rate: 0.69757%
Account Balance: \$350,000.00

Effective Date: 01/04/18
Maturity Date: 01/03/19
YTD Interest Paid: \$0.00
Interest Accrued: \$374.78
Int Earned Since Last Stmt: \$187.45

The Annual Percentage Yield Earned is 0.70%.

CD Issued by Bank 2

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$106,500.00
Interest Accrued:	\$114.04	02/28/18	ENDING BALANCE	\$106,500.00
Int Earned Since Last Stmt:	\$57.04			

CD Issued by Signature Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$243,500.00
Interest Accrued:	\$260.74	02/28/18	ENDING BALANCE	\$243,500.00
Int Earned Since Last Stmt:	\$130.41			

ACCOUNT OVERVIEW

Account ID: 1020919066
Product Name: 2-YEAR PUBLIC FUND CD
Interest Rate: 0.74721%
Account Balance: \$450,036.85

Effective Date: 12/28/17
Maturity Date: 12/26/19
YTD Interest Paid: \$0.00
Interest Accrued: \$543.88
Int Earned Since Last Stmt: \$258.20

The Annual Percentage Yield Earned is 0.75%.

CD Issued by First Security Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$111,506.87
Interest Accrued:	\$134.76	02/28/18	ENDING BALANCE	\$111,506.87
Int Earned Since Last Stmt:	\$63.98			

CD Issued by Mutual of Omaha Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$101,010.53
Interest Accrued:	\$122.07	02/28/18	ENDING BALANCE	\$101,010.53
Int Earned Since Last Stmt:	\$57.95			

CD Issued by National Cooperative Bank, NA

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$237,519.45
Interest Accrued:	\$287.05	02/28/18	ENDING BALANCE	\$237,519.45
Int Earned Since Last Stmt:	\$136.27			

ACCOUNT OVERVIEW

Account ID:	1019078872	Effective Date:	05/19/16
Product Name:	3-YEAR PUBLIC FUND CD	Maturity Date:	05/16/19
Interest Rate:	0.54851%	YTD Interest Paid:	\$0.00
Account Balance:	\$256,269.78	Interest Accrued:	\$227.31
		Int Earned Since Last Stmt:	\$107.90

The Annual Percentage Yield Earned is 0.55%.

CD Issued by Glacier Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$104,929.36
Interest Accrued:	\$93.07	02/28/18	ENDING BALANCE	\$104,929.36
Int Earned Since Last Stmt:	\$44.18			

CD Issued by VIST Bank

YTD Interest Paid:	\$0.00	02/01/18	OPENING BALANCE	\$151,340.42
Interest Accrued:	\$134.24	02/28/18	ENDING BALANCE	\$151,340.42
Int Earned Since Last Stmt:	\$63.72			

Thank you for your business.

Monthly SBM Member Report - February 28, 2018

FY 2018

Attorney Members and Affiliates in Good Standing	September 30					Current Fiscal Year		FY Increase (Decrease)
	2011	2012	2013	2014	2015	September 30 2016	February 28 2018	
Active	39,389	39,935	40,475	41,093	41,608	41,921	41,888	(212)
Less than 50 yrs serv	38,289	38,829	39,335	40,036	40,490	40,725	40,514	(319)
50 yrs or greater	1,100	1,106	1,140	1,057	1,118	1,196	1,374	107
Voluntary Inactive	1,275	1,276	1,263	1,211	1,218	1,250	1,161	(82)
Less than 50 yrs serv	1,255	1,256	1,231	1,184	1,195	1,230	1,135	(82)
50 yrs or greater	20	20	32	27	23	20	26	0
Emeritus	1,139	1,279	1,391	1,552	1,678	1,841	1,973	234
Total Attorneys in Good Standing	41,803	42,490	43,129	43,856	44,504	45,012	45,256	(60)
Affiliates								
Legal Administrators	25	22	19	14	13	13	10	(3)
Legal Assistants	439	446	433	413	425	405	371	(29)
Total Affiliates in Good Standing	464	468	452	427	438	418	381	(32)
Total Attorney Members and Former Members in the Database								
State Bar of Michigan Member Type								
Attorney Members in Good Standing:								
ATA (Active)	39,389	39,935	40,475	41,093	41,608	41,921	41,888	(212)
ATV (Voluntary Inactive)	1,275	1,276	1,263	1,211	1,218	1,250	1,161	(82)
ATE (Emeritus)	1,139	1,279	1,391	1,552	1,678	1,841	1,973	234
Total Members in Good Standing	41,803	42,490	43,129	43,856	44,504	45,012	45,256	(60)
Attorney Members Not in Good Standing:								
ATN (Suspended for Non-Payment of Dues)	5,068	5,144	5,248	5,427	5,578	5,743	6,312	424
ATDS (Discipline Suspension - Active)	375	384	400	407	415	418	436	6
ATDI (Discipline Suspension - Inactive)	6	7	10	12	11	18	19	1
ATDC (Discipline Suspension - Non-Payment of Court Costs)	0	0	1	3	3	3	16	(2)
ATNS (Discipline Suspension - Non-Payment of Other Costs)	67	66	76	83	92	99	94	(1)
ATS (Attorney Suspension - Other)**	0	1	1	1	1	1	0	0
ATR (Revoked)	480	492	519	521	517	534	562	11
ATU (Status Unknown - Last known status was inactive)**	2,396	2,214	2,174	2,088	2,076	2,074	2,070	0
Total Members Not in Good Standing	8,392	8,308	8,429	8,540	8,693	8,890	9,518	439
Other:								
ATSC (Former special certificate)	126	132	134	136	140	145	156	4
ATW (Resigned)	1,187	1,272	1,354	1,429	1,483	1,539	1,612	70
ATX (Deceased)	7,025	7,503	7,797	8,127	8,445	8,720	9,042	139
Total Other	8,338	8,907	9,285	9,692	10,068	10,404	11,019	213
Total Attorney Members in Database	58,533	59,705	60,843	62,088	63,265	64,306	65,201	592

* ATS is a new status added effective August 2012 - suspended by a court, administrative agency, or similar authority

** ATU is a new status added in 2010 to account for approximately 2,600 members who were found not to be accounted for in the IMIS database. The last known status was inactive and many are likely deceased. We are currently researching these members to determine a final disposition.

N/R - not reported

Notes: Through February 28, 2018, a total of 592 new members joined the SBM so far in FY 2018

The reduction in members in good standing was due to February suspensions for non-payment of dues

State Bar of Michigan Retiree Health Care Trust
Balance Sheet
For the Five Months Ending February 28, 2018

Assets	
Investment	<u>\$2,896,123</u>
Total Assets	<u><u>\$2,896,123</u></u>
Fund Balance	
Fund Balance at Beginning of Year	2,771,178
Net Income (Expense) Year to Date	<u>124,946</u>
Total Fund Balance	<u>2,896,123</u>
Total Liabilities and Fund Balance	<u><u>\$2,896,123</u></u>

State Bar of Michigan Retiree Health Care Trust
Income Statement
For the Five Months Ending February 28, 2018

	February 2018	CURRENT YTD
Income:		
5-7-00-000-0921 Change In Market Value	(76,235)	(86,303)
5-7-00-000-1005 Investment Contributions	4,778	23,888
5-7-00-000-1920 Interest and Dividends	2,231	187,361
Total Income	<u>(69,227)</u>	<u>124,946</u>
Net Fund Income (Expense)	<u><u>(69,227)</u></u>	<u><u>124,946</u></u>

To: Board of Commissioners, State Bar of Michigan
Members, Attorney Discipline Board
Commissioners, Attorney Grievance Commission

From: Trustee of the State Bar of Michigan Retirement Plan and 457(b) Plan

Subject: 2017 Annual Report - State Bar of Michigan Retirement Plan and 457(b) Plan

Date: April 10, 2018

CC: Janet K. Welch, SBM Executive Director
Alerus Retirement Solutions/Alerus Financial N.A.

Pursuant to Section 5.7 of the State Bar of Michigan Retirement Plan, an Annual Report of the Trustee is required:

“(a) Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- 1) the net income, or loss, of the Trust Fund;*
- 2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;*
- 3) the increase, or decrease, in the value of the Trust Fund;*
- 4) all payments and distributions made from the Trust Fund; and*
- 5) such further information as the Trustee and/or Administrator deems appropriate.*

“(b) The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.”

The State Bar of Michigan Retirement Plan and 457(b) Plan are available to eligible employees of the State Bar of Michigan, Attorney Discipline Board, and Attorney Grievance Commission. The plans' assets (employer and employee contributions, and qualified rollovers) are invested in various mutual funds approved by the Trustee at the direction of each employee in the plans, and held by the State Bar of Michigan Retirement Plan and 457(b) Plan for the benefit of the participants.

Alerus Financial N.A. is the record keeper, custodian, paying agent and third party administrator for the retirement plans and Fidelity serves as the trading agent for the plans' assets. Alerus Financial, N.A. also serves as an investment co-fiduciary for the purpose of providing investment recommendations and monitoring services in accordance with the terms of the investment policy statement.

The SBM Retirement Plan is a 401(a) plan and is used for employer contributions. As of December 31, 2017, there were 130 participants with balances in the 401(a) plan. The 457(b) Plan is used for employee contributions. As of December 31, 2017, there were 121 participants with balances in the 457(b) Plan.

The Co-Trustees of the State Bar of Michigan Retirement Plan and 457(b) Plan met twice during 2017 to review investment performance, decide on the addition of investment funds offered, update the plan documents, decide on loan and withdrawal requests, and handle other administrative matters pertaining to the plans.

A summary of the financial information for both plans for 2017, provided by Alerus, is attached. The minutes of the Trustee meetings are also attached.

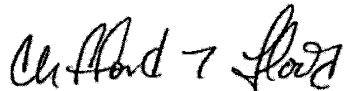
Please direct all inquiries to James C. Horsch, Chairperson of the Trustee of the State Bar of Michigan Retirement Plan and 457(b) Plan, at (517) 346-6324.

Sincerely,

The Trustee of the State Bar of Michigan Retirement Plan and 457(b) Plan



Alan M. Gershel, Co-Trustee and AGC Grievance Administrator



Clifford T. Flood, Recording Secretary and SBM General Counsel



Jeanette L. Socia, Co-Trustee and SBM Human Resources Manager



James C. Horsch, Chairperson and SBM Director of Finance & Administration



Mark A. Armitage, Co-Trustee and ADB Executive Director

State Bar of Michigan Retirement Plan - 2017

	Beginning Balance 01/01/17	Gains & Losses	Contributions	Withdrawals	Transfers	Ending Balance 12/31/17
Employee Deferrals	\$ 919,012.01	\$ 154,790.58	\$ -	\$ (7,608.44)	\$ 2,109.66	\$ 1,068,303.81
Employer Match	1,935,143.87	294,547.17	189,575.73	(44,526.67)	28,912.29	2,403,652.39
Employer Contribution	3,115,300.24	457,056.38	295,203.59	(82,751.58)	53,028.20	3,837,836.83
Employer Discretionary	756,949.82	111,615.62	13,999.44	(10,865.97)	9,019.07	880,717.98
Rollovers	248,132.53	42,565.92	134,601.61	(12,175.83)	1,429.19	414,553.42
Loans	\$ 162,372.65	\$ 8,935.48	\$ -	\$ 107,530.00	\$ (85,198.02)	\$ 193,640.11
Total	\$ 7,136,911.12	\$ 1,069,511.15	\$ 633,380.37	\$ (50,398.49)	\$ 9,300.39	\$ 8,798,704.54

State Bar of Michigan 457(b) Plan - 2017

	Beginning Balance 01/01/17	Gains & Losses	Contributions	Withdrawals	Transfers	Ending Balance 12/31/17
Employee Deferrals	\$ 5,267,214.75	\$ 955,828.71	\$ 492,882.73	\$ (31,929.28)	\$ -	\$ 6,683,996.91
Total	\$ 5,267,214.75	\$ 955,828.71	\$ 492,882.73	\$ (31,929.28)	\$ -	\$ 6,683,996.91

- Notes: 1) There were a total of 22 loans outstanding involving 22 employees in the 401a Retirement Plan at the end of 2017, an increase of 5 compared to 2016.
2) There were a total of 130 participants with balances at the end of 2017 in the 401a Retirement plan, an increase of 5 compared to 2016.
3) There were a total of 121 participants with balances in the 457(b) plan at the end of 2017, an increase of 4 compared to 2016.
4) There were a total of 5 withdrawals - 2 separation, 0 in-service, 2 RMD's, 0 QDROs, 0 beneficiary, and 1 hardship withdrawal from the 401a Retirement Plan; and 4 withdrawals - 3 separation, 0 beneficiary, and 1 RMD from the 457(b) Plan during 2017.
5) Gains and losses are shown net of realized and unrealized gains and losses.
6) There were 2 forfeitures during 2017. Separate Forfeiture reconciliations have been provided. Forfeitures are used to offset Plan administration expenses and employer contributions owed. The total amount in the forfeiture account as of 12/31/2017 was \$8.93.
7) Ending balances and activity are based on an "effective date" of 12/31/17, which includes all activity that would have been effective during 2017, with the exception of the receivable amounts.

MINUTES

Trustees - SBM Retirement Plans
Thursday, February 16, 2017
9:30 A.M., Library of the State Bar of Michigan

1. Call to Order: Chairperson Horsch called the meeting to order at 9:34 A.M. Trustees Flood and Socia were present in person and Trustees Horsch, Armitage, and Gershel were present by teleconference.

Cindy Faulkner and Andrew Calogerakis were also present in person.

2. Approval of Agenda: A motion was made, supported and passed unanimously to approve the Agenda as presented.

3. Approval of Minutes: A motion was made, supported and passed unanimously to approve the Minutes of the meeting of Wednesday, August 17, 2016.

4. Reports of Alerus representatives:

a. Mr. Calogerakis reviewed the 2016 4th Quarter Reports for the Retirement and 457(b) Plans and provided an overview of the various markets.

b. Watch List: Mr. Calogerakis reviewed the three funds on both of the 4th Quarter Report Watch Lists (the AllianzGI NFJ Small Cap fund, on since June 30, 2013, the Vanguard Mid Cap Growth fund, and T. Rowe Price New America Growth fund, on since at least 2nd Quarter 2016). For the reasons stated in the Investment Commentary in the reports, he recommended that the trustees retain all three funds.

Following a lengthy discussion, a motion was made, supported and passed unanimously to accept Mr. Calogerakis' recommendation and make no changes and to retain the AllianzGI NFJ Small Cap fund, the Vanguard Mid Cap Growth fund, and the T Rowe Price New America Growth fund.

c. Publishing Fund Watch List Commentary and related documents: Trustee Flood suggested that the comments regarding the watch list and recommendations provided by Alerus be published on the website for Participants to review. This will be done in such a way that Participants will be able to understand the commentary, and will include the length of time that each fund has been on the watch list, if applicable. The trustees agreed and further agreed that the Quarterly Reports should also be made available. Accordingly, a motion was made, supported and passed unanimously to publish the Watch List commentary and related documents on the Alerus website so participants can review them.

d. Ms. Faulkner notified the trustees that one of the three funds approved at the last meeting was not properly deployed but rather an incorrect fund was deployed. That error will be corrected and the new fund deployed and notice sent to Participants. The fund that was not deployed and should have been was the Vanguard Small Cap Index Adm (VSMAX). No Participants had selected the incorrect fund.

e. Ms. Faulkner reviewed the benchmarking reports with trustees.

5. Administrator's Report: Ms. Socia reported as follows:

a. During Open Enrollment in the 4th Quarter 2016, Alerus gave a presentation in Lansing and Detroit to all staff regarding how to navigate and use the Alerus website.

The Alerus representative also provided personalized, private consultations to those who elected this service. Approximately 25 participants took advantage of the opportunity.

b. Loans and Hardship requests: the current outstanding loan total is \$155,000, (including 3 new loans, of 17 total loans), of which 3% originated with ADB, 26% with AGC, and 71% with SBM. The average repayment amount for loans is \$158/pay period. There have been no new hardship requests since August 2016, only inquiries.

c. Forfeitures and distributions: Forfeitures are at zero, and there have been distributions of \$108,000 since August 2016, mostly from terminated participants.

6. SBM Retirement Plan and Restatement Update: Mr. Flood reported that there is no new response or update from the IRS. He is hoping that we will hear back by April 2017.

7. Other:

a. It was agreed that our standing meetings would be moved from the third Wednesday in February and August to the second Wednesday in February and August to lessen developing scheduling conflicts, with the change taking effect for the August 2017 meeting.

b. Trustee Horsch suggested trustees consider seeking bids on alternative management and investment service providers. There was a discussion about the amount of fees that are currently paid to Alerus for the two plans. Trustee Socia will look into the amounts paid and report in August.

9. Adjourn: A motion was made, supported and passed unanimously to adjourn. The meeting adjourned at 11:10 A.M.

The next scheduled meeting: Wednesday, August 9, 2017 at 9:30 A.M.

MINUTES

Trustees - SBM Retirement Plans
Wednesday, August 16, 2017
2:30 P.M., Library of the State Bar of Michigan

1. Call to Order: Chairperson Horsch called the meeting to order at 2:35 P.M. Trustees Armitage, Flood, Horsch, and Socia were present in person and Trustee Gershel was present by teleconference.

Cindy Faulkner and Andrew Calogerakis of Alerus were also present in person.

2. Approval of Agenda: A motion was made, supported and passed unanimously to approve the Agenda with two amendments 1) changing the date from 09.30.16 to 06.30.17 in item 4a, and 2) adding a discussion of Plan Investment Policy Statements to Other Business.

3. Approval of Minutes: A motion was made, supported and passed unanimously to approve the Minutes of the meeting of Thursday, February 16, 2017.

4. Reports of Alerus representatives:

a. Mr. Calogerakis reviewed the 2017 2nd Quarter Reports for the Retirement and 457(b) Plans and provided an overview of the various markets.

b. Watch List: Mr. Calogerakis reviewed the two funds on the 2nd Quarter Report Watch Lists (the Vanguard Mid Cap Growth Inv., on since September 30, 2016; and the AllianzGI NFJ Small Cap Value Instl., on since June 30, 2013). For the reasons stated in the Investment Commentary in the reports, he recommended that the trustees retain the AllianzGI NFJ Small Cap Value Instl, but replace the Vanguard Mid Cap Growth Inv.

Following a lengthy discussion, a motion was made, supported and passed unanimously to accept Mr. Calogerakis' recommendation to replace the Vanguard Mid Cap Growth Inv (VMGRX) fund with Mass Mutual Select Mid Cap Growth (MEFZX) fund.

c. Investment Policy Statements: Mr. Calogerakis stated that he was able to find a copy of the IPS for the retirement plan, but not for the 457 plan. The investment policy that is currently being used has been out of date for a while. The new IPS includes similar roles and responsibilities, but the screening criteria will be updated. This will allow the ability to tailor the different types of funds (stocks, bonds, index). This item will be discussed further at the February 2018 meeting.

5. Administrator's Report: Ms. Socia reported as follows:

a. Loans and Hardship requests: the current outstanding loan total is \$212,000, (including 3 new loans, of 21 total loans), of which 22% originated with ADB, 35% with AGC, and 43% with SBM.

b. Forfeitures and distributions: Forfeitures are at zero.

- c. Our plans allow individuals who are no longer employed with the three entities to keep their investments with Alerus, and we incur the expenses for those assets. For the 401 plan, there are 18 people who are no longer employed, with a balance of \$760,000, and for the 457(b) plan, there are 22 people who are no longer employed, with a balance of almost \$1,000,000. The fees we pay Alerus for these former employees totals approximately \$10,000 per year. There are currently 128 total people in the 401 plan and 120 total people in the 457b plan.
 - d. Individual meetings are scheduled for employees consulting with an Alerus representative on September 11 & 12.
6. SBM Retirement Plan and Restatement Update: Trustee Flood reported that we have received a favorable Reinstatement letter from the IRS.

7. Other:

- a. Trustee Socia reported on the amount of fees that are currently paid to Alerus for the two plans. Fees are based on asset volume; the gross fees in 2012 were \$43,000. Projected fees for the 2017 calendar year are \$53,000. Since 2012, the asset balance has increased by \$4,000,000 and fees have increased by \$10,000. The fees are about 0.45% per year, which is less than the standard industry fee. Trustees expressed their general satisfaction with Alerus with respect to its fees and its administrative services.
 - b. It was suggested that the Trustees consider options for passing along the fees incurred for former employees back to them. Trustee Socia will consult with Alerus for available options.
9. Adjourn: A motion was made, supported and passed unanimously to adjourn. The meeting adjourned at 4:04 P.M.

