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**Subject:** Role of the State Bar of Michigan

As a member of the State Bar's Representative Assembly, I have read the recent report of the Task Force with great interest. Here are a few of my thoughts:

1. I support maintaining the SBM's status as a mandatory bar.
2. While in no way making light of the serious First Amendment concerns that are implicated by a mandatory bar and public advocacy, my initial impression of the \*Keller\* compliance recommendations is that they are so baroque as to make the entire enterprise feel like a jungle of red tape, and may be hopeless to implement. For example, if we may not advocate for issues "that are perceived to be associated with one party or candidate," this simply encourages one political party or another to take up its "dissenter's veto" and silence the SBM from speaking out on what would otherwise be a legitimate subject. I think that "public confidence in the court system" is a far cry from being the foundation of a "dubiously \*Keller\*-permissible position." Even \*Keller\* itself seems to suggest that a \*Keller\* analysis is extremely impressionistic, and my gut reaction is that we are better-served by relying on the good judgment of our members -- something of a \*sensus fidelium\* for lawyers. My feeling is that trying to formalize a "rigorous" \*Keller\* process will be unsatisfactory in the end, and that a better approach would be to instead reform the SBM's governance process to increase the number of veto points so that the broadest possible cross-section of our membership's good judgment can control what the organization chooses to speak about.
3. I completely agree that the SBM's role should be broadened in attorney regulation. Indeed, my first reaction is that the Attorney Grievance Commission and Attorney Discipline Board could be structured in a fashion somewhat similar to the SBM Board of Commissioners, or Judicial Tenure Commission. Some of the seats on the AGC and ADB could be chosen by attorneys and others by the Supreme Court. I am too young to remember the turmoil that surrounded prior Grievance Administrators which may have prompted the current governance structure, but my broad sense is that if lawyers are to be a self-regulating profession, we ought to have a formal seat at the table of the regulatory bodies. On the other hand, is it really necessary that the Executive Director of the SBM be subject to the approval of the Supreme Court? The Court already gets to appoint several members of the Board of Commissioners -- is not the Court's need to oversee these decisions satisfied by controlling the appointment of those members? Conversely, could we do away with Court-appointed members on the BOC if the Court was simply given veto power over the actions of the SBM (in like manner to the Governor's veto power over the Legislature)?
4. I fully agree that SBM governance needs to be re-examined. The recommendations in the report, however, seem to me to leave the Representative Assembly with little reason to exist, although I may not be fully understanding what is proposed. In any event, as a member of the Representative Assembly, I have two main thoughts: (1) it is an organization with a great deal of potential, as it captures the viewpoints of a much wider cross-section of lawyers than the Board of Commissioners; and (2) as it currently exists, its work is not as relevant to the average member as it ought to be. So long as the RA is perceived by the membership to be a sort of Model UN for adults, its work is not going to be taken seriously; yet it is a shame that it does not have more serious work to do. My thought is that the SBM could be made a bicameral organization, with the BOC functioning like a Senate and the RA like a House of Representatives. This relates back to my 2nd point in this fashion: the members of the RA are a self-selecting bunch. They are people who are willing to give up at least 2 days a year to spend the day debating suggested amendments to the court rules which the Supreme Court may end up ignoring. As an example, the SBM often suggests that there is no need for further \*Keller\* analysis of the judicial campaign finance resolution that the RA adopted in September 2010 because it passed "unanimously," but it is a self-selected group. The kind of person who might be likely to have dissented as to the propriety of

such a resolution may not choose to be in the RA in the first place.

My feeling is that if the RA had a broader role to play in the

\*management\* issues

of the State Bar, you would also get a broader cross-section of attorneys willing to make the time to participate in the RA. Therefore, broadening the RA's portfolio might allow us to continue to rely, for \*Keller\* purposes, on the informal good sense of our members by making the viewpoints of the participating members even more diverse. Prominent dissenters may not care to make themselves available for participation in the RA merely to object to the occasional resolution advocating a position they think is not \*Keller\*-permissible; but they may be willing to make time to discuss that \*and\* to have a hand in controlling the budget or other management issues that impact their day-to-day professional lives.