

## Court Rules

File	Rule	RA Position/Description	RA Adopted Position On	Published for Comment	Public Hearing Date	Final Action
2005-12	5.104(A)(1), 5.402(C), 5.403(B)	These changes are intended to limit the use of ex parte guardianships to emergency situations, as well as to ensure that parent receive prompt notice and an opportunity to be heard when their parental rights are suspended.	3/27/2004	The proposed amendment of MCR 5.104(A)(1) would establish a time frame within which the proof of service must be filed when the court issues an ex parte order. The proposed amendment of MCR 5.402(C) would add the requirement of how service is to be made on a parent of a minor who is the subject of a petition when the whereabouts of the parent are known. The proposed amendment of MCR 5.403(B) would add the requirement of a subsequent hearing within 56 days if a temporary guardian is appointed for a minor by ex parte order and the parents of the minor are not present at the ex parte hearing.	To be scheduled	
	8.120	The amendment would allow members of the Bar who have elected emeritus status to practice law under the same provisions as law students and recent law school graduates.	10/1/2004		No date scheduled	
	2.403	Case Evaluation: would limit scope regarding automobile no fault benefit cases to only expenses actually incurred and disputed before the case evaluation hearing due to the ongoing nature of these types of claims	4/16/2005		No date scheduled	
	3.602	Arbitration: would provide three procedural revisions: to substitute "motion" or "complaint" for "applicant" (an undefined term within the court rules or Arbitration Act), clarify post-arbitration actions and set timing deadlines consistent with the Federal Arbitration Act	4/16/2005		No date scheduled	
	2.107(C)	Service and Filing of Pleadings and Other Papers, Manner of Service. Amendment would allow attorneys to stipulate to serve documents upon each other via electronic mail.	9/22/2005		No date scheduled	
	2.107(G)	Service and Filing of Pleadings and Other Papers, Filing with Court Defined. Amendments would add additional language "The date of the pleadings are filed, which includes receipt by mail, shall be noted on the docketing statement if different than the date docketed."	9/22/2005		No date scheduled	
	6.610(I)	Adds new language regarding notification of appellate rights in the District Court after misdemeanor conviction	9/22/2005		No date scheduled	

## Rules Concerning SBM

File	Rule	RA Position/Description	RA Adopted Position On	Published for Comment	Public Hearing Date	Final Action
	Rules Concerning the State Bar of Michigan Pro Hac Vice Rule (Rule 18)	The RA adopted a proposed rule submitted by the Unauthorized Practice of Law Committee that would designate the State Bar of Michigan as a central "clearinghouse" for pro hac vice applications and would require an out-of-state attorney seeking pro hac vice admission to pay a fee equivalent to the amount of dues and CPF assessment that active State Bar of Michigan members pay.	9/22/2005		No date scheduled	
	Rules Concerning the State Bar of Michigan Confidential Rule (Rule 20)	The RA adopted a proposed Rule Concerning the State Bar of Michigan, submitted by the Unauthorized Practice of Law Committee. The Rule grants certain State Bar of Michigan programs formal confidentiality protection. The programs include, the Ethics Program, the Unauthorized Practice of Law program, the Practice Management Resource Center program and the Lawyers and Judges Assistance Program.	9/22/2005			

## Legislation

Legislation	RA Position/Description	RA Adopted Position On	Bill Status
HB 5101 - Introduced 8/24/05	The RA supports in principle the use of video and audio recording of custodial interrogations as the best method of securing a precise and accurate record if custodial interrogations and calls for task force.	9/22/2005	8/24/05 Referred to House Judiciary