The next scheduled meeting: Wednesday, February 14, 2018 at 2:30 P.M.

**VI. – A. Client Protection
Fund Claims**

TO: Board of Commissioners
FROM: Professional Standards Committee
DATE: April 20, 2018, BOC Meeting
RE: Client Protection Fund Claims for Consent Agenda

Rule 15 of the Client Protection Fund Rules provides that “claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant.” To protect CPF claim information and avoid negative publicity about a respondent regarding a claim that has been denied and appealed, the CPF Report to the Board of Commissioners is designated “confidential.”

**CONSENT AGENDA
 CLIENT PROTECTION FUND**

Claims recommended for payment:

a. Consent Agenda

	Claim No.	Professional Standards Committee Amt.
1.	CPF 3069	\$2,500.00
2.	CPF 3135 & 3137	\$5,500.00
3.	CPF 3247	\$76,000.00
4.	CPF 3257	\$30,456.08
5.	CPF 3346	\$1,500.00
6.	CPF 3353	\$17,531.43
7.	CPF 3383	\$1,800.00
8.	CPF 3400	\$5,009.18
	Table Total	\$140,296.69

b. Supporting documentation is provided under separate cover.

The Professional Standards Committee recommends payment of the following claims by the State Bar of Michigan's Client Protection Fund:

1. CPF 3069 **Amount recommended: \$2,500.00**

Claimant retained Respondent to represent her son in a criminal matter for \$5,000. There is no written retainer agreement for this matter, but Respondent admitted that the \$5,000 fee included the underlying matter and an appeal. Respondent completed the legal services through sentencing, but did not complete the appeal. Based on Respondent's failure to complete the appellate work, the Attorney Discipline Board (ADB) reprimanded Respondent and ordered him to pay \$2,500 in restitution to Claimant, as the \$5,000 fee was unreasonable. Respondent's failure to return the unearned portion of the fee constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(D)(6) and 11(B). This claim is recommended for reimbursement in the amount of \$2,500 payable to Claimant.

2. CPF 3135 & 3137 **Amount recommended: \$5,500.00**

Claimant retained Respondent to handle two matters, an alimony matter and a parental rights matter and paid \$5,500 for the representation. Respondent did not complete the legal services. Respondent's failure to return the unearned fees constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(D)(6), and 11(B). These claims are recommended for reimbursement in the amount of \$5,500 payable to the Claimant, which follows the ADB's order of restitution.

3. CPF 3247 **Amount recommended: \$76,000.00**

Respondent became Trustee of a Trust and misappropriated \$76,000 of Trust funds, constituting dishonest conduct as defined by CPF Rules 9(C)(1) and 11(B). This claim is recommended for reimbursement in the amount of \$76,000 payable to the Trust, which differs from the ADB's order of restitution because the other amounts were properly accounted for in bank records.

4. CPF 3257 **Amount recommended: \$30,456.08**

Respondent was retained to represent a beneficiary's interest in a decedent estate. Respondent misappropriated \$47,743.14 in estate proceeds owed to the beneficiary. Respondent was convicted of embezzling the beneficiary's share of \$47,743.14, which is conclusive evidence under CPF Rule 11(B) that Respondent committed dishonest conduct. Restitution was calculated to include \$47,743.14 in embezzled principal, plus \$4,002.94 in statutory interest, and \$1,210.00 in costs for a total of \$52,956.08. Respondent reimbursed \$22,500.00, leaving a balance due of \$30,456.08. This claim is recommended for reimbursement in the amount of \$30,456.08 payable to the beneficiary.

If this claim is approved for reimbursement, it is recommended that CPF staff be granted permission to adjust the amount payable to reflect any additional restitution payments or bank settlement funds that are received by the beneficiary prior to the Fund receiving a fully executed subrogation agreement and issuing a check, without further review.

5. CPF 3346 **Amount recommended: \$1,500.00**

Claimant retained Respondent to file a bankruptcy petition for a flat fee of \$1,500. Claimant provided documentation of a \$600 payment; however, Respondent agreed to reimburse \$1,500. Respondent did not file the petition before his license to practice law was suspended. Respondent's failure to return the unearned fees constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1) and 9(D)(6). This claim is recommended for reimbursement in the amount of \$1,500 payable to Claimant, which follows the Attorney Discipline Board's (ADB) order of restitution.

6. CPF 3353

Amount recommended: \$17,531.43

Claimant retained Respondent to assist in resolving an outstanding business collection matter for a flat fee of \$1,000. While Respondent was detained at the county jail, the legal assistant negotiated a settlement including a payment from Claimant to the opposing party of \$39,500. However, the legal assistant falsely informed Claimant that the settlement amount was \$42,500. Claimant transferred \$42,500 into Respondent's business account. The opposing party received \$24,968.57 in partial payment. Respondent's assistant misappropriated the remaining \$17,531.43. Respondent is solely responsible for the supervision of an assistant and failed to safeguard Claimant's funds. Respondent's inability to disburse the \$14,531.43 due under the settlement agreement and return \$3,000 to Claimant for overpayment constitutes dishonest conduct and is a reimbursable loss under Rules 9(C)(1) and 11(B). This claim is recommended for reimbursement for \$17,531.43 payable to Claimants, which differs slightly from the ADB's order of restitution based on records.

7. CPF 3383

Amount recommended: \$1,800.00

Claimant retained Respondent to file a bankruptcy petition for \$1,800. Respondent did not file the petition before his license to practice law was suspended. Respondent's failure to return the unearned fees constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(D)(6), and 11(B). This claim is recommended for reimbursement in the amount of \$1,800 payable to Claimant's husband, which follows the ADB's order of restitution.

8. CPF 3400

Amount recommended: \$5,009.18

Claimant retained Respondent to handle a landlord-tenant matter. Respondent filed suit, the tenant agreed to purchase the property, Respondent drafted the closing documents, and dismissed the action. Respondent received \$7,000 and earned \$1,990.82, leaving a balance due Claimant of \$5,009.18. Respondent's did not remit the \$5,009.18 to Claimant, which constitutes dishonest conduct and is a reimbursable loss as provided by CPF Rules 9(C)(1), 9(D)(6), and 11(B). This claim is recommended for reimbursement in the amount of \$5,009.18 payable to Claimant, which follows the ADB's order of restitution.

Total payments recommended: \$140,296.69

**VII. – A Model Criminal
Jury Instructions**



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee solicits comment on the following proposal by May 1, 2018. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes new instructions, M Crim JI 11.40, 11.40a and 11.40b, for the “harmful substances” offenses found at MCL 750.200i, 750.200l, and 750.200j(1)(c), respectively. (Definitions are found at MCL 750.200h, and a penalty enhancement at MCL 750.212a.)

[NEW] M Crim JI 11.40 Harmful Substances – Unlawful Acts

(1) The defendant is charged with committing an unlawful act with a harmful substance or device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured / delivered¹ / possessed / transported / placed / used / released] a [substance / device].

(3) Second, that the [substance / device] that the defendant [manufactured / delivered / possessed / transported / placed / used / released] was a harmful [biological (substance / device) / chemical (substance / device) / radioactive (material / device) / electronic or electromagnetic device].

*[Provide definition by selecting from paragraphs (a) through (g):]*²

(a) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(b) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an

organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(c) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(d) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with 1 or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(e) A “harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(f) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(g) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(4) Third, that the defendant [manufactured / delivered / possessed / transported / placed / used / released] the harmful [substance / device] for an unlawful purpose. That is, [he / she] did so to frighten, terrorize, intimidate, threaten, harass, injure or kill any person, or did so to damage or destroy any real or personal property without the permission of the owner or a governmental agency with authority over the property, if it is public property.

[Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:]

(5) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the harmful [biological (substance / device) / chemical (substance / device) / radioactive (material / device) / electronic or electromagnetic device] resulted in property damage.

(6) Fourth, that [You may also consider whether³] the [manufacture / delivery / possession / transportation / placement / use / release] of the harmful [biological (substance / device) / chemical (substance / device) / radioactive

(material / device) / electronic or electromagnetic device] resulted in physical injury [not amounting to serious impairment of a bodily function³] to another person.

(7) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the harmful [biological (substance / device) / chemical (substance / device) / radioactive (material / device) / electronic or electromagnetic device] resulted in serious impairment of a bodily function to another person.⁴

(8) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the harmful [biological (substance / device) / chemical (substance / device) / radioactive (material / device) / electronic or electromagnetic device] resulted in the death of another person.

(9) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the harmful [substance / device] occurred in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].⁵

Use Note

1. “Delivery” is defined in MCL 750.200h.
2. MCL 750.200h(f) through (l), provides the definitions.
3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury,” rather than causing a “serious impairment of a bodily function.”
4. The definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

5. MCL 750.212a.

[NEW] M Crim JI 11.40a Harmful Substances – False Statement of Exposure

(1) The defendant is charged with causing another to believe that he or she was exposed to a harmful substance or device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant did something to inform [*name complainant*] that [he / she] had been exposed to a harmful [biological (substance / device) / chemical (substance / device) / radioactive (material / device) / electronic or electromagnetic device¹].

[*Provide definition by selecting from paragraphs (a) through (g):*]²

(a) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(b) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(c) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(d) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with 1 or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(e) A “harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(f) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(g) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(3) Second, that [*name complainant*] had not actually been exposed to a harmful [biological substance / chemical substance / radioactive material or device / electronic or electromagnetic device].

(4) Third, the defendant knew that [*name complainant*] had not actually been exposed to a harmful [biological (substance / device) / chemical (substance / device) / radioactive (material / device) / electronic or electromagnetic device], but intended to make [him / her] believe that [he / she] had been exposed.

Use Note

1. The instruction may have to be modified if the false statement involves an electronic or electromagnetic device and the complainant's computer.
2. MCL 750.200h(f) through (l), provides the definitions.

[NEW] M Crim JI 11.40b Imitation Harmful Substance or Device

(1) The defendant is charged with manufacturing, possessing, placing or releasing an imitation harmful substance or device for an unlawful purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured / delivered¹ / possessed / transported / placed / used / released] a [substance / device].

(3) Second, that the [substance / device] that the defendant [manufactured / delivered / possessed / transported / placed / used / released] was an imitation harmful substance or device. An imitation harmful substance or device means something that is claimed to be or is designed or intended to appear to be a harmful biological, chemical, radioactive, or electromagnetic substance or device, but is not such a substance or device.

*[The court may provide any of the following definitions where appropriate:]*²

(a) A “harmful biological device” means a device designed or intended to release a harmful biological substance.

(b) A “harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(c) A “harmful chemical device” means a device that is designed or intended to release a harmful chemical substance.

(d) A “harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with 1 or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(e) A “harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(f) A “harmful electronic or electromagnetic device” means a device designed to emit or radiate or that, as a result of its design, emits or radiates an electronic or electromagnetic pulse, current, beam, signal, or microwave that is intended to cause harm to others or cause damage to, destroy, or

disrupt any electronic or telecommunications system or device, including, but not limited to, a computer, computer network, or computer system.

(g) “Harmful radioactive device” means a device that is designed or intended to release a harmful radioactive material.

(4) Third, that the defendant [manufactured / delivered / possessed / transported / placed / used / released] the substance or device to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or did so to damage or destroy any real or personal property without the permission of the owner or a governmental agency with authority over the property, if it is public property.

[Select from paragraphs (5) through (8) where one of the following aggravating factors has been charged:]

(5) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the imitation harmful substance or device directly or indirectly resulted in property damage.

(6) Fourth, that [You may also consider whether³] the [manufacture / delivery / possession / transportation / placement / use / release] of the imitation harmful substance or device directly or indirectly resulted in physical injury [not amounting to serious impairment of a bodily function³] to another person.

(7) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the imitation harmful substance or device directly or indirectly resulted in serious impairment of a bodily function to another person.⁴

(8) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the imitation harmful substance or device directly or indirectly resulted in the death of another person.

(9) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the imitation harmful substance or device occurred in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or

railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].⁵

Use Note

1. “Delivery” is defined in MCL 750.200h.
2. MCL 750.200h(f) through (l), provides the definitions.
3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury,” rather than causing a “serious impairment of a bodily function.”
4. The definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.
5. MCL 750.212a.

Public Policy Position
Model Criminal Jury Instructions 11.40, 40a, and 40b

The Criminal Jurisprudence & Practice Committee Supports M Crim JI 11.40, 40a, and 40b with Amendments.

Explanation

The committee voted unanimously to support the proposed jury instruction with the following changes:

For consistency, 11.40(3)(g) should be moved to replace 11.40(3)(e), and the current subsection (e) and (f) should be changed to (f) and (g) respectively.

In subsection (7) the word “bodily” should be replaced with “body.”

A standalone section should be added that the Model Criminal Jury Instructions that defines “serious impairment of a body function.” and use note 4 in M Crim JI 11.40 and 11.40b should be replaced with reads: “When there is an issue raised over whether the injury amounts to a serious impairment of a body function, the trial court shall read instruction ____ as it is supported by the facts of the case.” It was suggested that the standalone jury instruction should go in Chapter 15 of M Crim JI, and could read as, “An injury constitutes a serious impairment of a body function where the injury includes one or more of the following: [list qualifying injuries from the statute, MCL 257.58c.]” There should also be a use note indicating that the trial court should include all definitions that may be supported by the evidence admitted at trial.

Number who voted in favor and opposed to the position:

Voted For position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote: 7

Contact Person: Nimish R. Ganatra

Email: ganatran@ewashtenaw.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee solicits comment on the following proposal by May 1, 2018. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a new instruction, M Crim JI 11.41, for the “chemical irritant” offenses found at MCL 750.200j. (Definitions are found at MCL 750.200h, and a penalty enhancement at MCL 750.212a.)

[NEW] M Crim JI 11.41 Chemical Irritants – Unlawful Acts

(1) The defendant is charged with committing an unlawful act with a chemical irritant or device for an unlawful purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured / delivered / possessed / transported / placed / used / released] a [substance / device].

(3) Second, that the [substance / device] that the defendant [manufactured / delivered / possessed / transported / placed / used / released] was a [chemical irritant / chemical irritant device / smoke device].

*[Provide definition for chemical irritants from paragraph (a) or from (b) then (a):]*¹

(a) A “chemical irritant” means a solid, liquid, or gas that, through its chemical or physical properties, alone or in combination with one or more other substances, can be used to produce an irritant effect in humans, animals, or plants.

(b) A “chemical irritant device” means a device designed or intended to release a chemical irritant.

(4) Third, that the defendant [manufactured / delivered / possessed / transported / placed / used / released] the [chemical irritant / chemical irritant device / smoke device] to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or did so to damage or destroy any real or personal property without the permission of the owner or a governmental agency with authority over the property, if it is public property.

[Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:]

(5) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the [chemical irritant / chemical irritant device / smoke device] resulted in property damage.

(6) Fourth, that [You may also consider whether²] the [manufacture / delivery / possession / transportation / placement / use / release] of the [chemical irritant / chemical irritant device / smoke device] resulted in physical injury [not amounting to serious impairment of a bodily function²] to another person.

(7) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the [chemical irritant / chemical irritant device / smoke device] resulted in serious impairment of a bodily function to another person.³

(8) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the [chemical irritant / chemical irritant device / smoke device] resulted in the death of another person.

(9) Fourth, that the [manufacture / delivery / possession / transportation / placement / use / release] of the [chemical irritant / chemical irritant device / smoke device] occurred in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].⁴

Use Note

1. MCL 750.200h(a) and (b), provides the definitions. The statute does not provide a definition for a smoke device.
2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury,” rather than causing a “serious impairment of a bodily function.”
3. The definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.
4. MCL 750.212a.

**Public Policy Position
Model Criminal Jury Instructions 11.41**

The Criminal Jurisprudence & Practice Committee Supports M Crim JI 11.41 with Amendments.

Explanation

The committee voted unanimously to approve the proposed jury instruction as written with the addition of the same standalone section defining “serious impairment of body function” recommended in the position for M Crim JI 11.40 along with a corresponding change to use note 3.

Number who voted in favor and opposed to the position:

Voted For position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote: 7

Contact Person: Nimish R. Ganatra

Email: ganatran@ewashtenaw.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee solicits comment on the following proposal by May 1, 2018. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

PROPOSED

The Committee proposes new instructions, M Crim JI 11.42 and 11.42a, for the “offensive or injurious substances” crimes found at MCL 750.209. (A penalty enhancement is found at MCL 750.212a.)

[NEW] M Crim JI 11.42 Offensive or Injurious Substances – Placement with Intent to Injure

(1) The defendant is charged with placing an offensive or injurious substance for an unlawful purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant placed an offensive or injurious substance or compound¹ in or near to [real / personal] property.

(3) Second, that when the defendant placed the offensive or injurious substance or compound, [he / she] intended to [injure or coerce another person / injure the property or business of another person / interfere with another person’s use, management, conduct, or control of his or her property or business].

[Select from paragraphs (4) through (8) where one of the following aggravating factors has been charged:]

(4) Third, that the offensive or injurious substance or compound damaged another person’s property.

(5) Third, that [You may also consider whether²] the offensive or injurious substance or compound caused physical injury [not amounting to serious impairment of a bodily function²] to another person.

(6) Third, that the offensive or injurious substance or compound caused the serious impairment of a bodily function to another person.³

(7) Third, that the offensive or injurious substance or compound caused the death of another person.

(8) Third, that placement of the offensive or injurious substance or compound occurred in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].⁴

Use Note

1. The statute does not provide a definition for an offensive or injurious substance or compound.

2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury,” rather than causing a “serious impairment of a bodily function.”

3. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

4. MCL 750.212a.

**[NEW] M Crim JI 11.42a Offensive or Injurious Substances –
Placement with Intent to Annoy**

(1) The defendant is charged with placing an offensive or injurious substance with intent to annoy or alarm. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant placed an offensive or injurious substance or compound¹ in or near to [real / personal] property.

(3) Second, that when the defendant placed the offensive or injurious substance or compound, [he / she] intended to annoy or alarm another person.

[Select from paragraphs (4) through (8) where one of the following aggravating factors has been charged:]

(4) Third, the offensive or injurious substance or compound damaged another person's property.

(5) Third, that [You may also consider whether²] the offensive or injurious substance or compound cause physical injury [not amounting to serious impairment of a bodily function²] to another person.

(6) Third, that the offensive or injurious substance or compound caused the serious impairment of a bodily function to another person.³

(7) Third, that the offensive or injurious substance or compound caused the death of another person.

(8) Third, that placement of the offensive or injurious substance or compound occurred in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].⁴

Use Note

1. The statute does not provide a definition for an offensive or injurious substance or compound.
2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a “physical injury,” rather than causing a “serious impairment of a bodily function.”
3. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:
 - (a) Loss of a limb or loss of use of a limb.
 - (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
 - (c) Loss of an eye or ear or loss of use of an eye or ear.
 - (d) Loss or substantial impairment of a bodily function.
 - (e) Serious visible disfigurement.
 - (f) A comatose state that lasts for more than 3 days.
 - (g) Measurable brain or mental impairment.
 - (h) A skull fracture or other serious bone fracture.
 - (i) Subdural hemorrhage or subdural hematoma.
 - (j) Loss of an organ.
4. MCL 750.212a.

**Public Policy Position
Model Criminal Jury Instructions 11.42 and 11.42a**

The Criminal Jurisprudence & Practice Committee Supports M Crim JI 11.42 and 11.42a with Amendments.

Explanation

The committee voted unanimously to approve the proposed jury instruction as written with the addition of the same standalone section defining “serious impairment of body function” recommended in the position for M Crim JI 11.40 along with a corresponding change to use note 3.

Number who voted in favor and opposed to the position:

Voted For position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote: 7

Contact Person: Nimish R. Ganatra

Email: ganatran@ewashtenaw.org

**VIII. – A. Business Law
Section Dues Amendment**



Memorandum

To: SBM Board of Commissioners
From: Darin Day
SBM Director of Outreach
Date: April 6, 2018
Re: Business Law Section – Free Membership for Law Students
Staff Recommendation for BOC Approval

Rule 5, Section 1(a)(5) of the Supreme Court Rules Concerning the State Bar of Michigan requires that the Board of Commissioners "...determine the amount and regulate the collection and disbursement of section dues..."

Upon review of the record, it is confirmed that the Business Law Section has taken all necessary steps to approve a change to its member dues structure in compliance with the section's bylaws. The Business Law Section has elected to offer free section memberships to law students. Reproduced below are the relevant excerpts from the section's bylaws and council meeting minutes:

ARTICLE II. MEMBERSHIP. SECTION 1. GENERAL. Each member of the Section (a "Member") shall pay to the State Bar of Michigan such dues as may be established from time to time by the Section Council, subject to the approval of the Board of Commissioners of the State Bar of Michigan, and upon payment of dues for the current year, shall be enrolled as a Member of the Section.

