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July 18, 2014

*To Chief Justice Young and Justices Cavanagh, Kelly, Markman, McCormack, Viviano and Zahra of the Michigan Supreme Court:*

The undersigned is a former Chairperson of the Representative Assembly of the State Bar of Michigan and former member of the Board of Commissioners of the State Bar of Michigan. The following are:

**COMMENTS SUPPORTIVE OF THE RECOMMENDATIONS OF EDWARD L. HAROUTUNIAN CONCERNING THE REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON THE ROLE OF THE STATE BAR OF MICHIGAN**

I concur with the comments and opinions of Edward L. Haroutunian within Exhibit 1, attached hereto and incorporated herein. I believe that Mr. Haroutunian's suggested procedure for confronting Keller case restraints to public policy issues that confront the State Bar of Michigan is an excellent solution and should prevent future problems. The major problem regarding the State Bar of Michigan involvement in public policy issues is the potential that a State Bar officer, member of the Board of Commissioners, or member of the Representative Assembly will attempt to "go Hollywood" with a political issue that suits his or her political agenda, thus damaging the professional objectives of the State Bar organization. Mr. Haroutunian's comments and opinions are a practical remedy to the problems related to handling Keller case matters for the State Bar of Michigan. His comments and recommendations are thoughtful and based on his many years of experience as a member of the governing bodies of the State Bar of Michigan. Most importantly, his recommendations respect the important roles of the Representative Assembly and Board of Commissioners to guide attorneys in the operation of their professions and protect the general public.

Sincerely,

ROBERT C. GARDELLA  
Attorney at Law

RCG/aq  
Attachment

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July 9, 2014

Via Email, Fax, or  
First Class Mail

To the Chief Justice Young and Justices Cavanagh, Kelly, Markman, McCormack, Viviano and Zahra of the Michigan Supreme Court:

The undersigned is a former Chair of the Representative Assembly of the State Bar of Michigan, and currently is a member of the Board of Commissioners of the State Bar of Michigan. The following are:

**COMMENTS TO THE MICHIGAN SUPREME COURT CONCERNING THE**  
**RECOMMENDATIONS OF THE TASK FORCE ON THE ROLE OF**  
**THE STATE BAR OF MICHIGAN**

**Recommendation 1—Continue State Bar as a Mandatory Bar**

The mandatory bar is preferable to the voluntary bar. However, the Task Force, while urging that the primary role of the Bar is to serve the public good, then suggests that the Supreme Court amend Rule 1 of the Supreme Court Rules for the State Bar by removing the language which states “and in promoting the interests of the legal profession in this state.” If the Court wishes to set forth that the primary role of the Bar is to serve the public good, then it should do so. However, deleting the language dealing with the Bar promoting the interests of the legal profession would be a severe disservice to the 43,000 plus attorneys of this state who are mandated to be members of the State Bar. It is recognized that the issue of “promoting the interests of the legal profession” must be accomplished within the confines of the Keller case.

The primary role of the Bar may be to serve the public good, but if the Bar cannot also promote the interests of the legal profession of this state within the Keller limitations, then a voluntary bar would be the most logical under those circumstances.

Therefore, although the primary purpose of the Bar can be the public good, the Bar must be able to promote the interests of the legal profession and at the same time stay within the Keller requirements, for the Bar to remain a mandatory Bar.

## Recommendation 2

1. All State Bar advocacy outside the judicial branch should be subject to a new, rigorous Keller process and the State Bar should emphasize a strict interpretation of Keller.

The point is well made, but not the implementation.

The Recommendation sets forth an independent Keller review panel appointed by the Supreme Court, the Representative Assembly (RA), the Board of Commissioners (BOC) and 1 member on a joint basis with the Supreme Court and the BOC.

This formalized extra layer in the hands of 7 people does not square with the Task Force's initial comment that "State Bar members input suggests that the most valued intangible benefit to the members is a voice in their own professional regulation."

Instead of a 7 member committee, the issues that come before the RA and the BOC should have an opinion of the Bar's counsel concerning Keller permissibility including the specific rationale for same. Then, the members of those respective groups (the RA or BOC, as the case may be), by a 75% super-majority vote, should decide whether to move forward with the issue presented or not. Now this gives the members of the State Bar "a voice in their own professional regulation" through the RA and BOC.

2. State Bar Sections that engage in external advocacy should do so only through separate entities not identified with the State Bar.

There is no need to force the Sections of the State Bar to use "assumed names". What is necessary is for each Section to clearly and in type large enough to be read, set forth that the Section only speaks for its membership and does not speak for the State Bar of Michigan.

3. Funding of Justice Initiatives activities should be subject to a formal Keller review during the annual budget process, and ultimate funding should be approved by a 75% super-majority of the Board of Commissioners.

This provision makes sense not only in terms of the Keller review, but also as to the 75% super-majority requirement.