MRPC and MSILS

File	Rule	RA Position/Description	RA Adopted Position On	Published for Comment	Public Hearing Date	Final Action
2003-62	MRPC: Preamble and Scope Section 20	Should state: "Violation of a Rule does not itself give rise to a cause of action against a lawyer nor does it create any presumption in such a case that a legal duty has been breached." A similar rule will be added.	11/14/2003	The Court's proposal follows the RA's recommendations. (section 20)	9/29/2005	
2003-62	MRPC: "confirmed in writing" 1.0(b), 1.7(b), 1.9(b), 1.10(d), 1.11(a), 1.12, and 1.18(d)	MRPC 1.0(b), 1.7(b), 1.9(b), 1.10(d), 1.11(a), 1.12 and 1.18(d) should not require lawyers to obtain written consent or provide written notice as set forth in those rules. The RA does not oppose the contention that an "in writing" requirement is a "best practice" and that it should be encouraged wherever possible, however, it is not believed to be an appropriate "rule" for which any alleged violation should result in investigation and possible sanction.	11/14/2003	The Court's proposal includes a "confirmed in writing" requirement as noted in rules 1.0(b), 1.7(b), 1.11(b), 1.19(b), 1.10(d), 1.11(a), 1.12, and 1.18(d).	9/29/2005	
2003-62	MRPC: 1.0 Informed consent	Should define the term "informed consent" and require that where a client's consent is required that it be "informed" consent.	11/14/2003	Includes a definition of informed consent and includes "informed" in provisions requiring consent. 1.0(c)	9/29/2005	
2003-62	MRPC: 1.5 Fees Proportion Division	Should not require fee divisions to be proportionate.	11/14/2003	Does not include a provision requiring proportionate division.	9/29/2005	
2003-62	MRPC: 1.5 Fees Consent to Division	Should not require a client's consent to any division of fees by lawyers not of the same firm.	11/14/2003	Requires client consent in writing.	9/29/2005	
2003-62	MRPC: 1.5 Fees Illegal or Excessive Fees	Should prohibit fees that are "illegal or clearly excessive."		Prohibits illegal or clearly excessive fees.	9/29/2005	
2003-62	MRPC: 1.5 Fees Nonrefundable Retainers	Should expressly permit reasonable and earned nonrefundable retainers.	11/14/2003	Does expressly permit reasonable and earned nonrefundable retainers, but only under certain conditions.	9/29/2005	
2003-62	MRPC: 1.5 Fees Nonrefundable Retainers	A lawyer and a client may agree to a lump sum or nonrefundable fee arrangement that is earned by the lawyer at the time of engagement or at the time of the agreement, provided that the fee agreement is in writing, signed by the client, and states that the fee is nonrefundable *This position was adopted upon consideration of the Court's proposal	4/16/2005	The Court's proposal states that a lawyer and a client may agree to a lump-sum or nonrefundable fee arrangement that is earned by the lawyer at the time of engagement, but includes additional conditions.	9/29/2005	
2003-62	MRPC: 1.7 Conflict of Interest Fiduciary Representation	Should provide commentary indicating that a lawyer representing a corporate fiduciary only as the personal representative of a decedent's estate, as trustee of a trust, and/or as conservator, not for this reasonable alone be barred from representing any client with interests adverse to the corporate fiduciary.	11/14/2003	The Court's proposal include the RA's recommendation as comment 36.	9/29/2005	

MRPC and MSILS

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2003-62	MRPC: 1.8 Conflict of Interest Sexual Relations	Should prohibit sexual relations between an attorney and that attorney's client unless a consensual sexual relationship existed when the client lawyer relationship began.	11/14/2003	The Court did not specifically include the provision recommended by the RA. It did, however, include comment 17, suggesting that the current MRPC, MCR, and the Legislature have sufficient safeguards in place addressing client-lawyer sexual relationships.	9/29/2005	
2003-62	MRPC: 1.15 Safekeeping Property Legal Fees and Expenses	<b>Plurality Opinion:</b> Should require lawyers to deposit into a client trust account legal fees and expenses that have been paid in advance. <b>Minority Opinion:</b> Should require lawyers to deposit into a client trust account legal fees, but not expenses, that have been paid in advance.	11/14/2003	The Court's proposal states that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. 1.15(c)	9/29/2005	
2003-62	MRPC: 1.15 Safekeeping Property Nonrefundable Retainers	Should provide that nonrefundable retainers may be placed in the lawyer's account unless a refund is determined to be necessary, at which time the retainer shall be treated as client funds.	4/16/2005	The Court's proposal states that nonrefundable fees that comply with proposed 1.5(f) are fully earned when received and should not be deposited in a client trust account. 1.15(c). In light of the RA's position in regard to 1.5(f), the RA supports the proposed language, but unanimously recommends that nonrefundable fees should comply with the factors set forth in the RA's recommendation regarding rule 1.5(f).	9/29/2005	
2003-62	MRPC: 1.17 Sale of Law Practice Sale/Purchase of "Area of Law Practice"	Should allow lawyers to sell or purchase an "area of law practice" in addition to a private law practice.	11/14/2003	The Court's proposal states that a law firm may sell or purchase a private law practice or an area of law practice, including good will, pursuant to this rule. 1.17(e)	9/29/2005	
2003-62	MRPC: 1.17 Sale of Law Practice Consent to Fees	Should allow a lawyer to refuse to undertake representation unless the client consents to pay fees regularly charged by that lawyer for rendering substantially similar services to other clients.	11/14/2003	The Court's proposal states that the fees charged clients shall not be increased by reason of the sale, and a purchaser shall not pass on the cost of good will to the client. The purchaser may, however, refuse to undertake representation unless the client consents to pay fees regularly charged by the purchaser for rendering substantially similar services to other clients prior to the initiation of the purchase negotiations. 1.17(b)	9/29/2005	
2003-62	MRPC: 1.18 Duties to Prospective Clients	Should not include a Rule governing the period during which a lawyer and prospective client are considering whether to form a client-lawyer relationship.	11/14/2003	The Court's proposal includes rule 1.18 concerning duties to prospective clients. The Court does note in a staff comment that the rule was included in its proposal in anticipation of debate on this issue.	9/29/2005	
2003-62	MRPC: 4.1 Truthfulness in Statements to Others	Should not include an affirmative duty on a lawyer to disclose a material fact to a third person when they know failing to do so would assist in a client's criminal or fraudulent act.	11/14/2003	The Court's proposal states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person. 4.1	9/29/2005	