Free Membership for Law Students and Law Grads. A discussion ensued regarding offering free membership in the Section to law students. Free membership is offered to law students by many other Sections. A motion was made that law students and law grads that have not yet passed the Bar will get free membership in the Section. The motion was seconded and passed unanimously, 10-0-0.

The section's proposed change does not conflict with the Supreme Court Rules or the State Bar of Michigan Bylaws. Therefore, it is recommended to the Board of Commissioners that the proposed change be APPROVED.

Memo to the Board of Commissioners on the Proposed SBM Investment Policy Changes

At the Finance Committee meeting on January 26, 2018, the SBM Investment Policy was on the agenda for review as required every two years. A subcommittee of the Finance Committee consisting of 4 of the 6 Finance Committee members was formed to review the SBM Investment Policy and make recommended changes.

The Investment Subcommittee of the Finance Committee met by conference call on February 20, 2018 at 11:00 AM to discuss updates to the SBM Investment Policy. Members of the Investment Subcommittee on the call included: Dana Warnez, Chair, Michael Hohouser, Shenique Moss, and Greg Ulrich. Staff assisting the subcommittee on the call were: Jim Horsch, Cliff Flood, Becky Weaver and Tina Bellinger

Cliff Flood reported that there have been no changes to PA 20 (the Michigan act that public entities follow governing investments and that the SBM's policy is patterned after).

Jim Horsch proposed changes to increase the threshold of the State Bar funds held by financial institutions in order to increase investment income and help ease the burden of banking administration, while still providing for prudent security and diversity of invested funds. Jim reviewed the list of financial institutions (both in CDs and bank accounts) that SBM could invest more in at higher rates if the policy changes were implemented. As examples, the SBM could invest close to \$2 million more in bank accounts at rates of 1.10% and 1.25%, and invest close to \$4 million more in banks with CDs ranging from 1.6% to over 2%. He also answered questions of the committee on our current investments.

After discussion, a motion was made and seconded by the Investment Subcommittee to approve the proposed changes to the SBM Investment Policy. Jim sent a memo and relined version of the policy changes approved by the subcommittee to the full Finance Committee for review, and there were no objections to the subcommittee's recommendation.

The attached redline version of the proposed investment policy shows the changes recommended for BOC approval. The February 2018 cash and investment report is included in the BOC financial reports for reference.

Investment Policy of the State Bar of Michigan
(Approved For approval by the Board of Commissioners on
January 22, 2016 April 20, 2018)

I. Purpose

It is the policy of the State Bar of Michigan to invest its funds in a manner that will provide the highest investment return with the maximum security while meeting the daily cash flow needs of the State Bar of Michigan and complying with all state and federal statutes.

II. Scope

The investment policy applies to all financial assets of the State Bar of Michigan including the Administrative Fund, the Client Protection Fund, and the funds of the Sections; but does not apply to the investment of SBM Retirement Health Care Trust funds, SBM Retirement Plan funds, or SBM 457b Plan funds. This investment policy supersedes any prior investment policy for the Administrative Fund, the Client Protection Fund and the funds of the Sections.

III. Objectives

The primary objectives, in priority order, of the State Bar of Michigan's investment activities shall be:

Safety - Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. No more than the amounts identified below may be invested in any one financial institution, unless the deposits are completely FDIC insured, and the financial institutions maintain the specified total assets and star ratings on the Bankrate.com Safe and Sound rating system at <http://www.bankrate.com/rates/safe-sound/bank-ratings-search.aspx>:

- Up to \$5 million dollars – financial institutions with a 4 star minimum rating and at least \$1,000 billion in total assets
- Up to \$4 million dollars – financial institutions with a 4 star minimum rating and at least \$1,000 \$100 billion in total assets
- Up to \$3 million dollars – financial institutions with a 4 star minimum rating and at least \$100 \$10 billion in total assets
- Up to \$2 million dollars – financial institutions with a 4 star minimum rating and at least \$10 \$1 billion in total assets
- Up to \$1 million dollars – financial institutions with a 3 star minimum rating

The star ratings and total assets for each financial institution shall be published each month in the SBM Cash and Investment Report. If a financial institution's star rating or total assets with SBM deposits falls below the minimum star ratings, the financial institution shall be reviewed for a reduction in invested amount by the Finance Committee not later than the next regularly scheduled Finance Committee meeting.

Diversification - The investments will be diversified by security type and institution in order to reduce portfolio risk.

Liquidity - The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. The SBM's cash and investments may be held in instruments with maturities not to exceed 5 years without express approval from the Finance Committee. The Finance Committee shall expressly approve the purchase of any investments with maturities greater than 5 years.

Return on Investment - The investment portfolio shall be designed with the objective of obtaining a high rate of return throughout the budgetary and economic cycles, taking into account the investment risk constraints and the cash flow characteristics of the portfolio.

IV. Prudence

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

V. Delegation of Authority to Make Investments

Authority to manage the State Bar of Michigan investments is the responsibility of the Treasurer of the State Bar of Michigan. The Executive Director and the Director of Finance & Administration are expressly authorized on the Treasurer's behalf to manage investments and make investment transactions in accordance with this policy. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Finance Committee.

VI. Authorized investments

The State Bar of Michigan may invest its funds in the following:

A. Bonds, securities, and other obligations of the United States or an agency or instrumentality of the United States.

B. Certificates of deposit (including certificates of deposit meeting the requirements of subsection 5 of PA 20 of 1943), savings accounts, deposit accounts (including deposit accounts meeting the requirements of subsection 6 of PA 20 of 1943), or depository receipts of a financial institution eligible to be a depository of funds in Michigan.

C. Commercial paper rated at the time of purchase within the 2 highest classifications established by not less than 2 standard rating services and that matures not more than 270 days after the date of purchase.

D. Repurchase agreements consisting of instruments in subdivision A.

E. Banker's acceptances of United States banks.

F. Obligations of this state or any of its political subdivisions that at the time of purchase are rated as investment grade by not less than 1 standard rating service.

G. Money market mutual funds registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, with the authority to purchase only investment vehicles that are legal for direct investment by local units of government in Michigan pursuant to Public Act 20 of 1943 as amended. This authorization is limited to securities whose intention is to maintain a net asset value of \$1.00 per share.

H. Obligations described in subdivisions A through G if purchased through an Interlocal agreement under the urban cooperation act of 1967. 1967 (ExSess) PA 7, MCL 124.501 to 124.512.

I. Investment pools organized under the surplus funds investment pool act, 1982 PA 367, MCL 129.111 to 129.118.

VII. Safekeeping and Custody

The State Bar of Michigan shall invest on a cash basis in all security transactions, including collateral for repurchase agreements and financial institution deposits. Securities may be held by a third party custodian designated by the Finance Committee and evidenced by safekeeping receipts.

VIII. Reporting

The Director of Finance & Administration shall compile a quarterly report for the Finance Committee, and the Treasurer shall make a quarterly report to the Board of Commissioners. This report shall include the type of investment, date of maturity, amount of investment, rate of interest and credit rating when applicable. This report shall be prepared in a manner that will allow the Board of Commissioners to ascertain whether investment activities during the reporting period have conformed to the investment policy.

IX. Policy Review

The investment policy shall be reviewed by the Finance Committee whenever Public Act 20 of 1943 is amended and no less than once every two years. The Finance Committee shall recommend changes, if any, to the Board of Commissioners for approval. The review process shall ensure that the investment policy fulfills the primary objectives in III, while keeping pace with legal, financial and economic trends.

Proposed Auditor Selection and Rotation Policy

April 11, 2018

SBM Finance Staff will conduct an RFP for audit services every three years, unless waived by audit committee and approved by BOC.

The Audit Committee recommends auditors to the BOC based upon qualifications, experience, and cost. The auditors must be independent, and must be licensed CPAs. The BOC considers the Audit Committee recommendation and has final approval of the auditors.

The current auditors may be reselected for recommendation by the Audit Committee based on the following conditions:

Audit firm rotation shall occur at least every 9 years, unless waived by audit committee and approved by BOC.¹

Audit partner rotation shall occur at least every 5 years, unless waived by audit committee and approved by BOC.

Any waiver of Audit Firm or Partner rotation shall be presented with specificity to BOC and must be for good and reasonable cause. Rotation policy shall be amended upon any issuance of professional standards by the AICPA giving clear direction that conflicts with this policy.

¹ *Comments by the Auditing Standards Committee of the Auditing Section of the American Accounting Association on PCAOB Rulemaking Docket Matter No. 37: PCAOB Release No. 2011-006, Concept Release on Auditor Independence and Audit Firm Rotation.* Neither Audit Firm rotation nor Audit Partner Rotation are mandatory, and the AICPA recommends a balance between addressing concerns about independence, objectivity, and professional skepticism through its inspections to achieve similar results without broader economic costs and a sacrifice of the quality of the audit.

COMMENTARY

Comments by the Auditing Standards Committee of the Auditing Section of the American Accounting Association on PCAOB Rulemaking Docket Matter No. 37: PCAOB Release No. 2011-006, *Concept Release on Auditor Independence and Audit Firm Rotation*

Participating Committee Members:

Keith L. Jones, Jagadison K. Aier, Duane M. Brandon, Tina D. Carpenter, Lisa M. Gaynor, W. Robert Knechel, Mikhail B. Pevzner, Brad J. Reed, and Paul L. Walker

SUMMARY: In August 2011, the Public Company Accounting Oversight Board (PCAOB or Board) issued a concept release to solicit public comment on the potential direction of a proposed standard-setting project on means to enhance auditor independence, objectivity, and professional skepticism. The Concept Release sought comments on and explores in detail the possibility of mandatory audit firm rotation. The PCAOB provided for a 121-day exposure period (from August 16 to December 14, 2011) for interested parties to examine and provide comments on the concept release. The Auditing Standards Committee of the Auditing Section of the American Accounting Association provided the comments in the letter below (dated December 13, 2011) to the PCAOB on PCAOB Rulemaking Docket Matter No. 37: PCAOB Release No. 2011-006, *Concept Release on Auditor Independence and Audit Firm Rotation*.

Data Availability: Information about and access to the release are available at: http://pcaobus.org/Rules/Rulemaking/Docket037/Release_2011-006.pdf

RE: PCAOB RULEMAKING DOCKET MATTER NO. 37: PCAOB RELEASE NO. 2011-006, *CONCEPT RELEASE ON AUDITOR INDEPENDENCE AND AUDIT FIRM ROTATION*

Submitted: January 2012
Accepted: January 2012
Published Online: February 2012

Dear Board Members:

The Auditing Standards Committee of the Auditing Section of the American Accounting Association is pleased to provide comments on the PCAOB Rulemaking Docket Matter No. 37: PCAOB Release No. 2011-006, *Concept Release on Auditor Independence and Audit Firm Rotation*.

The views expressed in this letter are those of the members of the Auditing Standards Committee and do not reflect an official position of the American Accounting Association. In addition, the comments reflect the overall consensus view of the Committee, not necessarily the views of every individual member.

We hope that our attached comments and suggestions are helpful and will assist the Board. If the Board has any questions about our input, please feel free to contact our committee chair for any follow-up.

Respectfully submitted,

Auditing Standards Committee

Auditing Section—American Accounting Association

Contributors:

Chair—Keith L. Jones, George Mason University

Jagadison K. Aier, George Mason University

Duane M. Brandon, Auburn University

Tina D. Carpenter, The University of Georgia

Lisa M. Gaynor, University of South Florida

W. Robert Knechel, University of Florida

Mikhail B. Pevzner, George Mason University

Brad J. Reed, University of Southern Illinois

Paul L. Walker, University of Virginia

RESPONSES TO SPECIFIC QUESTIONS IN THE RELEASE

Section III (D). General Questions

Should the Board focus on enhancing auditor independence, objectivity, and professional skepticism? How significant are the problems in those areas relative to problems in other areas on which the Board might focus? Should the Board simply defer consideration of any proposals to enhance auditor independence, objectivity, and professional skepticism?

Auditor independence, objectivity, and professional skepticism are cornerstones of the audit profession, and the PCAOB should continue to focus on improving them to serve the interests of capital market participants and users of financial information. Given the evolving changes in accounting standards and increasing regulatory requirements for financial reporting, the Committee believes that there now is a greater need for the Board to consider ways to help improve auditors' judgments and mindsets in facing new challenges, to ensure that the financial statements continue to reflect a true and fair view of a company's performance, resources, and liabilities.

The Committee also recognizes that independence, objectivity, and professional skepticism are difficult to define and even harder to evaluate (other than when they obviously are lacking). Thus, any regulation is easily justified by simply waving at these concepts, because nobody would argue against improving independence, objectivity, and skepticism. So while they are certainly worthwhile goals, they are much more problematic as a guide to better practice, especially through

regulation. The Board would be well served to pause and consider not just if more regulation is needed, but why current regulation is not achieving the desired level of independence, objectivity, and professional skepticism.

Would audit firm rotation enhance auditor independence, objectivity, and professional skepticism?

A mandatory audit firm rotation proposal is premised on two assumptions: (1) a long-term relationship between a company and its audit firm would impinge on the auditor's independence and impair their ability to be objective and neutral, and (2) mandatory audit firm rotation would resolve problems (if any) associated with long-term association between companies and their audit firms. The Committee believes that, while mandatory firm rotation could lead to improved perceptions of auditor independence, objectivity, and professional skepticism, there is no evidence or research that supports the PCAOB's conjectures.

Two recent studies performed subsequent to the passage of the Sarbanes-Oxley Act (e.g., Myers et al. 2003; Kaplan and Mauldin 2008) provide additional reasons to question the need for and benefit of mandatory audit firm rotation. In a sample of firm-years from 1988 to 2000, Myers et al. (2003) do not find evidence to support concerns about lower audit quality associated with longer auditor tenure. Instead, they document *higher* earnings quality associated with longer auditor tenure. They suggest that in the current audit environment, auditors with longer tenure, on average, put greater constraints on extreme management decisions in financial reporting, thus yielding evidence contrary to the claim that earnings quality deteriorates with extended auditor tenure.

Kaplan and Mauldin (2008) use an experimental setting to examine non-professional investors' judgments regarding *audit firm* rotation compared to *audit partner* rotation. The authors find no significant differences in non-professional investors' beliefs about auditor independence between a group that evaluated five-year audit firm rotation versus a group that evaluated five-year audit partner rotation (already required by SOX). In other words, investors' independence judgments for auditors are not incrementally different for audit firm rotation above and beyond the already required audit partner rotation. The already imposed partner rotation seems sufficient to create the same perceived benefits for independence, objectivity, and professional skepticism, with no additional costs. Additional analyses also suggest that non-professional investors seem to believe that auditors are more likely to be independent in the presence of a strong audit committee.

The Committee also believes that mandatory firm rotation can present a serious obstacle to auditors in conducting their independent and objective examination of financial reports. Companies may be reluctant to share information about future business plans that may have accounting implications with an outgoing auditor.

What are the advantages and disadvantages of mandatory audit firm rotation? If there are potential disadvantages or unintended consequences, are there ways a rotation requirement could be structured to avoid or minimize them?

Limited academic research suggests that mandatory audit firm rotation may have more potential disadvantages and unintended consequences than advantages. These issues relate to audit quality, audit costs, and audit specialization.

Audit quality. One of the consequences of mandatory firm rotation could be an increase in the number of audit failures. The Treadway Commission Report (Committee of Sponsoring Organizations of the Treadway Commission [COSO] 1987) suggests that a significant number of financial frauds involved companies that had recently changed their auditor, and others suggest that a greater proportion of audit failures occur on newly acquired audit clients (Berton 1991; Petty

and Cuganesan 1996; Geiger and Raghunandan 2002; Johnson et al. 2002; Myers et al. 2003; Carcello and Nagy 2004; Stanley and DeZoort 2007; Davis et al. 2009; Gul et al. 2009). Further, Palmrose (1986, 1991) documents greater litigation risk to auditors in the early years of an engagement, and the AICPA's Quality Control Inquiry Committee of the Securities and Exchange Commission (SEC) Practice Section concluded that, in its analysis of 406 cases of alleged auditor failures between 1979 and 1991, audit failure occurred almost three times more often when the audit firm was engaged in its first or second year (AICPA 1992).

Audit costs. Mandatory firm rotation could increase audit fees. The Cohen Commission (1978) concluded that fees and time budgets were serious concerns that would be exacerbated by putting auditors in situations in which new clients are up for bid more often. There is both experimental and archival evidence that fee and time budget pressures can lead to reduced audit quality (Alderman and Deitrick 1982; DeZoort and Lord 1997; Coram et al. 2004; Ettredge et al. 2011). Further, auditors consistently discount audit fees for new engagements by an average of around 24 percent (Simon and Francis 1988; Ghosh and Pawlewicz 2009; Sankaraguruswamy and Whisenant 2009). However, firms might stop discounting to cover the increased costs. If one considers an audit fee as reflecting a set of services bundled across time, then either the total expected fee must increase given the reduced payback period, or costs must decrease, suggesting less effort and a loss of audit quality. The Committee assumes that neither is acceptable.

The increase in costs likely will be substantial for large, multinational firms with complex accounting issues because of the steep learning curve. In addition, small firms also will bear a substantial burden, as a portion of the incremental audit fees involved with a new client is fixed and/or sticky. Collectively, the cost to U.S. client-firms for audit services will increase as a result of audit firm rotation, and such costs will be passed on to shareholders and/or consumers.

Another factor to consider is that if audits go up for bid more often, large audit firms are better at bidding on new clients. If large audit firms are capable of obtaining more new clients because of their effective bidding, the end result could be even more market concentration than we currently have.

Audit specialization. Mandatory audit firm rotation could have the unintended consequence of increasing a "myopic" view of a client by the auditor. That is, if an auditor knows that after ten years, he or she will have to give up a client, would he or she have incentive to invest in the necessary audit quality, in expanding and improving its quality control systems, in developing better and deeper relationships with a client? It is possible that, as a result of mandatory audit firm rotation, we will see a "commoditization" of audits. Some audit firms are specialized in certain industries, and mandatory rotation may result in a loss of that specialized knowledge. Munoz et al. (2001) show that broad experience facilitates accountants in developing appropriate knowledge structures, while specific domain experience helps them maximize their performance. As documented by Shelton (1999), experienced auditors (audit managers and partners) are less likely to be influenced by irrelevant information in their judgments than inexperienced auditors (audit seniors). Further, investors and information intermediaries associate auditor tenure with higher audit quality (Ghosh and Moon 2005), and auditors with longer tenure tend to place greater constraints on management's discretion (Myers et al. 2003).

Audits could become much less client-specific and more targeted to apply to larger groups of clients in order to minimize switching costs resulting from mandatory firm rotation. Auditors may have to become much more generalist than specialist in nature if their audit firm does not have a large presence in a particular industry, which would easily allow them to move across clients in the same specialty. Finally, recent regulatory financial reporting requirements, such as Sarbanes-

Oxley (2002) and changing accounting standards (Financial Accounting Standards Board [FASB]/ International Financial Reporting Standards [IFRS]), have brought about an immediate and urgent need for audit specialists who have a more detailed understanding of a client's industry and operations in order to ensure that the client adheres to financial reporting requirements. Mandating audit firm rotation at this juncture would add additional complications.

To minimize these overwhelming disadvantages of changing auditors, the PCAOB also needs to consider whether mandatory firm rotation should be accompanied by complementary changes to existing requirements. For example, if, as some have suggested, audit risk is greater in the early years of an auditor-client relationship because of the lack of experience with the client, the PCAOB should consider additional quality control or other procedures to mitigate that risk. Such procedures could include (1) heightened internal supervision or oversight requirements for the first year or two of a new engagement, and (2) increased required communications between predecessor and successor auditors and the sharing of working papers. Overall, the Committee feels that such steps, while necessary to mitigate the negative outcomes associated with mandatory firm rotation, would further increase the costs and burden to companies in trying to implement the new requirement.

Firm rotation versus individual auditor rotation. Rotating audit firms may not always lead to the rotation of individual auditors, due to staffing constraints. For example, assume that the Detroit office of Deloitte had to rotate off the audit of General Motors (GM). The loss of this audit engagement would inevitably lead to a surplus of audit staff in Deloitte's Detroit office. The addition of this engagement at another audit firm would inevitably cause a shortage of staff in their Detroit office. Thus, auditors who specialize in the GM audit could move to the new audit firm, as a reallocation of resources at both firms would become necessary. It is well known that former Andersen auditors were hired by firms that picked up their Andersen clients. It is unlikely that the lead audit partner would come from another firm, but mandatory audit partner rotation is already in place. Small audits will not likely have a significant effect on staff turnover, but the rotation of large audit engagements could create a class of auditors who specialize in the audit of a specific company and rotate across firms with the audit client. Thus, it is not clear that mandatory firm rotation would have the desired effect on professional skepticism.