Recommendation 3—The State Bar's regulatory services should be better integrated with the activities of the other attorney regulatory agencies.

This provision is apparently made on the theory that the discipline process is broken.

The system is not broken and therefore does not need to be fixed by any of the proposed Recommendations.

**Recommendation 4—Modify State Bar Governance for Greater Clarity and Efficiency.**

**1. Eliminating the ambiguous designation of the RA as the “final policy-making body of the State Bar.”**

The designation is not ambiguous, it is clear!

The RA came into being in 1972 because the then 23 members of the BOC felt that it should not make decisions for the then 12,000 members of the State Bar, but instead, should have a broader base of lawyers which would act as the final policy making body of the Bar.

Today there are over 43,000 lawyers in the State Bar and the rationale for the creation of the RA is more true today than in 1972.

The RA with its 150 members from all corners of Michigan acts as the final policy making body of the Bar. That means, if there is a conflict between the RA and BOC on a specific issue, the RA position will prevail. Such a conflict has only happened once during the 42 years of existence of the RA.

The relationship between the RA and the BOC has always been a good one, with each body respecting the actions of the other, recognizing the time limitations of each group to act. This recognition is a good thing. It is the basis for a check and balance which has worked for a long time!

Therefore, the language should remain that the RA is the “final policy making body of the State Bar”.

**2. Designating the BOC the exclusive decision maker on management issues of the State Bar, and the RA the exclusive decision maker on dues recommendation to the Supreme Court.**

The dues responsibility of the RA already exists today. With respect to the BOC being the exclusive decision maker on management issues, as a practical matter this already exists today, but the safety valve is that the RA, if necessary, has the ability to address an issue if it determines it is necessary. This has never happened in the 42 years of the RA's existence. If it's not broke, don't fix it.

Therefore, this recommendation should not be implemented.

**3. Requiring the agendas and schedule of meetings of the BOC and RA to be established by a majority of the State Bar officers and by a majority of the officers of the RA, meeting jointly.**

The idea of agendas and schedules of meetings being dealt with for the BOC, by the BOC officers, makes sense. And, the idea of agendas and schedules of meetings being dealt with for the RA, by the RA officers, makes sense. Further, a majority, respectively, of each body's officers making those decisions makes sense.

What does not make sense is for 5 BOC officers and 3 RA officers to get together, jointly, and for a binding vote to be taken by a majority to decide the agendas and schedules for both the BOC and RA. Each body should act independently, but should discuss and consult with each other concerning the issues which the BOC will deal with and the issues the RA will address.

**4. Providing that although the BOC is exclusively responsible for adopting positions on proposed court rules published for comment and on pending proposed legislation, both the BOC and RA must approve all other policy positions.**

This recommendation, again, simply attempts to fix something which is not broken. The actions of the BOC and RA over the last 42 years has been very good. Actions that require speed have generally been dealt with by the BOC, while those that required a more deliberative forum have been handled by the RA. (Interestingly, the RA is in the process of dealing with increased technology and how it handles matters on a more expeditious manner). Neither group has exclusivity over anything, except the RA over the issue of member dues increases.

The relationship between the RA and BOC should remain as it is today.

**Recommendation 5. Reduce Inactive Dues and Convene a Special Commission to Examine Active and Inactive licensing, Pro Hac Vice, and Recertification Issues.**

Although these issues may be of interest in the future, at the present time there appears to be no need to re-examine these issues given the fact that the discipline portion of the dues for the next fiscal year has been reduced by Order of the Supreme Court.

Therefore, this Recommendation should not be acted upon.

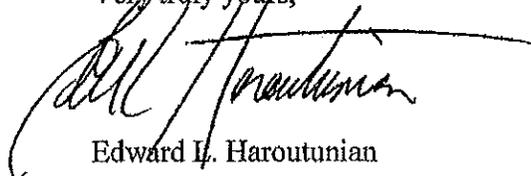
OVERALL RECOMMENDATION

What exists today in terms of the State Bar being a mandatory bar, external advocacy for State Bar Sections, the regulatory services currently provided by the Bar, the current Governance of the State Bar through the RA and BOC, and the current Membership Dues issues should all remain as it exists today.

The only area that requires a more rigorous discipline is Keller applicability to State Bar advocacy with respect to issues before the RA and BOC, where Counsel for the State Bar should issue an opinion as to Keller applicability, and for each respective body (RA or BOC, as the case may be) to then vote on Keller permissibility with a 75% super-majority of those present and voting to allow the matter to proceed.

Thank you for the opportunity to comment and should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,



Edward L. Haroutunian

cc: Officers of the Representative Assembly of the State Bar of Michigan  
Board of Commissioners of the State Bar of Michigan  
Executive Director of State Bar of Michigan  
General Counsel to the State Bar of Michigan