MRPC and MSILS

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2003-62	MRPC: 4.2 Communication with Party Represented by Counsel Persons or Parties	Should not be amended to apply to represented "persons" rather than "parties." Minority Opinion: should be amended to apply to represented "persons" rather than "parties."	11/14/2003	The Court's proposal includes two alternatives. Alternative A follows the RA's recommendation, retaining the term "parties" rather than changing the term to "persons."	9/29/2005	
2003-62	MRPC: 4.2 Communication with Party Represented by Counsel Law Enforcement Exception	Should, if amended to apply to represented "persons," include a law enforcement exception recognizing that U.S. and Michigan constitutional provisions govern such contacts.	4/16/2005	The Court's proposal includes two alternatives. Alternative A follows the RA's recommendation, retaining the term "parties" rather than changing the term to "persons" and does not include a law enforcement exception. However, alternative B, retains the term "parties" AND includes a law enforcement exception. The RA does not support the law enforcement exception without the corresponding change from "parties" to "persons."	9/29/2005	
2003-62	MRPC: 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law	Should include a rule like proposed ABA Model Rule 5.5 governing an out of state lawyer's professional activities within the state.	11/14/2003	The Court's proposal includes rule 5.5 which is identical to the ABA Model Rule 5.5.	9/29/2005	
2003-62	MRPC: 6.1 Voluntary Pro Bono Publico Service 3/30/300	Should include a standard of 30 hours, 3 cases or \$300 per year.	11/14/2003	The Court's proposal follows the RA's recommendation.	9/29/2005	
2003-62	MRPC: 6.1 Voluntary Pro Bono Publico Service Pro Bono Services	Should more broadly define pro bono services to include direct services to person of limited means, or services to include direct services to persons of limited means, or services to charitable, religious, civic, community, governmental, and educational organizations, or to secure or protect civil rights, civil liberties or public rights, including services in activities for improving the law, the legal system or the legal profession.	11/14/2003	The Court's proposal follows the RA's recommendation.	9/29/2005	
2003-62	MRPC: 7.6 Political Contributions to Obtain Legal Engagements or Appointments by Judges	Should be deleted in its entirety.	11/14/2003	The Court's proposal does not include rule 7.6.	9/29/2005	
2003-62	MRPC: 3.8 Special Responsibilities of a Prosecutor	Should retain the current MRPC 3.8.	11/14/2003	The Court retains this rule in its proposal.	9/29/2005	
2003-62	MRPC: 6.3 Legal Services Organizations and Lawyer Referral Services	Should retain the current MRPC 6.3.	11/14/2003	The Court retains this rule in its proposal.	9/29/2005	
2003-62	MRPC: 6.6 Professional Conduct	Should retain the current MRPC 6.6.	11/14/2003	The Court retains this rule in its proposal.	9/29/2005	
2003-62	MRPC: 1.0.2 Transition Provision	Should include provision stating "All engagements existing as of the effective date of the amendments shall be controlled by the law in effect at the inception of the engagement, unless otherwise agreed by both the lawyer and the client.	4/16/2005	The Court's proposal does not appear to include a transition provision.	9/29/2005	