Because there appears to be little or no relevant empirical data directly on mandatory rotation available, should the Board conduct a pilot program so that mandatory rotation of registered public accounting firms could be further studied before the Board determines whether to consider developing a more permanent requirement? How could such a program be structured?

The Committee believes that the PCAOB should conduct a pilot program if the PCAOB decides to implement a mandatory audit firm rotation policy. The PCAOB could initiate a long-term trial Voluntary Auditor Rotation program, and modify it as needed during the trial period before adopting a permanent requirement. The PCAOB could urge audit committees and boards of directors to voluntarily rotate auditors every ten years or be required to file a statement with the PCAOB (on the audit firm's ten-year anniversary with the client) outlining their rationale for the continued engagement of their long-term auditors.

The voluntary nature of the requirement would provide audit committees, boards, and management teams that have legitimate reasons for not rotating auditors to explain those reasons to the PCAOB and to the public. By making this report a requirement, the PCAOB may symbolically, and perhaps actually, increase the ability of the audit committee to advocate for auditor rotation when prudent reasons dictate.

The voluntary nature of the audit firm rotation requirement would enable issuers with legitimate reasons for not rotating auditors to explain those reasons. The issuers' shareholders can make their own determination about the legitimacy of reasons provided for non-rotation, and communicate their reactions either directly to the issuer, indirectly through public comment, or indirectly through their investment decisions.

Additionally, the Committee recommends that the Board undertake a study of mandatory audit firm rotation policies that exist at the state government level. For example, the state of Illinois requires all of its agencies to be audited annually by the Illinois State Auditor General, who hires special assistant auditors. The special assistant auditors are independent certified public accountants who conduct financial and compliance audits of state agencies. By Illinois law, each agency must change special assistant audit firms every six years. One very small study of Illinois universities that are audited under this six-year auditor rotation schedule found that auditors have the largest number of findings in the first year of the engagement, and the fewest number of findings in the last year of the engagement (Simmons et al. 2009). This finding suggests some improvement in audit quality in the early years of the engagement. The low level of audit quality findings in the final year of the engagement is consistent with the auditor having a low level of motivation in the year prior to rotating off of an audit engagement. One additional point about the mandatory audit rotation policy in Illinois involves cooperation between the predecessor and successor auditors. The Illinois Audit Act specifies that the audit working papers prepared by the CPA firms are the property of the State. Therefore, newly hired audit firms have complete access to the details of previous audit findings, which could reduce the start-up costs incurred by successor auditors.

While the regulatory environment is different for corporate clients and their auditors, the Committee encourages the PCAOB to consider creative ways to reduce start-up costs, if the PCAOB decides to implement a mandatory audit firm rotation policy.

According to the 2003 GAO Report, large firms estimated that a rotation requirement would increase initial year audit costs by more than 20 percent. What effect would a rotation requirement have on audit costs? Are there other costs the Board should consider, such as the potential time and disruption impact on company financial reporting staff as a result of a change in auditors? Are there implementation steps that could be taken to mitigate costs? The Board is particularly interested in any relevant empirical data commentators can provide in this area.

Our response to a previous question addresses some of these issues. It also is important to remember that the true cost of auditor switching is larger than just the audit fee, especially when the opportunity costs of manager and board time are considered.

A 2003 report by the Conference Board Commission on Public Trust and Private Enterprise recommended that audit committees consider rotation when, among other factors, "the audit firm has been employed by the company for a substantial period of time—e.g., over 10 years." To what extent have audit committees considered implementing a policy of audit firm rotation? If audit committees have not considered implementing such a policy, why not? What have been the experiences of any audit committees that have implemented a policy of rotation?

The Committee is not familiar with any research on experiences of audit committees that have implemented a rotation policy. However, the Committee agrees that the issue should be addressed with a survey of audit committee members.

Are there alternatives to mandatory rotation that the Board should consider that would meaningfully enhance auditor independence, objectivity, and professional skepticism? For example, should broader alternatives be considered that relate to a company's requirement to obtain an audit, such as joint audits or a requirement for the audit committee to solicit bids on the audit after a certain number of years with the same auditor? Could audit committee oversight of the engagement be otherwise enhanced in a way that meaningfully improves auditor independence?

The Committee believes that audit committees should be more responsible for ensuring auditor independence, but does not have enough information on joint audits or a requirement for audit committees to solicit bids on the audit after a certain number of years with the same auditor to allow it to suggest other alternatives.

Should the Board continue to seek to address its concerns about independence, objectivity, and professional skepticism through its current inspection program? Is there some enhanced or improved form of inspection that could better address the Board's concerns? If mandatory rotation were in place, could an enhanced inspection, perhaps focused particularly on professional skepticism, serve as a substitute in cases in which it would be unusually costly, disruptive or otherwise impracticable to rotate auditors?

The Committee believes that the PCAOB should continue to address concerns about independence, objectivity, and professional skepticism through its inspections to achieve similar results without broader economic costs. Mandating firm rotation not only increases the overall costs of audits, but also creates uncertainty and disparity in audit quality. The PCAOB should focus its attention on the incentives that audit partners have to relax professional skepticism. The incentives to relax professional skepticism relate to how the profitability of an audit engagement factors into an audit partner's compensation. An audit partner has incentives to maintain good relations with the client, to reduce expenses related to the audit, and to minimize any impact of misstatements uncovered at the client. A profitable audit partner is not necessarily a professionally skeptical audit partner. Until those incentives align, there will be threats to auditor independence, regardless of whether firms are required to rotate periodically. Rather than implementing a costly directive such as mandatory firm rotation, the PCAOB may be better served by looking at individual incentive structures that lead to unintended reductions in professional skepticism. Until audit partners are evaluated on and rewarded for their professional skepticism, there always will be threats to professional skepticism.

It may be helpful to consider other professions and how they are rewarded for their professional skepticism. For example, professional reporters make careers for themselves by uncovering a big story (e.g., Woodward and Bernstein). Professional prosecutors make careers for themselves by prosecuting high-profile cases. However, audit partners are not rewarded in the same manner for being skeptical. It is an open question as to whether it is good public policy that auditors are as skeptical as investigative reporters or professional prosecutors, but it is a question worth asking.

Section IV. Possible Approaches to Rulemaking

A. Term of Engagement

- 1. If the Board determined to move forward with development of a rotation proposal, what would be an appropriate term length?**

If the Board decides to move forward with a rotation proposal, the Committee suggests that the term should be long enough for the company to recover its “start-up” costs. The Committee recommends a term of no less than ten years.

2. Should different term lengths for different kinds of engagements be considered? If so, what characteristics, such as client size or industry, should this differentiation be based on?

If the Board decides to move forward, it would be advisable to have varying term lengths depending on the size of the audit engagement relative to the size of the audit firm (or the office where the audit is performed). Such distinctions would be similar to differentiating between large accelerated filers, accelerated filers, and non-accelerated filers when assessing an appropriate filing window. Another factor to consider is the availability of suitable competitors with appropriate audit expertise. For example, if an audit engagement requires specialized industry knowledge and other audit firms in the city are not likely to have specialists in that area, then rotating audit firms would not be advisable.

Mandatory rotation also could be required for companies that have significant prior misstated financial statements, auditors with long tenure, and for which the PCAOB has identified significant issues that can reasonably be associated with tenure.

3. Does audit effectiveness vary over an auditor’s tenure on a particular engagement? For example, are auditors either more or less effective at the beginning of a new client relationship? If there is a “learning curve” before auditors can become effective, generally how long is it, and does it vary significantly by client type?

As mentioned earlier, prior research suggests an association between new audits and audit failures (Berton 1991; Petty and Cuganesan 1996; Geiger and Raghunandan 2002; Johnson et al. 2002; Myers et al. 2003; Carcello and Nagy 2004; Stanley and DeZoort 2007; Davis et al. 2009; Gul et al. 2009), but whether that evidence is applicable to mandatory firm rotation is not clear.

For those that currently rotate auditors voluntarily, the PCAOB could conduct a study (or sponsor one) that examines whether new auditor-client relationships result in fewer problems, fewer audit adjustments, and/or fewer audit failures.

4. Some have also suggested that, in addition to being less effective at the beginning of an engagement, an auditor may be less diligent toward the end of the allowable term. On the other hand, others have suggested that auditors would be more diligent toward the end of the allowable term out of concern about what the replacement auditor might find. Would auditors become more or less diligent toward the end of their term? Does the answer depend on the length of the term?

The accountability literature would suggest that auditors would be more diligent toward the end of the audit term. This is because auditors would feel greater accountability for the quality of their work when they know that another auditor will be replacing them in the next year. For instance, Lord (1992) finds that experienced audit managers were less likely to issue an unqualified opinion when they were made accountable for their decisions. Similarly, DeZoort et al. (2006) show that auditors who are under higher levels of accountability pressure, by way of having to provide feedback and justification, provide more conservative materiality judgments and have less judgment variability. However, the advent of PCAOB inspections and audit partner rotation plays the same role of increasing accountability without the loss of audit effectiveness and efficiency due to mandatory audit firm rotation. In fact, changing firms may reduce this sense of accountability, as audit partners may feel more accountable to fellow partners (i.e., shame) than to unknown partners of another firm.

5. How much time should be required before a rotated firm could return to an engagement?

Considering the small number of audit firms that are truly available to large companies, setting a short period would be more reasonable. The start-up costs are sufficiently large that companies will most likely opt to keep the successor auditor for as long as they can before mandatory rotation. Thus, the PCAOB should not unduly further restrict firms' choice of auditors.

B. Scope of Potential Requirement

6. Should the Board consider requiring rotation for all issuer audits or just for some subset, such as audits of large issuers? Should the Board consider applying a rotation rule to some other subset of issuer audits? For example, are there reasons for applying a rotation requirement only to audits of companies in certain industries?

As previously discussed, the Board should consider if viable alternatives exist for each audit client based on industry and location. Negative unintended consequences from mandatory audit firm rotation are likely positively associated with client size and industry specialization. In other words, the audit quality of large audit clients in specialized industries is more likely to suffer from mandatory audit firm rotation.

C. Transition and Implementation Considerations

7. To what extent would a rotation requirement limit a company's choice of an auditor? Are there specific industries or regions in which a rotation requirement would present particular difficulties in identifying an auditor with the necessary skills and expertise? Is it likely that some smaller audit firms might decide to leave the public company audit market due to the level of uncertainty regarding their ongoing client portfolios?

As discussed above, market concentration and loss of specialization are possible disadvantages of a mandatory firm rotation rule.

8. If rotation would limit the choice of auditors, are there steps that could be taken to allow a company sufficient time to transition out of non-audit service arrangements with firms that could be engaged to perform the audit? Are there other steps that could be taken to address any limitation on auditor choice?

Consider an example in which a company uses PricewaterhouseCoopers (PwC) for audit services and Ernst & Young (EY) for nonaudit services. If rotation is required and the company must rotate away from PwC, the company must either choose between KPMG and Deloitte (assuming that only a Big 4 firm is an option) or must also switch its nonaudit service provider to include EY as a potential audit provider.

An indirect cost to audit firms is that companies may choose to hire consulting (versus audit) firms to provide nonaudit services to avoid the above loss of choice. This potential reduction of consulting services for Big 4 audit firms might represent an additional positive step supporting auditor independence; however, it may lead audit firms to shy away from performing audit services.

A transition period allowing one firm to perform both audit and nonaudit services does not seem to be consistent with the goal of increased auditor independence (to the extent that one believes joint provision reduces independence).

9. If rotation were required, would audit firms have the capacity to assign appropriately qualified personnel to new engagements? If they do not currently have that

capacity, could firms develop it in order to be able to compete for new clients, and would they do so?

If the Board determined to move forward, then it would need to effectively manage the transition to avoid mass rotation in a single year, and allow firms to structure plans to transition effectively and prevent any capacity issues.

- 10. Would rotation create unique challenges for audits of multinational companies? For voluntary rotations that have taken place, what have been the implementation and cost issues and how have they been managed?**
- 11. Would increased frequency of auditor changes disrupt audit firms' operations or interfere with their ability to focus on performing high quality audits? How would any such disruption vary by firm size? For example, would a rotation requirement pose fewer or more implementation issues for small firms than for large ones?**
- 12. Would audit firms respond to a rotation requirement by devoting fewer resources to improving the quality of their audits? Would firms focus more on non-audit services than on audit services?**

There are no empirical data on how auditors adjust their revenue mix in response to regulatory changes. Hypothetically, in response to the restrictions of mandatory audit firm rotation, auditors could start switching to providing nonaudit services, which would not be subject to audit firm rotation requirements. However, in our view, it is unlikely that such changes would be massive, since the accounting firms had to significantly downsize their consulting practices following independence scandals of the early 2000s, and as a result of the Sarbanes-Oxley Act. Auditing will be their "bread and butter," regardless. The question is whether mandatory audit firm rotation could negatively affect accounting firms' investments in their audit practices.

The table below provides a breakdown of the total fees paid during the 2000–2010 period by the type of accounting firm, using Audit Analytics and Compustat data.

Firm	Aggregate audit fees during 2000–2010	Aggregate Nonaudit fees during 2000–2010
Arthur Andersen (before dissolution)	\$ 837,242,778	\$ 1,647,635,089
Ernst & Young	\$ 21,861,321,402	\$ 8,423,968,775
Deloitte	\$ 20,272,753,804	\$ 8,413,020,382
KPMG	\$ 18,439,156,932	\$ 6,827,805,949
PwC	\$ 28,177,819,504	\$ 13,551,710,365
All others	\$ 4,193,322,039	\$ 915,698,827
Total	\$ 93,781,616,459	\$ 39,779,839,387

As is evident for almost all firms above, with the exception of Arthur Andersen, audit fees significantly exceed nonaudit fees; in aggregate, audit fees exceed nonaudit fees by a ratio of about 2.3:1. It is hard to imagine that there will be a wholesale switch from provision of audit services to provision of nonaudit services, even if mandatory rotation is instituted. In addition, we are aware of no empirical evidence suggesting that auditors would switch to greater provision of nonaudit services as a result of natural rotation (i.e., resignations and dismissals of auditors).

However, it is possible that over time, we could see a recurring trend to the growth of nonaudit practices within accounting firms, because those practices would not be subject to mandatory rotation requirements. If accounting firms were to turn more aggressively to provision of nonaudit

services when faced with rotation demands, one possible positive consequence would be clients' greater ability to acquire nonaudit services from other firms, because under current SOX provisions, firms are prohibited from providing many types of nonaudit services, and any provision of permitted nonaudit services has to be approved by the audit committee (Chen et al. 2008).

Regardless of what may happen, one could still ask a reasonable question; specifically, is provision of nonaudit services by itself "bad"? Relevant research is mixed; however, it seems that the majority of studies support the view that nonaudit services are not necessarily harmful. With respect to negative evidence, prior research provides some evidence that nonaudit services result in greater economic bonding between auditors and their clients. In particular, auditors are less likely to resign from clients paying higher nonaudit fees; however, this effect is less pronounced after passage of the Sarbanes-Oxley Act (Chen et al. 2008). Correspondingly, clients are more likely to fire auditors that charge higher audit fees, with this effect more pronounced among smaller clients (Ettredge et al. 2007).

Nonaudit fees also can have positive "spillover" effects, whereby knowledge gained from nonaudit services helps improve the quality of audit engagements. For example, Lim and Tan (2008) show that this spillover effect is more pronounced among specialist auditors. One potential explanation for this finding is that industry specialists benefit more from knowledge gleaned from nonaudit services (e.g., IT work) and, thus, can more efficiently transfer such learning to their audit engagements. However, Frankel et al. (2002) also raise the possibility that nonaudit services may have negatively affected auditor objectivity in the pre-SOX period, as manifested in a higher level of earnings management. Ferguson et al. (2004) find similar evidence of a positive association of earnings management and nonaudit services in the U.K. market. At the same time, Frankel et al.'s (2002) work has been challenged by several other studies that failed to find a similar relation between nonaudit fees and earnings management (e.g., Ashbaugh et al. 2003; Chung and Kallapur 2003; Larcker and Richardson 2004).

Therefore, it seems that while some studies support the view that nonaudit services increase the level of economic bonding with clients, no clear evidence exists supporting this view. Nonaudit services also could be beneficial in terms of "knowledge spillovers." Thus, even if accounting firms increase their investments in nonaudit services, research does not provide clear evidence that this will be undesirable.

Because nonaudit fees tend to originate more from highly specialized projects and have been cited as being more lucrative (Chen et al. 2008), we can see a renewed trend to invest more human and physical capital into nonaudit services in general. In other words, mandatory audit firm rotation could contribute to a change in the general profile of many accounting firms to more of a consulting or an advisory service, where auditing will be less dominant. However, this change will likely take a very long time. If this change occurs, it is hard to tell whether it will necessarily be negative. Its effect will depend on the relative trade-off between benefits of mandatory audit firm rotation in the form of greater auditors' objectivity and independence, and a possible long-term cost of under-investment into auditing services.

- 13. Would rotation have any effect on the market for non-audit services? Would any such effect be harmful or beneficial to investors?**
- 14. Some have expressed concern that rotation would lead to "opinion shopping," or that in competing for new engagements firms would offer favorable treatment. Others have suggested that rotation could be an antidote to opinion shopping because companies would know that they could not stick with a firm promising favorable treatment forever. Would opinion shopping be more or less likely if**

rotation were required? If rotation limits auditor choice, could it at the same time increase opinion shopping?

15. What effect would a rotation requirement have on competition for audit engagements? If competition would be increased, how might that affect audit quality?

Mandatory firm rotation might have both short- and long-term effects on competition. In the short term, it might force increased competition. However, in the long term, companies will have at least one less audit firm from which to choose each year of rotation. In addition, if firms choose to switch their primary function from the performance of audit services to nonaudit services, companies also will face a reduced number of firms from which to choose.

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Audit Firm Rotation vs. Audit Partner Rotation

by Bostrom | Dec 14, 2015 | Financial Management, News & Announcements

The Public Company Accounting Oversight Board (PCAOB) recently requested comment on whether audit firm rotation would improve the quality of audits. Currently, public companies are required to rotate engagement partners every five years; there is no requirement in the U.S. to rotate audit firms. While non public companies and non-profit organizations are not required to rotate audit firms or audit engagement partners, they need to think about the quality of their audits.

First, a little background on PCAOB, audit firm and audit partner rotation – and then some information on how non-profits can help ensure a sound audit.

Congress established the PCAOB, a non-profit corporation, to oversee the audits of public companies to help protect investors and the public interest by promoting informative, accurate, and independent audits. Apparently, its concern is that long-term relationships with audit firms may create problems with objectivity or independence (even though the audit engagement partner is rotated every five years). As expected, the large accounting firms, the American Institute of Certified Public Accountants (AICPA) and several large corporations and non-profit organizations came out against an audit firm rotation requirement. A large accounting firm (Ernst & Young) believes that mandatory rotation would come at a great expense to audit quality.

Studies have shown that audit failures come at a much higher rate during the first three years of an audit engagement, indicating a significant learning curve in the first three years of the engagement for the external auditor, especially with large public companies. The AICPA opposes mandatory rotation due to costly and unintended consequences. It

believes that mandatory rotation would hinder the ability of the audit committees to oversee external auditors. The AICPA believes that audit committees should be further strengthened and encouraged to take a more proactive role in overseeing the independent auditor, which would include selecting (or retaining) the most qualified firm for the job. In a letter co-signed by 31 large public companies and large non-profit organizations, they believed that mandatory firm rotation, if implemented, would harm corporate governance, reduce audit quality, diminish the role of audit committees, increase the incidence of undetected fraud and increase costs. Even the PCAOB recognized that mandatory firm rotation would represent a significant change in practice and would increase costs and cause disruptions for companies and external auditors. Former SEC Chairman Richard Breedon favors a system of rotation (10-12 years), but with an opportunity for extension if a PCAOB inspection indicates that there is no loss of independence. Former U.S. Comptroller General Charles Bowsher suggested implementing a system of rotation that would be limited to 25 to 40 of the very large companies. His argument: the cost issue related to rotation would be diminished by the very large budgets of these companies.

So, as the debate continues in the large public company world, what should the non public companies and non-profit organizations consider to ensure that they obtain quality audits?

1. A quality audit starts within the organization. An organization should strive to use qualified accounting professionals who prepare periodic financial statements for review by the board of directors (BOD). The organization should have strong internal controls and adequate segregation of duties.
2. Budgets. An organization needs to prepare budgets that are reviewed and approved by the BOD. Results need to be reported and compared to budget and variances need to be explained and understood.
3. Audit committee. Organizations should consider forming audit committees that hire and communicate with the outside auditor.
4. External auditor. The organization should hire an auditor that is well-qualified and has experience in the organization's industry. The firm should be right-sized. A small, local firm is not well qualified to audit a large, public company. Also, a large national firm may not give a small client the proper attention it needs to provide good value to the organization.
5. Partner rotation. As discussed above, public companies are required to rotate partners every five years. The AICPA believes that this procedure provides the necessary "fresh look" to ensure

objectivity. Non public companies and non-profit organizations are not required to rotate partners, but may want to consider the benefits of this process for their organizations.

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Audit Firm Bid Responses from NABE LISTSERVE

Questions: Do you have a policy for when you need to go out for bid for auditors? **No.** If so, how many years does your policy allow you to stay with your current audit firm before you are required to go out for bid? **N/A** Does your policy require you to change your audit firm every few years? **No.** If so, how many years? **N/A** Also, does your policy require you to rotate audit partners every few years if you don't change audit firms? **No.** If so, how many years? **N/A** I also would be interested in knowing if you have no policy on this issue. Our Foundation, which uses the same firm as the Bar, issued an RFP about three years ago. It was determined to stay with the same firm, which has been conducting audits of The Missouri Bar and related entities for decades.

State Bar of Michigan – 3 YEAR BID, BOARD MAY WAIVE AND RESELECT SAME AUDITOR. NO POLICY TO CHAGE AUDITORS OR ROATE PARTNERS.

The State Bar of Michigan requires going out for bids every 3 years (in accordance with our bidding policy), unless specifically waived by the Audit Committee and the Board of Commissioners. We also have no requirement or policy to change audit firms after so many years, or to change audit partners).

Missouri State Bar - NO POLICY

Do you have a policy for when you need to go out for bid for auditors? **No.**

If so, how many years does your policy allow you to stay with your current audit firm before you are required to go out for bid? **N/A**

Does your policy require you to change your audit firm every few years? **No.**

If so, how many years? **N/A**

Also, does your policy require you to rotate audit partners every few years if you don't change audit firms? **No.**

If so, how many years? **N/A**

Our Foundation, which uses the same firm as the Bar, issued an RFP about three years ago. It was determined to stay with the same firm, which has been conducting audits of The Missouri Bar and related entities for decades.

South Carolina State Bar – 3 YEAR BIDS, MAY RENEW WITH SAME FIRM BUT ROTATE AUDIT PARTNERS AFTER 3 RENEWALS

We contract for three year periods, so we seek bids during the third year. We may stay with the same firm for renewal. If we renew for a third period, we must rotate audit partners.

North Carolina Bar - 5 YEAR BIDS, MAY RESELECT SAME FIRM

Our board did pass a formal policy back in 2014. It requires a formal bid at least every 5 years. There is no requirement to change firms and our last RFP did result in remaining with the same firm, with significant contract savings. Our policy doesn't require partner rotation, but we know our current firm does rotate partners every 5 years as I believe is standard practice.

Cincinnati Bar – 4 YEAR BIDS, MAY STAY WITH SAME FIRM WITH PARTNER ROTATION

The Cincinnati Bar Association bids on a 4 year schedule which mirrors our 4 year contracted pricing. We can continue with the same firm for continuity, but would request a different partner at the end of the contract.

Hawaii State Bar – NO POLICY

We have no policies on this issue, but I think these are good ones to have. I will share with our finance people

Nebraska State Bar – 3 YEAR BIDS, MAY RESELECT THE SAME FIRM IF MOST QUALIFIED AND COST EFFECTIVE

It is the policy of the organization to contract with the CPA firm selected to audit the organization for a period not to exceed three years.

At the end of this period the organization's President-Elect, with the assistance of staff, will interview a minimum of three CPA firms specializing in auditing not-for-profit organization and make a recommendation to the Executive Council for final selection. Rewarding the contract for auditing services to the existing auditing firm is acceptable as long as the interview and selection criteria clearly indicate the firm is the most qualified and cost-effective.

Additionally, the contract awarding the audit to the CPA firm for a three-year-period will have a clause allowing the organization to terminate the contract before the end of the contract period if the current firm provides unsatisfactory service or if the financial condition of the organization prohibits the expense of a full audit.

We are in the process of updating our manual so am interested in best practices. We did put our audit out for bids last year and have a substantial three-year savings as a result. Our current firm is equally responsive and so far occasional questions have been considered a part of their base fee.

Rewarding the contract for auditing services to the existing auditing firm is acceptable as long as the interview and selection criteria clearly indicate the firm is the most qualified and cost-effective.

Ohio State Bar Association – NO BIDS, BUT ROTATE FIRMS AFTER 8 CONSECUTIVE YEARS

The Ohio State Bar does bid out new auditors. The policy states that no public accounting firm performs such services for the OSBA for more than eight (8) consecutive years at a time.

Georgia State Bar – ROTATE FIRMS EVERY 5 YEARS

Rotate every 5 years. Do not repeat same firm with different partner.

State Bar of Arizona – 5 YEAR BIDS, SAME FIRM CAN BE RETAINED FOR 5 MORE YEARS, THEN AFTER 10 YEARS MUST CHANGE AUDIT FIRMS

The audit firm selected shall demonstrate qualifications and experience in performing audits for comparably sized nonprofit entities and preparing required income tax returns.

The audit firm shall not be retained for consulting engagements which would impact the independence of the firm to conduct the audit.

The audit firm will not be retained for more than a five-year period; the same firm may be retained beyond five years, provided it is selected via a competitive process by the F&A Committee. Under no circumstances will the same audit firm be retained for successive periods beyond a total of ten years.

Not included in the policy is the need to rotate audit partners every few years if the same audit firm is retained. I do think it would be a good idea to incorporate the rotation (if feasible) as part of our best practices and revise our Financial Policies Manual to include this language.

**X. – B. Auditor Selection
Recommendation**

SBM Audit Committee Auditor Recommendation for the FY 2018 Audit

Background of State Bar of Michigan Auditors

The State Bar of Michigan engaged the firm of Plante Moran, (East Lansing office) to conduct the annual financial audit from FY 1996 to FY 2010. In 2001, the Executive Committee approved Plante Moran to conduct the FY 2001 audit, but agreed to put the FY 2002 audit out for bid. In 2002, after an RFP process and review of proposals from CPA firms by the Audit Subcommittee of the Finance Committee, the Board of Commissioners approved Plante Moran to continue as auditors for another three year period, at which time another RFP would be conducted to review and select an audit firm. In 2005, the Audit Subcommittee of the Finance Committee went through a similar RFP process under the leadership of Tony Jenkins, and selected Plante Moran to continue as auditors for a three year period. In 2008, the Audit Committee under the leadership of Julie Fershtman selected Plante Moran to continue as auditors for a three year period with the caveat that the audit partner be changed. As a result, the audit partner was changed from Mary Shafer to Jean Young.

After the completion of the FY 2010 audit, the Audit Committee under the leadership of Tom Rombach went out for bid and selected Andrews Hooper Pavlik PLC (Okemos office) to be the auditors for the FY 2011-FY 2013 audits, which was approved by the BOC. In 2014, a proposal was offered by AHP to extend the engagement for two years with an audit partner rotation from Jeff Fineis to Roger Hitchcock, which was accepted by the Audit Committee under the leadership of Don Rockwell, and approved by the BOC for FY 2014 and FY 2015. In 2016, a proposal was offered by AHP to extend the engagement for another two years with an audit partner rotation from Roger Hitchcock to Jeff Fineis, and the Audit Committee under the leadership of Denny Barnes accepted the proposal, and the BOC approved the extension with AHP for FY 2016 and FY 2017.

Recent Activity of the Audit Committee

The Audit Committee, under the leadership of Dana Warnez, met on January 22, 2018 to review a proposal to extend the engagement with AHP for another 2 years with a proposed audit partner rotation. The Audit Committee decided instead to go out for bid for audit services for the FY 2018-FY 2020 period, and did not recommend waiving the bidding requirement.

The Audit Committee and staff prepared and distributed a Request for Proposal (RFP). A total of 8 firms attended a pre-bid conference call on February 8, 2018. A total of 3 firms provided proposals for consideration by the deadline of March 7, 2018. These proposals were considered at a meeting of the Audit Committee in Detroit on March 23, 2018. After review of the proposals and after telephone interviews with each firm, the committee recommended at a teleconference on March 27, 2018 that the audit firm of Andrews Hooper Pavlik PLC be retained, as AHP was the least cost option, and the Audit Committee has been satisfied with their work. Furthermore, the Audit Committee agreed that a policy on

auditor selection, audit firm rotation, and audit partner rotation be formulated and recommended to the BOC at the April 20, 2018 Board of Commissioners meeting.

A proposed SBM policy on Auditor Selection, Audit Firm Rotation, and Audit Partner Rotation was drafted by CPA member Chelsea Rebeck, based on AICPA guidance, benchmarking that staff conducted on the National Association of Bar Executives listserve, and other information. The policy was sent to the Audit Committee for review and there were no objections. The proposed policy is provided in the BOC materials for its review along with background information.

Audit Committee

- 1) Dana Warnez, Chair of the Audit Committee and Finance Committee
- 2) Joe McGill, Member of the Board of Commissioners
- 3) Hon. David Perkins, Member of the Finance Committee
- 4) Chelsea Rebeck, CPA, Member of Finance Committee (non-BOC)
- 5) Brian Shekell, Member of the Board of Commissioners

Staff Liaison, Jim Horsch, Director of Finance & Administration

Schedule

- 1) Finalize the RFP – January 24, 2018
- 2) Send RFP letter to list of qualified firms and post on website – January 25, 2018
- 3) Pre-bid conference call with prospective auditors – February 8, 2018
- 4) Proposals due – March 7, 2018
- 5) Evaluate proposals – mid to late March/early April, 2018
- 6) Audit firm recommendation from the Audit Committee – by April 10, 2018
- 7) Auditor recommendation approved by BOC – April 20, 2018
- 8) Contact selected audit firm – April 20, 2018

“Request for Proposal” Document

See attached RFP.

Firms With Proposals from the Previous Four RFP's

- 1) Abraham & Gaffney, PC
- 2) Andrews Hooper Pavlik, PLC
- 3) Layton and Richardson, PC
- 4) Plante Moran, PLLC
- 5) Rehmann
- 6) Yeo & Yeo, PC

The 2018 RFP was sent to these firms, to any firms who have bid in the past, and to other qualified CPA firms in Michigan via e-mail, as well as by posting the RFP on the State Bar website.

Audit Firms Requesting to be on Pre-Bid Conference Call

- 1) Andrews Hooper Pavlik (Okemos) - Jamie L. Rabe, CPA, Senior Manager, (Current Auditor)
- 2) Baker Tilly (Southfield) - James G. Buckley, CPA
- 3) DoerenMayhew (Troy) - Sean McEvoy CPA Manager and Megan McCandlish, CPA Manager, Contacted by Patrick Fuelling CPA
- 4) Plante Moran (East Lansing) - Jean M. Young CPA, Partner (Former Auditor)
- 5) Rehmann (Lansing) - Mary H. McCune CPA, Principal
- 6) Taylor & Morgan (Flint) – Becki L. Flanagan, CPA
- 7) UHY LLP (Farmington Hills) - Marlene J. Beach, CPA, Principal, and Michael Santicchia CPA
- 8) Yeo & Yeo, CPAs (Lansing) – Mark R. Perry, CPA, Principal

Audit Firms who Submitted a Proposal (See attached details for each firm)

- 1) Andrews Hooper Pavlik, PLC - Current auditors since FY 2011
- 2) Plante Moran, PLLC - Previous auditors (FY 1996 through FY 2010)
- 3) UHY, LLP - First time a proposal has been received from this firm

Audit Services Fees Proposed by Each Firm

The fees for the three year period for audit services (including any assistance with implantation with GASB 75) are provided in the attached document. AHP was the least expensive, followed by PM, and then UHY.

Request for Proposal for Audit Services State Bar of Michigan

Dear CPA Firm,

The State Bar of Michigan is seeking bid proposals from qualified CPA firms for audit services beginning with the audit for the fiscal year ended September 30, 2018. Although the State Bar is not required to change audit firms, it is interested in considering proposals from all qualified firms.

The State Bar is a unified bar operating under the supervision of the Supreme Court of the State of Michigan. It is organized as a public body corporate and is located in downtown Lansing, Michigan. The State Bar has over 45,000 attorney members and a budget of over \$10 million annually. For financial reporting purposes, the State Bar of Michigan is a component unit of the State of Michigan, is included within the State of Michigan's Comprehensive Annual Financial Report, and follows GASB accounting standards. The State Bar has a fiscal year end of September 30. For further information, the State Bar's website is located at www.michbar.org.

Scope of Services Requested

The scope of the audit will include the State Bar's Administrative Fund, Client Protection Fund, the 42 Sections of the State Bar, and the State Bar of Michigan Retiree Health Care Trust. The most recent audited annual financial report (FY 2017) is located at the State Bar's website at www.michbar.org/generalinfo. The audit will also include the Attorney Discipline System (ADS), a related entity located in Detroit consisting of the Attorney Discipline Board and Attorney Grievance Commission. Their websites are located at www.adbmich.org and www.agcmi.com. The State Bar provides financial services, including financial reporting and accounting to the Attorney Discipline System. The Attorney Discipline System is an enterprise fund of the State of Michigan and also follows GASB accounting standards. The ADS audited annual financial report is similar in scope to the State Bar of Michigan's report.

Proposal Requirements

Your proposal should be in the form of an audit engagement letter, and should address the following basic requirements:

- 1) The audit must be completed so that a draft of the reports and crosswalk are ready for review by the Audit Committee by November 15 of each year, and so that a final annual report can be issued to the Supreme Court by December 31 of each year.

- 2) Electronic copies of the State Bar of Michigan audited financial report, the related crosswalk for the State of Michigan, and the Attorney Discipline System financial report will be provided, based on the information provided by the State Bar staff. The State Bar staff will handle printing and distribution of the reports, as necessary.

3) A meeting with the Audit Committee shall be held in December, as well as a meeting with the Finance Committee and Board of Commissioners in January. A conference call with the Attorney Discipline System representatives shall also be held in December.

4) A “management letter”, if any, shall be provided to the Audit Committee and Board of Commissioners of the SBM, and to the Boards of the Attorney Discipline Board and Attorney Grievance Commission, outlining any issues with the audit or internal accounting controls. Required communications with the entity boards can be sent via PDF to the State Bar, and we will distribute the auditor letters via e-mail. For reference, there are currently no management letter issues.

5) Information to be supplied with your proposal shall include: a) an overview of your firm; b) your firm’s qualifications, including specific experience with GASB, governmental units and not-for-profit entities; c) biographical sketches of the partner(s) and staff who would be assigned to this engagement; d) an estimate of the hours required for the engagement; e) the proposed audit fee (including any additional costs not part of the audit fee if any); f) payment provisions requested; g) client references; h) other services your firm provides; i) proof of liability insurance and amount; and j) agreement to indemnify the State Bar of Michigan from any liability resulting from the auditor’s work on this engagement.

6) The State Bar does not expect to seek audit proposals for another three years after acceptance of the requested proposal. Therefore, the proposed audit service fees included in your proposal should address each of the next three years.

Pre-Bid Conference

A pre-bid conference call will be held on Thursday, February 8, 2018 from 2:00 PM to 3:00 PM. While attendance is not mandatory, any questions submitted after that time must be provided in writing. If you are interested in attending this conference call, please contact us at jhorsch@michbar.org and we will provide the conference call number and passcode.

Successful Proposal - Selection Criteria

The criteria for selection of the successful proposal will include general experience, qualifications, reputation, experience with GASB, experience with similar organizations, and the audit fee. Although the audit fee will be an important factor, it will not be the only factor considered.

Due Date for Proposals

Proposals must be received by 5:00 PM on Wednesday, March 7, 2018. The proposal shall be submitted via e-mail in secure PDF format, marked to the attention of James C. Horsch, Director of Finance & Administration, at jhorsch@michbar.org. Proposals received after that time and date will not be considered. The State Bar of Michigan reserves the right to accept or reject any and all submitted proposals.

Notification of Successful Proposal and Questions

The State Bar of Michigan expects to notify the firm submitting the successful proposal on April 20, 2018. Selection will be made by the Audit Committee of the State Bar of Michigan with approval by the State Bar of Michigan Board of Commissioners. Questions regarding this proposal can be addressed during the pre-bid conference.

We look forward to receiving your proposal and discussing this further with you at the pre-bid conference.

Sincerely,

James C. Horsch, CAE, CMA, CFM
Director of Finance & Administration
306 Townsend
Lansing, Michigan 48933
(517) 346-6324
jhorsch@michbar.org

Audit Services Proposals - Summary

1) Andrews Hooper Pavlik, PLC

- Current auditors since FY 2011
- Founded in 1993 - 160 staff serves greater Lansing, Saginaw, Grand Rapids, Auburn Hills, Ann Arbor, Midland, Bay City and Owosso.
- Local Office – Okemos, Michigan
- Jeffrey Fineis, CPA, Audit Partner and Jamie Rabe, CPA, Engagement Senior Manager (can provide a partner rotation if requested)
- Governmental entity (GASB) experience
- Other management services available
- Cost – 2018 - \$34,950, 2019 - \$34,980, 2020 - \$35,960, inclusive of subsequent events and GASB 75 implementation assistance.
- 350 hours

2) UHY, LLP

- First time a proposal has been received from this firm
- Michael Santicchia, CPA, Partner, Marlene J. Beach, CPA, Principal, and Mike Federlein, CPA, Senior Manager
- 17 offices nationwide, 4 Michigan offices
- 750 staff, with 400 based in Michigan-
- Local office – Farmington Hills
- Firm founded in 1968, and more than 20 years of experience in governmental work
- Governmental entity (GASB) experience (cities, villages, counties, townships, State entities, and other governmental units)
- Other management services available
- Costs: 2018 - \$42,500, 2019 - \$42,500, 2020 - \$42,500, including subsequent events and GASB 75 assistance.
- 700 hours in 2018 and 600 hours in 2019 and 2020

3) Plante Moran, PLLC

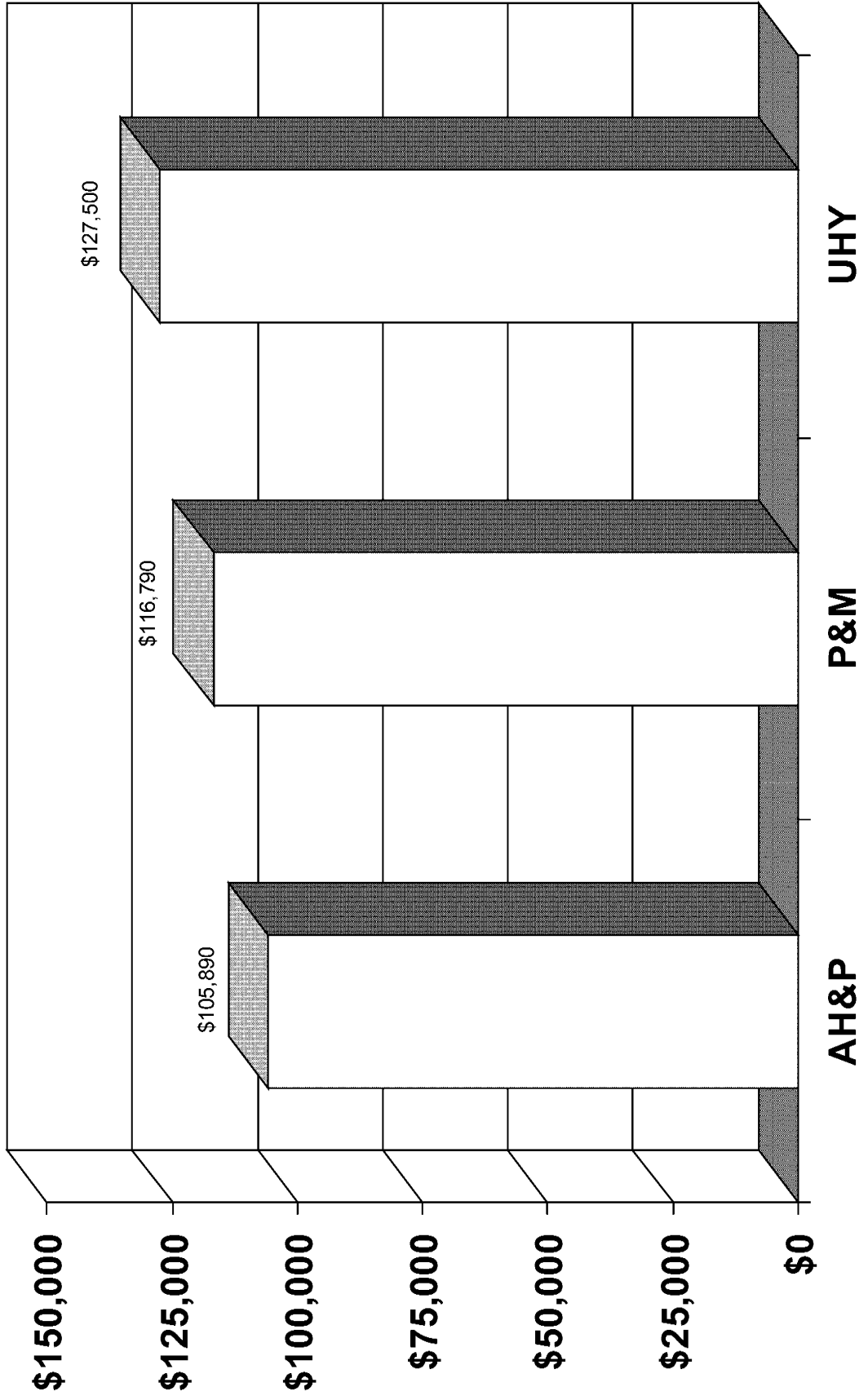
- Previous Auditors (FY 1996 through FY 2010)
- Founded in 1924 – 2,200 staff
- Has a governmental unit with 200 staff
- 15th largest CPA and consulting firm in US
- Local Office – East Lansing, Michigan
- Jean Young, CPA, Partner; Mary Shafer, CPA collaboration partner; Marie Steigel, CPA Senior Manager
- Governmental entity (GASB) experience

- Other management services available
- Cost – 2018 - \$38,900, 2019 -\$38,590, 2020 -\$39,300 (including GASB 75 implementation and subsequent events.)
- 259 hours

3 Year Cost of Audit Firms

Based on Proposals Submitted in March 2018

Confidential



**XI. – A. Proposed Ethics
Opinion R-25 on For-Profit
Online Matching Services**

MEMORANDUM

TO: Board of Commissioners
FROM: Professional Standards Committee
SUBJECT: Proposed Formal Ethics Opinion R-25
MEETING
DATE: April 20, 2018, Board of Commissioners meeting

Attached is proposed Formal Ethics Opinion R-25 that addresses for-profit online matching services. The Professional Standards Committee offers the proposed opinion for initial review and discussion.

Month __, 2018

SYLLABUS

Participation in a for-profit online matching service which for a fee matches prospective clients with lawyers constitutes an impermissible sharing of fees with a nonlawyer if the attorney's fee is paid to and controlled by the nonlawyer and the cost for the matching service is based on a percentage of the attorney's fee paid for the legal services provided by the lawyer. Therefore, a Michigan lawyer participating in this business model:

1. Violates MRPC 6.3(b), which prohibits a lawyer from participating in for-profit lawyer referral services.
2. Violates MRPC 5.4, which prohibits a lawyer from sharing fees with a nonlawyer.
3. Violates MRPC 7.2(c), which prohibits a lawyer from giving anything of value to recommend a lawyer's services unless it is a reasonable payment for advertising the lawyer's services, the usual charges for a not-for-profit lawyer referral service or payment for the sale of a law practice.
4. Subverts compliance with MRPC 1.15, which requires a lawyer to safeguard legal fees and expenses paid in advance by depositing them into a client trust account until the fee is earned and the expense is incurred.
5. Impedes compliance with MRPC 1.16(d) and its requirement that any unearned prepaid fees and unexpended advances on costs must be refunded.
6. Assists in the unauthorized practice of law in violation of MRPC 5.5(a) to the extent the online service holds itself out as a provider of legal services and guarantees satisfaction.
7. Violates MRPC 5.3 to the extent that the conduct of the matching service when performing administrative "back office" services traditionally done through the law firm does not comport with the professional obligations of the lawyer.

References: MRPC 1.15(b)-(d), (g); 1.16(a), (d); 5.3; 5.4; 5.5(a); 6.3(b); 7.2(c); R-021; RI-366

TEXT

The Committee has been asked to consider whether Michigan lawyers may ethically participate in online services that match prospective clients with lawyers. The assessment requires a careful review of the business model to determine whether it constitutes a for-profit lawyer referral service and if compliance with the terms for participation requires a Michigan lawyer to violate the Michigan Rules of Professional Conduct (MRPC).

Legal matching services are not new, but innovation in technology has spearheaded private entrepreneurial online matching services beyond the usual bar association non-profit lawyer referral services. To evaluate this issue, this Opinion reviews two online lawyer matching services to consider whether Michigan lawyers can remain ethically compliant if becoming a participating lawyer.

Model 1. One such business model has a national website that includes in its business name “legal services” to market its online matching services to consumers needing legal services. All participating lawyers are branded with the business name to associate them with the non-law firm entity in advertisements to drive prospective clients to the website to purchase legal services at fixed prices.

Many legal services are offered on the website for a fixed fee. For example, a consumer selects the desired legal services, pays a set price for a 15 minute consultation, pays another set price for review of a business document with a 30 minute consultation, or pays a set price for “start-to-finish” work. After paying the fixed fee, the consumer reviews profiles of participating lawyers and selects a lawyer to provide the legal services. Another legal service offered on the website is a 15 or 30 minute consultation with a participating lawyer for a fixed fee provided by the next available participating lawyer who calls the consumer within 15 minutes of the consumer’s purchase of the consultation. Many legal services are offered for this fee arrangement from consultation after a document review to full service “start-to-finish” work regarding a particular matter.

Both offerings require the consumer to make payment for the legal services through the website’s payment portal for deposit into the matching service’s account before any contact by the consumer with a participating lawyer. The website advertises that all legal services are backed by a “satisfaction guarantee,” which may include switching lawyers, substituting the services, or a refund.

The website markets to lawyers that it can match them with clients who have already paid for limited-scope legal services and that it takes care of all administrative matters, including collecting the fee, holding the fee until the legal services are provided, distributing the prepaid fee to the lawyer, and automatically deducting a percentage of the legal fee as a “marketing fee” from the lawyer’s operating account.

Model 2. Another for-profit online matching service specifically targets businesses needing legal services to match with its network of participating lawyers. The website has “legal” in its name to connect it with the provision of legal services. A business owner/contact uses the online platform to submit a completed attorney request form to permit a website project manager to generate a list of participating network attorneys matching the selection criteria. The business owner/contact receives an alert when the attorney matching list is ready for review and must then create an account to view the network-generated list, the attorney profiles, and pricing. The business owner/contact may receive a free half hour consultation with the network lawyers listed. After the consultation, each lawyer sends a pricing proposal using many alternative fee arrangements. After selecting a network attorney, the business client pays the legal services fee through the matching

service's website account. The website provides administrative support through centralized billing and invoices.

The website uses an application and vetting process to establish its network of participating lawyers. Besides meeting minimum requirements (a minimum years of professional experience and a minimum level of malpractice insurance coverage), network lawyers must offer preferred pricing to website business customers reflecting at least a net 17.5% discount off their standard rates inclusive of the matching service fee and alternative fee arrangements, including fixed and capped fees. Lawyers admitted to the network must maintain a 95% approval rating to remain in the network.

The website collects and holds all fees paid in advance by the business client until earned by the selected network attorney. The website gets a percentage (about 7.5%) of each legal fee remitted to the website and touts that the discounted rates offered by the network attorneys are 60-75% less than the traditional law firm solution because the website handles the back-office administrative processes traditionally done by attorneys through their law firm. The website guarantees client satisfaction by promising to credit the business client website account up to \$10,000 to complete any work not done right or inconsistent with the website's standards through another network attorney.

Numerous ethical concerns are presented by both business models. Although these online matching services do not call themselves lawyer referral services, the functional characteristics of a referral service are embedded in both business models. Traditionally, a lawyer referral service operates to refer prospective clients to participating lawyers who have met the qualifications set by the service, including experience in a particular practice area, geographic location, and minimum malpractice insurance coverage. The introductory comments to the ABA Model Supreme Court Rules Governing Lawyer Referrals characterizes that a lawyer referral program "is to provide the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's needs." Introduction, ABA Model Supreme Court Rules Governing Lawyer Referral And Information Services. These online matching services promise to match consumers in need of legal services with qualified lawyers. The prospective client's ability to choose a lawyer from the network of participating lawyer rather than the referral service identifying and making the selection does not negate the referral characteristics of the business model. Hence, the Committee concludes that both business models operate as for-profit lawyer referral services. A number of other jurisdictions agree.¹ Some jurisdictions have taken a contrary

¹ See South Carolina Ethics Opinion 17-06 (2017) (A website service that refers clients to a lawyer for a portion of the fee paid to the lawyer for legal services violates the prohibition of Rule 7.2(c) that precludes payments to a for-profit referral service); New Jersey Ethics Opinion 732 (2017) (Lawyers may not participate in the program because the program improperly requires a lawyer to pay an ethically impermissible referral fee.); Ohio Ethics Opinion 2016-3 (2016) (A lawyer's participation in an online for-profit service where the fee structure is tied specifically to individual client representations that a lawyer completes or to a percentage of the attorney's fee is not permissible. A lawyer may participate in a lawyer referral service only if it meets the requirements of Rule 7.2(b) and is registered with the Supreme Court of Ohio); Kentucky Ethics Opinion KBA E-429 (2008) (Some internet for-profit group marketing arrangements go beyond the mere pooling of finances of group advertisers because the participating lawyers pay a fee for a specific referral and thus function as an ethically impermissible for-profit lawyer referral service.); Arizona Ethics Opinion 05-08 (2005) (It is ethically impermissible for a lawyer to participate in a for-profit client/attorney internet matching service that substantially functions as a for-profit lawyer referral service because the

view based on differing ethical standards on what constitutes an ethically permissible lawyer referral service.²

For Michigan lawyers to participate in a lawyer referral service, it must meet the criteria in MRPC 6.3. The referral service must be a not-for-profit referral service, maintain registration with the State Bar, and operate in the public interest under the Rule. Both matching services considered in this Opinion are for-profit services and are not registered with the State Bar. Accordingly, a Michigan lawyer participating in either of these business models violates Rule 6.3(b).

Under both business models, the matching service participation requirements direct or regulate the client-lawyer relationship from its formation to termination. MRPC 5.4(c) prohibits a lawyer from allowing a third-party to “direct or regulate the lawyer’s professional judgment in rendering legal services.” In both business models, the prospective client must interact with and respond to the matching services requirements before having any access to the participating lawyers. The first business model requires payment in full for the desired legal service through the website payment portal before the client can connect with the lawyer. The other business model requires the prospective client to establish an account with the website before receiving the list of network lawyers meeting the client’s selection criteria. Both business models define the services offered, the fees charged, when and how they are paid, and the refund policy. In the first business model, the scope and length of the lawyer-client relationship is determined by the matching service. It even specifies the time the lawyer will spend on the matter for the predetermined set fee. Such matters should be made by or directed by the lawyer after consultation with prospective client regarding the client’s specific legal matter. Both business models conflict with a lawyer’s ethical obligation to maintain independent professional judgment in rendering legal services as required by MRPC 5.4(c).³

Also, with both business models, the fee paid to the matching service is based on a percentage of the attorney’s fees generated for the legal services provided by the attorney for each client matter. MRPC 5.4(a) provides that unless an exception applies (none of which is applicable here), a

participating lawyer is paying the service for recommending the lawyer’s services contrary to ER 7.2(b)(2)); and Maryland Ethics Opinion 2001-03 (2001) (An internet service that brings clients and lawyers together and receives a portion of the fee paid for the legal services implicates the prohibition against for-profit referral services.).

2 See e.g., North Carolina Proposed 2017 Formal Ethics Opinion 6 (“Proposed opinion rules that a lawyer may participate in an online platform for finding and employing lawyers subject to certain conditions.” The Committee notes that the North Carolina Ethics Committee proposed amendments to certain rules of professional conduct and comments to enable lawyers to meet the conditions for participation.); and Nassau County Bar Association Ethics Opinion 2001-4 (New York, 2001) (“Subject to the operational structure and advertising content as described, an attorney may affiliate with an on-line legal services-related website.”).

3 See Pennsylvania Formal Ethics Opinion 2016-200 (2016) (Delegation to a nonlawyer of critical decisions and functions, such as whether the legal services have been satisfactorily performed or the advanced fee has been earned violates the lawyer’s ethical duty to exercise independent professional judgment.); and Ohio Ethics Opinion 2016-3 (2016) (“A lawyer must be cautious when considering a referral service that makes decisions that are clearly within the scope of the lawyer’s exercise of professional judgment on behalf of a client. Decisions such as setting limits on the amount of time a lawyer must spend on each client’s case, specifying a number of cases that a lawyer must agree to handle, limiting the scope of a lawyer’s representation of a client, or generally directing a lawyer’s representation of a client are all decisions that a lawyer is duty-bound to make.”).

“lawyer or law firm shall not share legal fees with a nonlawyer.” To avoid the inference of fee-splitting with nonlawyers, the first matching service electronically remits that amount of the advanced fee paid by the client to the lawyer’s designated account after the participating lawyer has provided the legal services and then immediately electronically withdraws from an account pre-designated by the lawyer its percentage of the earned attorney’s fee. Whereas, in the second business model, the matching service’s fee is embedded within the percentage discount network attorneys must offer prospective clients. In Informal Ethics Opinion RI-366 (2014), the Committee considered the method by which the nonlawyer was paid when it opined that “[a] lawyer’s participation in a marketing arrangement in which consumers purchase coupons for legal services from a vendor that retains a portion of the purchase price would entail an impermissible sharing of fees with a nonlawyer and, on that basis, is unethical pursuant to MRPC 5.4.” Similarly, if the matching service fee is a percentage of the fee for legal services for each client matter then this is an ethical impermissible fee splitting arrangement. Therefore, a lawyer participating in either business model is engaged in impermissible fee splitting with a nonlawyer contrary to MRPC 5.4(a). Our reasoning is consistent with other jurisdictions.⁴

In the first business model, the fee paid to the matching service is labeled a marketing fee. The second business model affixes no label to its fee. MRPC 7.2(c) prohibits a lawyer from giving anything of value for recommending the lawyer’s services except for the reasonable cost of advertisement, a reasonable non-for-profit lawyer referral service participation fee, or to purchase a law practice. The comments to MRPC 7.2 provide that a lawyer “is not permitted to pay another person for channeling professional work.” The advertisement exception under Rule 7.2(c) is the only possible exception for both business models. However, in both business models, the matching service is marketed to consumers as having an association with lawyers qualified to handle their legal matters. Legal consumers are driven to the matching service website based on the marketing brand of the matching service rather than any individual participating lawyer. A true advertising fee has no connection to the formation of an attorney client relationship or the amount of the attorney’s fee paid for the legal services, but is based on the value of the advertisement. Here, the matching service pricing structure is directly linked to the formation of an attorney client relationship and attorney fees generated. Further, a genuine advertising medium offers no

⁴ See South Carolina Ethics Opinion 17-06 (2017) (“Allowing the service to indirectly take a portion of the attorney’s fee by disguising it in two separate transactions does not negate the fact that the service is claiming a certain portion of the fee earned by the lawyer as its ‘per service marketing fee’” and is prohibited fee splitting); New Jersey Ethics Opinion 732 (2017) (Lawyers may not participate in the program because the program requires the lawyer to share a legal fee with a nonlawyer.); Ohio Ethics Opinion 2016-3 (2016) (An arrangement that makes the fee to the online service contingent upon the fee for legal services implicated the prohibition on fee splitting with a nonlawyer); Pennsylvania Formal Ethics Opinion 2016-200 (2016) (“The manner in which the payments are structured is not dispositive of whether the lawyer’s payment to the Business constitutes fee sharing. Rather, the manner in which the amount of the ‘marketing fee’ is established, taken in conjunction with what the lawyer is supposedly paying for, leads to the conclusion that the lawyer’s payment of such ‘marketing fees’ constitutes impermissible fee sharing with a non-lawyer.”); Indiana Ethics Opinion No 1 (2012) (An online group marketing service that receives a percentage of the fee paid for legal service for channeling clients to a lawyer violates the prohibition against fee splitting with nonlawyers.); Alabama Ethics Opinion RO 2012-01 (2012) (The percentage taken by a site that is not tied to the reasonable cost of an advertisement violates the ethical prohibition of sharing fees with nonlawyers.); Kentucky Ethics Opinion KBA E-429 (2008) (Once the compensation system of an internet group marketing scheme becomes tied to the attorney’s fee earned for the referral it becomes a prohibited fee splitting with a nonlawyer.); and Maryland Ethics Opinion 2001-03 (2001) (The referral fee paid to the internet services constitutes a prohibited fee splitting with a nonlawyer.).

“satisfaction guarantee.” For all these reasons, the fee paid to the matching services is not ethically permissible under MRPC 7.2(c). Our perspective is analogous with many other jurisdictions.⁵

In both business models, the matching service collects and controls the attorney’s fees remitted by the legal consumer before legal services are provided by the participating lawyer. A lawyer must safeguard client funds by depositing them into a client trust account until earned and withdrawing/distributing the funds when earned. MRPC 1.15(b) and (g). In Formal Ethics Opinion R-21, the fiduciary obligations of lawyers was emphasized as follows:

MRPC 1.15(d) requires that “[a]ll client or third person funds” be deposited into an IOLTA or non-IOLTA account. “Client or third person funds” include unearned legal fees and advanced expenses that have been paid in advance, funds in which a third person has an interest, and funds in which two or more persons (one of whom may be the lawyer) claim an undivided interest. When the funds received are unearned fees and advanced costs or expenses, they must be held in trust until earned or expended.

The fiduciary obligations of lawyer under MRPC 1.15 are absolute, and not subject to partialling. Lawyers participating in either business model cannot adhere to the ethical obligations under MRPC 1.15.⁶

A lawyer has precise ethical duties when a dispute arises regarding entitlement of the attorney’s fees. When a dispute arises, MRPC 1.15(c) requires disputed funds be “kept separate by the lawyer until the dispute is resolved.” MRPC 1.15(c) further requires the lawyer to promptly distribute all portions of the property not in dispute. Yet again, since the matching service (not the lawyer) is

5 South Carolina Ethics Opinion 17-06 (2017) (“By basing the advertising charge to the lawyer on the fee collected for the work rather than having a fixed rate per referral or other reasonable cost for the advertisement, a lawyer utilizing this service cannot claim the exception to the prohibition of paying for referrals”); Ohio Ethics Opinion 2016-3 (2016) (The structure of the business model indicates that the fee paid by participating lawyers is not truly advertisement costs. “The Ohio Board previously set forth parameters to distinguish the reasonable amount of advertisement from referral fees as follows: 1) if the lawyer is required to pay an amount of money based on an actual number of people who contact or hire the lawyer, or an amount based on the percentage of the fee obtained from rendering the legal services; 2) if the third party will provide services that go beyond the ministerial function of placing the lawyer’s information into public view; or 3) if the third party will not clarify that the information is an advertisement, but rather, makes the information regarding the lawyer appear as if the third party is referring or recommending the lawyer, or that the lawyer is part of the third party’s services to its users.”); Indiana Ethics Opinion No 1 (2012) (The fee paid to the online service is not a true advertising cost because it is tied to the specific fee paid for legal services rather the reasonable cost of the advertisements.); Alabama Ethics Opinion RO 2012-01 (2012) (The percentage taken by the website is not based on the reasonable cost of advertising, e.g. traffic to the website.); and Kentucky Ethics Opinion KBA E-429 (2008) (When the online service becomes actively involved in matching or referring clients its fee is no longer for advertising and a lawyer is not permitted to give anything of value for the service.).

6 Participating lawyers cannot adhere to their duties to safeguard client funds, assure reasonableness of the fee, and refund an unearned fee when the nonlawyer online service holds and controls the advanced fee based on terms that it sets. See Ohio Ethics Opinion 2016-3 (2016), Indiana Ethics Opinion No 1 (2012), and Alabama Ethics Opinion RO 2012-01 (2012). Pennsylvania concurs except for 1.5(a) concerns as its ethics rules allow lawyers to participate in for-profit matching services. Pennsylvania Formal Ethics Opinion 2016-200 (2016).

paid the unearned attorney's fee, the lawyer may be barred from discharging the lawyer's obligations under Rule 1.15.⁷

The matching service's control of the unearned attorney's fees raises yet another ethical concern. Under MRPC 1.16 (a)(3), clients may discharge a lawyer with or without cause. Similarly, circumstances require the lawyer to decline or withdraw from the representation in the event of, for example, a conflict of interest or a competence issue. In such cases, the lawyer may have to return the entire fee, including the percentage earmarked for the matching service. MRPC 1.16(d) requires the lawyer to refund any "advance payment of fee that has not been earned." When addressing the coupon-related marketing scheme in RI-366, the Committee opined that:

Under circumstances in which a lawyer must decline a prospective representation generated by the proposed marketing arrangement for any reason, including concerns about competence or conflicts, the lawyer has a duty to refund the entire fee, including the Company's share, to the consumer. Regardless of whether the Company is holding the entire advance fee, or the Company has already transmitted fees to the lawyer, less the Company's share, it is unclear how the lawyer could comply with the obligations of MRPC 1.16(d) if the lawyer must decline a potential representation generated by this type of marketing.

Here, since the matching service (not the lawyer) is paid the unearned attorney's fee, the lawyer may be barred from discharging the lawyer's obligations under Rule 1.16.⁸

Finally, both matching service hold themselves out as legal services organizations based on their naming convention and marketing schemes used to drive legal consumers to their websites. Both matching service provides a "100 percent" personal guarantee about the lawyers' services. MRPC 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of regulating the legal profession in that jurisdiction, or assist another in doing so. This Rule "applies to the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person." Comment to MRPC 5.5(a). MRPC 5.4 (b)-(d) prohibit a lawyer from practicing law in any form with nonlawyers for a profit. Because the matching services hold themselves out as a legal services organizations, participating lawyers are aiding the unauthorized practice of law in violation of MRPC 5.5(a).⁹

⁷ See the references in note 5.

⁸ See the references in note 5.

⁹ See Ohio Ethics Opinion 2016-3 (2016) ("[A] lawyer involved in this type of referral service should verify that the nonlawyers of the company are not engaging in the practice of law, as the lawyer could be responsible for assisting in the unauthorized practice of law."); Pennsylvania Formal Ethics Opinion 2016-200 (2016) ("Participation in such a program could also raise potential concerns regarding assisting in the unauthorized practice of law, in violation of RPC 5.5(a).").

The Committee notes that MRPC 5.3 may also be implicated due to the matching service performing administrative “back office” services traditionally done through the law firm, such as client billing that includes confidential client information.¹⁰

Conclusion

In summary, Michigan lawyers must carefully review the business model structure of these innovative online matching services to determine whether they constitute a for-profit lawyer referral service under the MRPC despite how the matching service depicts its services. Michigan lawyers must further examine whether compliance with any terms for participation prohibit them from ethically meeting their professional duties.

Based on the two business models considered in this Opinion, a Michigan lawyer’s participation in a for-profit online matching service which for a fee matches prospective clients with lawyers constitutes an impermissible sharing of fees with a nonlawyer if the attorney’s fee is paid to and controlled by the nonlawyer and the cost for the matching service is based on a percentage of the attorney’s fee paid for the legal services provided by the lawyer. Therefore, a Michigan lawyer participating in this business model engages in unethical conduct because the lawyer:

1. Violates MRPC 6.3, which prohibits a lawyer from participating in for-profit lawyer referral services.
2. Violates MRPC 5.4, which prohibits a lawyer from sharing fees with a non-lawyer.
3. Violates MRPC 7.2(c), which prohibits a lawyer from giving anything of value to recommend a lawyer’s services unless it is a reasonable payment for advertising the lawyer’s services, the usual charges for a not-for-profit lawyer referral service or payment for the sale of a law practice.
4. Subverts compliance with MRPC 1.15, which requires a lawyer to safeguard legal fees and expenses paid in advance by depositing them into a client trust account until the fee is earned and the expense is incurred.
5. Impedes compliance with MRPC 1.16(d) and its requirement that any unearned prepaid fees and unexpended advances on costs must be refunded.
6. Assists in the unauthorized practice of law in violation of MRPC 5.5(a) to the extent the online service holds itself out as a provider of legal services and guarantees satisfaction.
7. Violates MRPC 5.3, to the extent the conduct of the matching service when performing administrative “back office” services traditionally done through the law firm does not comport with the professional obligations of the lawyer.

¹⁰ See Ohio Ethics Opinion 2016-3 (2016) and Pennsylvania Formal Ethics Opinion 2016-200 (2016).

**XII. – A. 50 Year
Honoree Resolution**

50-Year Golden Celebration Resolution

The Board of Commissioners of the State Bar of Michigan extends congratulations to our 50-year honorees for proudly serving our profession since 1968. We thank you for your unfailing loyalty and extraordinary contributions to the welfare of the citizens you serve. Your dedication to the rule of law and commitment to supporting the Constitutions of our nation and state, respecting our courts and judges, and practicing law with integrity, civility and concern for the public are deeply appreciated.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the State Bar of Michigan that honor, recognition and gratitude are bestowed on our honorees for their 50 years of membership in the State Bar of Michigan.

Adopted by the Board of Commissioners.

Jennifer M. Grieco, President

XII. – B. 2018
John W. Cummiskey
Award



Memorandum

To: State Bar of Michigan Board of Commissioners

From: Keith Morris and Maya Watson, Access to Justice Initiative (ATJI) Co-Chairs

Date: April 9, 2018

Re: 2018 John W. Cummiskey Nominee—Charles “David” Jones

The ATJI requests that the State Bar of Michigan Board of Commissioners support its recommendation that Charles “David” Jones receive the 2018 John W. Cummiskey Award. David’s long-standing commitment to pro bono service made him a standout among the other impressive nominees for this year’s award. A summary of the full slate of nominees for the 2018 Cummiskey Award is attached, as well as the nomination materials submitted on David’s behalf.

David is a retired Administrative Law Judge (ALJ) from the Michigan Administrative Hearing System who has been volunteering with Elder Law of Michigan (ELM) since September 2013. Since 2013, David has assisted approximately 900 seniors and has volunteered approximately 2,000 hours. David selflessly shares his time, knowledge, and expertise with ELM staff and clients. Prior to becoming an ALJ in 1977, David was a staff attorney with Legal Aid of Western Michigan.

Most of the seniors that ELM assists do not have the means to pay for legal services. Without David, these seniors may not have had access to any legal services. Getting legal advice from experienced attorneys on issues ranging from handling creditors, Medicaid/Medicare issues, and working out landlord/tenant issues, empowers and improves seniors’ economic security, and provides them with much-needed peace of mind. David’s dedication to ELM, along with other volunteers, means that ELM can assist more seniors.

There were five impressive nominees for the 2018 John W. Cummiskey Award. The ATJI formed a subcommittee to thoroughly review the nomination materials and recommend a winner for the award to the full membership of the ATJI. The ATJI unanimously voted to adopt the subcommittee’s recommendation that Charles “David” Jones receive this year’s award. Therefore, we ask that State Bar of Michigan Board of Commissioners support its recommendation that Charles “David” Jones receive the 2018 John W. Cummiskey Award.

**State Bar of Michigan
Access to Justice Initiative
2018 John W. Cummiskey Award
Summary of Nominations**

Award Criteria

The purpose of this award is to foster awareness of the need for involvement of the private bar in delivering legal services to the poor, by giving public recognition each year to a Michigan lawyer who has made a significant pro bono contribution to this effort. The award is established in the name of John W. Cummiskey of Grand Rapids, a leading advocate and activist in the cause of making legal services available to all, without regard to economic status.

	Nominee	Nominator
1	Charles (David) Jones*	Jadranko Tomic Bobas
2	John Mooney	Lynda Krupp
3	Jill Nylander*	Sherri Belknap
4	Kim Scott	Thom Linn
5	David Shaltz*	Doug Chalgian

*2017 nomination carried over. (Cummiskey Award nominations are eligible for consideration for two years.)

2018 Cummiskey Award Workgroup Members

There are five nominees for the 2018 Cummiskey Award. The deadline for nominations was Friday, February 16, 2018. The 2018 Cummiskey Award Workgroup was formed by the Access to Justice Initiative and consists of:

- Elizabeth Kamm, *Abdnour, Michigan State University*
- Caroline Bermudez-Jomaa, *Legal Aid & Defender Association*
- Jamie A. Hochman Herz, *Alzheimer's Association*
- Jean-Paul Rudell, *Bay de Noc Law Firm, PC*
- Emily M. Sullivan, *Huth Lynett*
- Rachel Renee Suhrbier, *Legal Aid of Western Michigan*
- Robert G. Mathis, *State Bar of Michigan*

Robert Mathis - Cummiskey Award [#7]

From: "State Bar of Michigan" <no-reply@wufoo.com>
To: <rmathis@mail.michbar.org>, <webmaster@mail.michbar.org>
Date: 1/23/2017 9:34 AM
Subject: Cummiskey Award [#7]

Name of Nominee: Charles David Jones
Title: Volunteer Attorney
Firm or Organization: Elder Law of Michigan
Address: 3815 W St Joseph St., Lansing, MI 48917
Phone: 517-349-0405
E-mail: djones@elderlawofmi.org
Name of Nominator: Jadranko Tomic Bobas
Title: Managing Attorney
Firm or Organization: Elder Law of Michigan
Address: 3815 W St Joseph St., Lansing, MI 48917
Phone: 517-505-6958
E-mail: jtomic-bobas@elderlawofmi.org


David is a retired Administrative Law Judge who has been volunteering one to two days per week at Elder Law of Michigan (ELM) since September 2013.

Since 2013, David has assisted approximately 900 seniors and has volunteered approximately 2,000 hours.


Most of the seniors' ELM assists do not have the means to pay for legal services. Without David, these seniors may not have had access to any legal services.

See attached resume.

Attach Document (Optional)

 [resume_cdj.pdf](#)
49.70 KB · PDF

Attach Additional Document (10MB Limit)

 [letter.pdf](#)
27.40 KB · PDF

To:

Mr. Robert Mathis
John W. Cummiskey Pro Bono Award
State Bar of Michigan

From:

Jadranko Tomic Bobas
Managing Attorney
Elder Law of Michigan

RE: John W. Cummiskey Pro Bono Award

Dear Mr. Mathis,

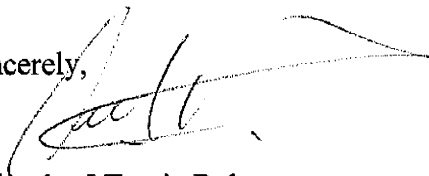
I am writing you to nominate Charles David Jones (David) for the John W. Cummiskey Pro Bono Award. David is a retired Administrative Law Judge who has been volunteering one to two days per week at Elder Law of Michigan (ELM) since September 2013. Dave selflessly shares his time, knowledge and expertise with the ELM staff and ELM clients.

ELM is a private non-profit organization that provides, among other things, legal services to eligible persons, the majority of whom are seniors. Due to budget restrictions, the demand for legal services greatly outweighs the current ELM staff. In 2015, ELM closed over 6,700 cases, and many clients have gone unassisted due to budget restrictions.

Most of the seniors' ELM assists do not have the means to pay for legal services. Without David, these seniors may not have had access to any legal services. Getting legal advice from experienced attorneys on issues ranging from handling creditors, Medicaid/Medicare issues, and working out landlord/tenant issues - empowers and improves seniors' economic security, and provides them with much-needed peace of mind. David's dedication to ELM, along with other volunteers, means that ELM can assist more seniors.

Since 2013, David has assisted approximately 900 seniors and has volunteered approximately 2,000 hours.

Sincerely,



Jadranko J Tomic Bobas
Managing Attorney
Elder Law of Michigan

PERSONAL RESUME

Basic Information

Name: Charles David Jones
Address: 2084 Tomahawk Circle, Okemos, MI 48864
Telephone: 517-349-0405
E-Mail: cdjonesmi@comcast.net
Date of Birth: December 12, 1947

Bar Membership

Michigan: Admitted October 18, 1975 (P25280)
Federal (US WD of Michigan): Admitted February 7, 1979

Law School

School: University of Wisconsin Law School, Madison, WI.
Date Graduated: December, 1974

Bar Activities

Member Administrative Law Council, 2005-2009

Undergraduate Education

University: Northwestern University, Evanston, Illinois
School: College of Arts and Sciences
Degree: B.A., 1970

Law-related Employment

Current Status: Retired, February 28, 2013
June, 1996, to February 28, 2013: Administrative Law Judge (ALE 17) for agency now known as Michigan Administrative Hearing System, Dept. of Licensing and Administrative Regulation (LARA). I conducted hearings, and wrote decisions in multiple areas, including Licensing (e.g. insurance agents, mortgage brokers, health professionals, builders, and other occupations); Insurance issues, including reimbursement of Blue Cross Blue Shield providers; Expunction of reports of child abuse and neglect; Adoption Subsidies; Occupational Safety and Health; Wage Claims; Unemployment Benefits

and Taxes; Barrier Free Design requirements; and Historic Districts.

November, 1977, to June, 1996: Administrative Law Judge for department now known as Department of Health and Human Services. From November, 1977, to December, 1992, I conducted hearings and wrote decisions in multiple areas, including Medicaid, ADC, children's services, and adult services. From December, 1992, to June, 1996, I specialized in adult foster care, children's foster care, and day care licensing.

January, 1975, to November, 1977: Staff Attorney for Legal Aid of Western Michigan. I worked in such areas as welfare, consumer rights, utility terminations, prisoners' rights, and landlord tenant.

Reference

Andre Friedlis, Manager, Michigan Administrative Hearing System, 611 W. Ottawa St., PO Box 30695, Lansing, MI., phone 517-335-2484.

Volunteer Legal Work

Volunteer Attorney for Elder Law of Michigan from September, 2013, to present. I have provided legal advice to seniors on multiple civil law issues, including Social Security, Medicare, Medicaid, real estate, debt, estates, insurance, nursing home, builders, and others.

Judicial Review of My Decisions

Capps v Mich. Dept. of Social Services, 115 Mich App 10; 320 NW2nd 272 (1982).
Palo Group Foster Care v Dept. of Social Services, 228 Mich App 140; 577 NW2nd 200(1998);
lv. den. 459 Mich. 911; 589 NW2nd 284(1998).



p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

To: Board of Commissioners
Communications and Member Services Committee
From: Dennis Barnes and Dana Warnez
Date: March 27, 2018
Subject: 2018 State Bar Award Nominations

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

The State Bar of Michigan Awards Committee met on Tuesday, March 20, 2018 and recommends the following people receive 2018 State Bar of Michigan Awards:

Roberts P. Hudson Award

The committee recommends two individuals: **Bruce A. Courtade and Julie I. Fershtman.**

Frank J. Kelley Distinguished Public Service Award

The committee recommends two individuals: **Hon. Marilyn J. Kelly and Robert P. Young, Jr.**

Champion of Justice Award

The committee recommends two individuals: **Robert J. Heimbuch and Miriam J. Aukerman.**

Kim Cahill Bar Leadership Award

The committee recommends the **Women Lawyers Association of Michigan.**

John W. Reed Michigan Lawyer Legacy Award

The committee recommends **Professor Lawrence Dubin.**

The committee will recommend a Liberty Bell Award winner to the Board at the Board's June meeting.

To view all SBM award nominations, visit <http://bit.ly/SBMAwards>. This is a password-protected website, so you will have to enter your SBM username or P number, and then the password you use to access the member area of michbar.org.

**XV. – A. Board Officer
Election Procedure,
Matrix, and 2018 Timeline**

**State Bar of Michigan Board of Commissioners
2018 Timeline for Officer Elections**

April 20, 2018	Distribution of materials regarding Procedure, Timeline, and Matrix
June 12, 2018	Letters of Intent and completed Matrix due to State Bar President and Executive Director
July 18, 2018	Board book sent to Commissioners that will include the Letters of Intent and Matrices of Officer Candidates
July 27, 2018	Candidate Forum (5 minutes to address Board and (BOC Meeting) 15 minutes total Q & A Election of Officers

Memo

To: Board of Commissioners

From: Officer Election Committee (Bruce Courtade, Chair; Kim Cahill; Francine Cullari; Michael Hohausler; Tony Jenkins; Craig Lubben; Angelique Strong Marks; Debra Walling)

cc: President Tom Cranmer, Janet Welch

Date: June 2006

Re: **RECOMMENDED ELECTION PROCEDURES FOR 2006 AND BEYOND**

The Officer Election Committee (“the Committee”) was initially asked to consider whether, in light of a proposal from the President’s Advisory Council (“the Council”), the rules concerning the election of State Bar officers should be amended. After studying the “Supreme Court Rules Concerning the State Bar of Michigan” (“the Rules”), the Bylaws of the State Bar of Michigan (“the Bylaws”)¹, and discussing their own personal views of and frustrations with the existing process, the Committee recommended that the rules governing elections not be changed, but that the Board of Commissioners (“the Board”) should consider certain procedural and educational changes to add some transparency to the process by which new generations of SBM Officers are selected, and specifically rejected the idea of extending the term limits of the Board or of the “grandfathering” of Officers beyond the level set forth in the existing Rules.

The Committee’s Report was submitted on April 4, 2006, and unanimously adopted by the Board of Commissioners at its April 7 meeting. Thereafter, the Committee was charged with developing recommendations to the Board of specific procedural and educational changes to the election process that would address those concerns raised in the Committee’s April 4, 2006 Report.

Summary of Recommendations

The Committee believes that the Board should adopt three changes to the current system of nominating and electing State Bar officers. Because the Committee does not believe that there is adequate time to implement all of the proposed changes before this year’s elections. Therefore, we propose a “phase-in” as set forth more fully below.

1. All non-incumbent officers who are seeking election to “the Chairs” must submit a letter of interest to the Executive Director and President of the State Bar by a set date each year. After 2006, this deadline will be 45 days before the July Board meeting. However, for this year, letters of interest must be submitted by June 28, 2006 (30 days before the elections at the July 28 Board meeting). Requirements for the letter of interest are set forth more fully below. These letters of interest, along with any attachments thereto and the matrices described in the third recommendation, below, must be submitted to the Board along with the Agenda and meeting materials that are sent to the Board before the meeting in which the elections are held each year.

¹ A copy of relevant sections of the Rules and Bylaws is attached as Exhibit #1.

2. A “candidates’ forum” should take place at the Board meeting in which elections are held each year. The Committee recommends that each candidate be given up to 5 minutes to present his or her qualifications for election. After each of the candidates has spoken, the Committee recommends that a “question and answer” session of at least 15 minutes’ duration be held, with each candidate allowed not more than one minute to answer each question presented by those in attendance at the meeting. This should be implemented beginning in July 2006.
3. For elections beginning in 2007, the Committee, with Staff input, intends to develop a matrix that all non-incumbent candidates for office must fill out and submit along with their letters of interest. The matrix will focus on issues such as: length of service on the Board; prior Board experience (i.e., leadership roles or projects undertaken for the Bar); attendance at Board and committee meetings; etc. The matrices for all candidates shall be submitted to the Board at or before the meeting in which the officer elections take place.

The Committee believes that these procedural rules may be adopted by the Board without need for amending the Bylaws.

Discussion

The Committee met via teleconference after the last Board meeting. A number of suggestions for how to make the election process more transparent and meaningful were discussed. One suggestion that had been raised in the initial Committee Report (the use of a nominating committee) was discussed at length. After considering the benefits and disadvantages of that option, the Committee decided not to recommend the adoption of a nominating committee at this time. Rather, the Committee believes that the proposals set forth below all would have a more positive impact than use of a nominating committee process, and are less fraught with potential risks experienced by many groups that use a nominating committee.

Therefore, the Committee decided to recommend the adoption of three specific changes to the manner in which officer elections are handled, and to wait to see whether those proposals sufficiently address the issues raised in the Committee’s prior Report. If necessary, the issue of using a nominating committee can be re-evaluated if it is determined that the proposals set forth below have failed to adequately address Board concerns about the election process.

1. Recommendation #1: Letters of Interest.

One of the issues raised by the Board and in the Committee meetings was the impression that the current election process gives the impression that the officer elections are a *fait accompli* after *sub rosa* discussions eliminate candidates who might be interested, leaving a single candidate about whose qualifications many voting Board members may know little or nothing.² The Committee believes that this issue can be easily remedied by requiring all persons interesting in seeking office to submit a simple letter of interest identifying the office to which they seek election and highlighting their abilities, background and experience that they feel qualify them for that role within the organization.

² This Report’s drafter apologizes to the Plain English Committee for a wordy sentence involving two italicized foreign terms.

a. Letters of Interest for Election as Treasurer.

Therefore, the Committee recommends adoption of a rule or policy that all non-incumbent officers who are seeking election to office of State Bar Treasurer (and therefore entry into “the Chairs”) must submit a letter of interest to the Executive Director and President of the State Bar by a set date each year. After 2006, this deadline will be 45 days before the July Board meeting. However, for this year, letters of interest must be submitted by June 28, 2006 (30 days before the elections at the July 28 Board meeting). Requirements for the letter of interest are set forth more fully below. These letters of interest, along with any attachments thereto and the matrices described in the third recommendation, below, must be submitted to the Board along with the Agenda and meeting materials that are sent to the Board before the meeting in which the elections are held each year.

b. Letters of Interest by Incumbent Officers for Positions Other than Treasurer.

The Committee is aware that, over time, an informal but widely-acknowledged pattern has led to a *de facto* practice that a Commissioner who is elected Treasurer generally embarks on a six-year procession through “the Chairs” culminating with his or her year as president.³ Therefore, under most circumstances, incumbent officers seeking to ascend to the next level of “the chairs” will not need to submit a letter of interest for that position: absent an expression of interest to the contrary, officers will be presumed to seek elevation to the next level of “the Chairs.”

However, under the Rules, the only officers who automatically ascend “the Chairs” without standing for election to the next level each year are the vice-president and president-elect. Therefore, it is possible that a sitting secretary or treasurer might either decide not to seek elevation in the chairs during a given year, or face a challenge from a Board member who is not an officer. Theoretically, a sitting treasurer could also opt to bypass his or her year as secretary and run for the office of vice-president.

Thus, the Committee recommends that if any candidate, in compliance with the 45-day deadline set forth above,⁴ submits a letter of interest seeking election to a position in “the Chairs” other than as Treasurer and/or outside of the normal six-year progression, the President shall notify the incumbent officer who would normally be seeking elevation to the now-contested seat in writing of the possibility of a disputed election. That incumbent officer must then prepare and submit to the SBM’s Executive Director and President his or her own letter of interest⁵ by not later than 30 days before the SBM meeting at which the election is to be held. (For 2006, the deadline for submitting an incumbent officer’s letter of interest will be July 15).

c. Minimal Requirements for Letters of Interest.

Each potential candidate is responsible for including in his or her information that he or she believes is sufficient to convince other Board members that the candidate is qualified to serve in whatever office he or she seeks. However, *at a minimum*, the letters of interest should include the following information:

- The office sought;
- A summary of the candidate’s history on the Board of Commissioners;

³ Year One: Stand for election as Treasurer
Year Two: Serve as Treasurer; seek election as Secretary
Year Three: Serve as Secretary; seek election as Vice President
Year Four: Serve as Vice President
Year Five: At conclusion of Vice President, ascend to President-Elect
Year Six: Serve as SBM President

⁴ June 28, 2006 for the 2006 elections.

⁵ And, for elections occurring after 2006, a Qualifications Matrix as discussed below.

- A discussion of the candidate's attendance at and participation in Board and Committee meetings;
- A summary of the candidate's service to the State Bar and (if applicable) local bar associations;
- An overview of the candidate's non-Bar-related experience of community service; and
- A statement, not exceeding 250 words, of why the candidate wants to attain the position for which he or she is seeking election, and what unique ideas or thoughts the candidate has for ways in which to improve the SBM.

All candidates must also include a copy of their résumé or curriculum vitae with their letter of interest.

d. Presentation of Letters of Interest to the Board.

The candidates' letters of interest, along with any attachments thereto and the matrices described below, must be submitted to the Board along with the Agenda and meeting materials that are sent to the Board before the meeting in which the elections are held each year.

2. Recommendation #2: Candidates' Forum.

In addition to general comments regarding the lack of knowledge of which Board members might be interested in running for office, the Committee heard and received comments from several people suggesting frustration with the lack of opportunity to talk to the candidates about the strengths that they would bring to office if elected. We believe that this concern could be easily ameliorated by having all candidates for contested elections participate in a "Candidates' Forum" held as part of the Board meeting at which elections are held (including meetings at which elections are held to fill vacancies in SBM offices that occur outside the normal election cycle).

The Committee recommends that each candidate for each contested election be given up to 5 minutes to present his or her qualifications for election. After each of the candidates has spoken, the Committee recommends that a "question and answer" session of at least 15 minutes' duration be held, with each candidate allowed not more than one minute to answer each question presented by those in attendance at the meeting. This should be implemented beginning in July 2006.

3. Recommendation #3: Qualifications Matrix.

Another method of assuring that the Board has adequate and useful information concerning the candidates' qualifications and abilities would be the use of a matrix to provide an objective overview of data regarding their past experience. The Committee discussed at length what kinds of information should be included in any such matrix. Among the suggestions were:

- Law School and date of graduation;
- Year of admission to Michigan Bar;
- Primary areas of practice;
- Past Bar service (state and local);
- Board of Commissioners' experience:
 - Year first elected or appointed;
 - Number of terms on the Board; and
 - Board Committees.
- Attendance at Board meetings during last three years;
- Non-Board, non-Bar volunteer experience.

Once completed by each candidate, the matrix must be submitted to the SBM President and Executive Director along with the letter of interest discussed above. The Executive Director shall then

delegate to appropriate staff the duty to verify that the information regarding Board attendance and experience is correct.

The Committee did not have time to develop a matrix before the 2006 SBM Officer elections. However, for elections beginning in 2007, the Committee, with Staff input, intends to develop a matrix that all non-incumbent candidates for office must fill out and submit along with their letters of interest. The matrix will focus on issues such as: length of service on the Board; prior Board experience (i.e., leadership roles or projects undertaken for the Bar); attendance at Board and committee meetings; etc. The matrices for all candidates shall be submitted to the Board at or before the meeting in which the officer elections take place.

4. The Committee's Proposals Do Not Appear To Require Changes To The Supreme Court Rules Or To The State Bar's Bylaws.

Other than the previously-discussed prohibition on a Secretary or Treasurer serving more than three consecutive terms found in §8 and §11's term limits, the SBM Bylaws are silent regarding the procedure for electing officers. Similarly, the Supreme Court Rules Governing the State Bar of Michigan offer no guidance as to the mechanics of how to elect officers.⁶

In the absence of any Supreme Court Rule on point, the Committee believes that the Board is given the authority, pursuant to Rule 5, to adopt the proposals suggested herein. That Rule provides, in pertinent part:

Section 1 – Powers, Functions, and Duties.

(a) The Board of Commissioners shall

* * *

(6) receive and review committee and section reports and recommendations proposing action by the board and take interim or final action that the board finds feasible, in the public interest, and germane to the functions and purposes of the State Bar; ...

The Committee proposals are in the public interest and germane to the functions of the State Bar. The public interest is promoted by assuring that State Bar officers, who bear more responsibility for the day-to-day and long-term operations of the Bar than any other members of the Board, are chosen in a manner that reflects openness and learned decision-making. Assuring that members of the Board who are asked to select the officers are well-informed as to their character and abilities likewise has a direct and substantial influence on the functions and purposes of the Bar.

CONCLUSION

The Committee's proposals offer simple but effective tools to address the concerns that Board members do not know enough about the election process or the individuals who seek election to "the Chairs." The Committee therefore requests that the Board adopt and implement the Proposals in accordance with the timelines set forth above.

⁶ Rule 7 provides, in part, that the Board shall elect certain officers, states when they must be elected, and explains that officer vacancies shall be filled by an election of the Board. However, the Rule provides no specific requirement regarding how the elections are to be carried out.

STATE BAR OF MICHIGAN OFFICER CANDIDATE FORM

(TO BE COMPLETED BY CANDIDATE – PLEASE ATTACH EXTRA SHEETS IF NECESSARY TO COMPLETE YOUR RESPONSES)

NAME			
OFFICE SOUGHT			
EMPLOYER			
TITLE & PRIMARY PRACTICE AREA			
SECTION 1: Educational Background			
1. Undergraduate school(s)			
2. Years of attendance or graduation			
3. Degree(s)			
4. Law School			
5. Year of Graduation			
SECTION 2: Bar Admission			
1. State(s) admitted to practice; year of admission for each			
SECTION 3: State Bar of Michigan Activities			
Board of Commissioners			
1. Year First Elected/Appointed			
2. Years served (i.e., 2000 – 2003)			
3. Leadership activities (year) <u>Example:</u> Treasurer (2006-2007)			
4. Date current term expires			
5. Eligible for Re-Election?			
Representative Assembly			
1. Year First Elected/Appointed			
2. Years served (i.e., 2000 – 2003)			
3. Leadership activities (year) <u>Example:</u> Clerk (2006-2007)			
Sections/Committees			
1. What Sections or Committees of the State Bar of Michigan do you belong to?			
2. Please describe briefly any leadership roles you have filled on these Sections or committees			

Name: _____
 Candidate for: _____

SECTION 4: Other Bar Activities	
1. To which national, local or affinity bar associations do you belong? (For each, please state the date on which you became a member).	
2. What leadership roles have you performed for each?	
SECTION 5: Non-Bar Activities	
1. On what other for-profit or non-profit Boards, groups or organizations have you served? (For each, please state the date on which you became a member).	
2. Please describe briefly any leadership roles you have filled on these Boards.	
SECTION 6: Other Achievements of Note	
SECTION 7: Publications	
1. Have you written any articles, commentaries, or books that have been published? If so,	
2. Provide titles, publishers and dates of publication for each such published piece.	

ACKNOWLEDGEMENT AND CERTIFICATION

I hereby acknowledge and certify that the foregoing information is true to the best of my knowledge and belief.

 Candidate Signature Date: _____

+++++
 Verification of Candidate's Attendance at State Bar Board of Commissioners' Meetings (To be Completed by State Bar Staff)

In the past three (3) years, how many meetings of the State Bar Board of Commissioners has the candidate been eligible to attend?	
Of the meetings identified above, how many meetings of the State Bar Board of Commissioners has the candidate actually attended?	
Percentage of attendance at Board of Commissioners meetings (past three years)	

ACKNOWLEDGEMENT AND CERTIFICATION

I hereby acknowledge and certify that the foregoing information is true to the best of my knowledge and belief.

 State Bar of Michigan Staff Signature Date: _____

**XVI. – A. FY 2019
Budget Process, Roles,
and Calendar**

FY 2019 Budget Process, Roles, and Calendar

FY 2019 Budget Process

The starting point for the FY 2019 budget will be an initial list of key budget assumptions along with high-level financial projections prepared by staff. The initial key budget assumptions will: 1) assume there is no dues increase or decrease; 2) establish the amount of percentage increases for salaries, benefits and non-labor expenses; 3) identify known increases or decreases in expenses, revenues and staffing; and 4) identify initiatives to address the strategic plan priorities for FY 2019.

The Officers, Finance Committee and BOC will review the key budget assumptions and modify as needed. Staff will then prepare the preliminary detailed budget based on the key budget assumptions. The Officers, Finance Committee, and BOC will review the preliminary budget at the June BOC meeting and provide feedback, taking into account the strategic plan priorities. In early July, the Finance Committee will review the budget and provide feedback. After further refinement, staff will then prepare the proposed FY 2019 budget for review and final approval at the BOC meeting on July 27, 2018.

Budget Roles for Officers, Finance Committee, Staff, and Board of Commissioners

The Officers (who are also the Board Committee Chairs and Steering Committee Chairs) will serve as the “Cross Functional Budget Committee.” Their role is to validate the key budget assumptions, make final policy recommendations on what is funded and what is not, and ensure alignment of the proposed budget with the strategic plan priorities for FY 2019.

The role of the Finance Committee is to review the key assumptions, review the financial impact of the proposed budget, assess the reasonableness of the revenue and cost projections, assure the budget is consistent with the financial reserve margin policy, and review the budget in detail with staff. The Finance Committee meets in early July with staff (SMT) to review the proposed line item budget in detail.

The role of the staff is to prepare the key budget assumptions for review and approval, prepare the preliminary and proposed budgets for review and approval, provide supporting information as requested, answer questions, and make changes to the budget consistent with the recommendations of the Officers, Finance Committee, and BOC.

The role of the Board of Commissioners is to review the key budget assumptions and preliminary and proposed budgets, ask questions, make sure the budget is consistent with the strategic plan priorities of the SBM, and approve the proposed budget or amend it as required.

FY 2019 Budget Calendar

March 2018

- Senior Management Team meets individually with the Executive Director to review their area's FY 2018 financial forecast and FY 2019 key budget issues (staffing changes, major projects, strategic plan priorities, and major revenue/expense changes).

April 2018

- Staff reviews the proposed budget process and calendar with the Executive Committee.
- Staff reviews the proposed budget process and calendar at the BOC meeting on April 20, 2018.
- Staff prepares an initial list of key budget assumptions, staffing projections, major expense and revenue changes anticipated, and any issues that need addressing based upon strategic planning priorities.
- Staff informs committees and other interested groups of the SBM budget process and calendar.
- Staff begins preparation of the preliminary budget (Finance staff to supply budget worksheets).

May 2018

- Staff reviews the key budget assumptions and preliminary budget projection with the Officers who act as the "Cross Functional Budget Committee" (via conference call).
- Staff reviews the key budget assumptions and preliminary budget projection with the Executive Committee and Finance Committee (via conference call).
- Staff makes adjustments to the key budget assumptions and preliminary budget projection as needed.
- Staff completes preliminary budget worksheets

June 2018

- Staff reviews the key budget assumptions and preliminary budget with the Board of Commissioners at the BOC meeting on June 8, 2018.
- Based on input from the June BOC meeting, including confirmation of the strategic planning priorities for FY 2019, staff revises the key budget assumptions and prepares the proposed budget.

July 2018

- Staff reviews the proposed budget in detail with the Finance Committee (via a face-to-face meeting) on or about July 11, 2018.
- Staff reviews the proposed budget with the Officers who act as the “Cross Functional Budget Committee” (via conference call).
- Staff reviews the proposed budget with the Executive Committee (via the regularly scheduled conference call).
- Staff modifies the final proposed budget based on the previous reviews, and reviews the proposed budget with the BOC for approval at the BOC meeting on July 27, 2018.

By September 1, 2018 – Staff publishes the final approved FY 2019 budget.

CALENDAR
STATE BAR OF MICHIGAN REPRESENTATIVE ASSEMBLY
SATURDAY, APRIL 21, 2018

Lansing Community College – West Campus, M-TEC Center
5708 Cornerstone, Lansing, Michigan 48917

*Denotes Action Items

Continental Breakfast will be available beginning at 8:30 a.m.

8:45 a.m. – 9:15 a.m. New Member Orientation¹

9:30 A.M. MEETING BEGINS

9:30 a.m. 1. Introductory Matters

A. Call to order by Chair Joseph P. McGill with Parliamentarian Hon. John M. Chmura

Mr. Joseph P. McGill

[Foley Baron Metzger & Juip, PLLC, 38777 Six Mile Rd., Ste. 300, Livonia MI 48152
phone: (734) 742-1825; email: jmcgill@fbmjlaw.com]

Hon. John M. Chmura

[37th District Court, 8300 Common Rd., # 104, Warren, MI 48093
phone: (586) 574-4925; email: jchmura@37thdistrictcourt.org]

B. Certification that a quorum is present by Assembly Clerk, Mr. Aaron V. Burrell
[Dickinson Wright, PLLC, 500 Woodward Ave., Ste. 4000, Detroit, MI 48226
phone: (313) 223-3118; email: aburrell@dickinsonwright.com]

C. Adoption of proposed calendar by Rules & Calendar Member, Ms. Pamela C. Enslin
[Warner Norcross & Judd, LLP, 401 E. Michigan Ave., Kalamazoo, MI 49007
phone: (269) 276-8112; email: penslen@wnj.com]

D. Approval of the September 28, 2017 Summary of Proceedings

9:35 a.m. 2. *Filling Vacancies

Mr. Michael C. Brown

Chair, Assembly Nominating and Awards Committee

[Monroe County Prosecutor's Office, 125 E. 2nd St., Monroe, MI 48161
phone: (734) 240-7600; email: michael_brown@monroemi.org]

9:45 a.m. 3. *Approval of 2018 Award Recipients

Mr. Michael C. Brown

Chair, Assembly Nominating and Awards Committee

[Monroe County Prosecutor's Office, 125 E. 2nd St., Monroe, MI 48161
phone: (734) 240-7600; email: michael_brown@monroemi.org]

¹ New member orientation will start at 8:45 a.m. When checking in, new members will be directed to the meeting location. All other members are invited to attend.

- 10:00 a.m. 4. Chair's Report
Mr. Joseph P. McGill
[Foley Baron Metzger & Juip, PLLC, 38777 Six Mile Rd., Ste. 300, Livonia MI 48152
phone: (734) 742-1825; email: jmcgill@fbmjlaw.com]
- 10:15 a.m. 5. Consideration of Proposal on Payee Notification Legislation
Proponent: Mr. Thomas H. Howlett, Member, Payee Notification Workgroup
[The Googasian Firm, PC, 6895 Telegraph Rd., Bloomfield Hills, MI 48301
phone: 248-502-0862; email: thowlett@googasian.com]
- 10:30 a.m. 6. Consideration of Proposal to Amend MCR 2.002
Proponent: Mr. Robert F. Gillett, Chair of Consistent Fee Waiver Committee
[Michigan Advocacy Program, 420 N. 4th Ave., Ann Arbor, MI 48104
phone: 734-665-6181; email: rgillett@lsscm.org]
- 10:45 a.m. 7. Consideration of Approval of Civil Discovery Rules Report
Proponent: Mr. Daniel D. Quick, Chair of the Civil Discovery Court Rule Review Special Committee
[Dickinson Wright, PLLC, 2600 W. Big Beaver Rd., Ste. 300, Troy, MI 48084
phone: (248) 433-7242; email: dquick@dickinsonwright.com]
- 11:30 a.m. 8. Adjournment

**ATTENDANCE FORMS ARE CIRCULATED AND COLLECTED AT THE
CONCLUSION OF THE MEETING**

Parliamentary Procedures At A Glance

To Do This: (1)	You Say This:	May You Interrupt Speaker?	Must You Be Seconded?	Is the Motion Debatable?	Is the Motion Amendable?	What Vote Is Required?
Adjourn the meeting (before all business is complete)	"I move that we 'adjournn."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Majority vote
Recess the meeting	"I move that we recess 'until..."	May not interrupt speaker	Must be seconded	Not debatable	Amendable	Majority vote
Complain about noise, room temperature, etc.	"Point of privilege."	May interrupt speaker	No second needed	Not debatable (2)	Not amendable	None (3)
Suspend further consideration of something	"I move we table it."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Majority vote
End debate	"I move the previous 'question."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Two-thirds vote
Postpone consideration of something	"I move we postpone 'this matter until..."	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote
Have something studied further	"I move we refer this 'matter to a committee."	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote
Amend a motion	"I move that this motion 'be amended by..."	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote
Introduce business (a primary motion)	"I move that..."	May not interrupt speaker	Must be seconded	Debatable	Amendable	Majority vote

Notes

1. These motions or points are listed in established order of precedence. When any one of them is pending, you may not introduce another that's listed below it. But you may introduce another that's listed above it
2. In this case, any resulting motion is debatable.
3. Chair decides.

Parliamentary Procedures At A Glance (continued)

To Do This: (4)	You Say This:	May You Interrupt Speaker?	Must You Be Seconded?	Is the Motion Debatable?	Is the Motion Amendable?	What Vote Is Required?
Object to procedure or to a personal affront	"Point of order."	May interrupt the speaker	No second needed	Not debatable	Not amendable	None (3)
Request information	"Point of information."	If urgent, may interrupt speaker	No second needed	Not debatable	Not amendable	None
Ask for a vote by actual count to verify a voice count	"I call for a division of the house."	May not interrupt speaker (5)	No second needed	Not debatable	Not amendable	None unless someone objects (6)
Object to considering some undiplomatic or improper matter	"I object to consideration of this question."	May interrupt speaker	No second needed	Not debatable	Not amendable	Two-thirds vote required
Take up a matter previously tabled	"I move we take from the table..."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Majority required
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	May interrupt speaker	Must be seconded	Debatable if original motion is debatable	Not amendable	Majority required
Consider something out of its scheduled order	"I move we suspend the rules and consider..."	May not interrupt speaker	Must be seconded	Not debatable	Not amendable	Two-thirds vote required
Vote on a ruling by the chair	"I appeal the chair's decision."	May interrupt speaker	Must be seconded	Debatable	Not amendable	Majority in the negative required to reverse chair's decision

Notes

4. The motions, points and proposals have no established order of precedence. Any of them may be introduced at any time except when the meeting is considering one of the top three matters listed in the chart (motion to adjourn, motion to recess, point of privilege).
5. But division must be called for before another motion is started.
6. Then majority vote is required.

SBM

STATE BAR OF MICHIGAN

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