MRPC and MSILS

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2003-62	MRPC: 1.4 Ownership and Copying of Lawyers' Files	Majority: opposed to including a rule about file ownership within the Rules. Strong Minority: supported including several provisions concerning this issue.	4/16/2005	The Court's proposal does not appear to include a provision regarding ownership and copying of lawyers' files.	9/29/2005	
2002-29	MSILS: 1.3 Purpose of These Standards	Should state that the Standards are not intended to create independent grounds for determining culpability.	4/16/2005	The Court's proposal states, "These standards are designed for use in imposing a sanction or sanctions following the entry of a finding of misconduct pursuant to MCR 9.115(f)(1). These standards are designed to promote fairness, predictability, and continuity in the imposition of sanctions. They are also designed to provide a focus for appellate challenges concerning the appropriate level of discipline imposed by a lawyer."	9/29/2005	
2002-29	MSILS: Definitions Knowledge	Should incorporate the language proposed by the ADB defining knowledge, except that "actual knowledge" should be used instead of "knowledge."	4/16/2005	The Court's proposal states that the definitions included the MRPC are incorporated by reference. The MRPC defines "knowingly, known or knows" as denoting actual knowledge, but does not define "actual knowledge."	9/29/2005	
2002-29	MSILS: Definitions Injury and Potential Injury	Injury: "Injury" is harm to a client, the public, the legal system or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury. Potential Injury: "Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyers' misconduct. The likelihood and gravity of the potential injury are factors to be considered in deciding the level of discipline.	4/16/2005	The Court's proposal does not include definitions of "injury" or "potential injury."	9/29/2005	
2002-29	MSILS: 2.3 Suspension	Suspension is the removal of a lawyer from the practice of law for not less than 30 days. See MCR 9.106(2). An attorney suspended for 180 days or more is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124, has established by clear and convincing evidence the elements of MCR 9.123(B), and has complied with other applicable provisions of MCR 9.123.	4/16/2005	The Court's proposal includes, as Standard 2.3, the RA's recommended definition of suspension.	9/29/2005	
2002-29	MSILS: Use of "Injury" within MSILS	After a finding of lawyer misconduct, potential or actual injury caused by the lawyer's misconduct should be considered by the ADB or a hearing panel as part of the process to determine whether that conduct should generally result in disbarment, suspension or reprimand in the absence of aggravating or mitigating factors unique to that case.	4/16/2005	The Court's approach adopts the idea of "harm" rather than "injury" or "potential injury." The Court adds "degree of harm" as a mitigating or aggravating factor to be considered after a finding or acknowledgement of misconduct. See 9.32(a) and 9.22(a).	9/29/2005	

MRPC and MSILS

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2002-29	MSILS: Use of "Reprimand" within MSILS	MSILS 4.6, 6.1, 8.0 should provide for reprimand as a sanction when a lawyer negligently: (i) fails to provide a client with accurate or complete information [MSILS 4.6], (ii) determines whether statements or documents submitted to a tribunal are false or takes remedial action when material information is being withheld [6.1], and (iii) practices law in violation of the terms of a disciplinary order [8.0].	4/16/2005	The Court published Alternative A and B for comment.	9/29/2005	
2002-29	MSILS: Preface "Consent" Stipulations/Orders/Judgments of Misconduct	MSILS should not apply to consent stipulations or orders/judgments of misconduct and therefore the words, "or acknowledgement" should be deleted from the "Preface."	4/16/2005	The Court's proposal includes "or acknowledgement."	9/29/2005	
2002-29	MSILS: 2.6 Admonition	MSILS 2.6 should neither define nor provide for admonition, also known as a private reprimand, as a form of non-public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.	4/16/2005	The Court's proposal includes MSILS 2.6 concerning admonition.	9/29/2005	
2002-29	MSILS: Use of Interference/Potential Interference with a Legal Proceeding or the Outcome of the Legal Proceeding within MSILS <b>Disbarred</b>	MSILS 6.2 and 6.3 should provide that serious/significant or potentially serious/significant interference with a legal proceeding or the outcome of the legal proceeding must be found before a lawyer may be <b>disbarred</b> for: (i) knowingly violating a court order or rule with the intent to obtain a benefit for the lawyer or another; (ii) intentionally tampering with a witness, (iii) making an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding; and (iv) improperly communicating with someone in the legal system other than a witness, judge or juror with the intent to influence or affect the outcome of the proceeding.	4/16/2005	The Court's proposal appears to address the RA's recommendations.	9/29/2005	
2002-29	MSILS: Use of Interference/Potential Interference with a Legal Proceeding or the Outcome of the Legal Proceeding within MSILS <b>Suspended</b>	MSILS 6.2 and 6.3 should provide that interference with a legal proceeding or the outcome of the legal proceeding must be found before a lawyer is <b>suspended</b> from the practice of law for: (i) knowingly violating a court order or rule; and (ii) engaging in communication with an individual in the legal system when the lawyer knows that such communication is improper.	4/16/2005	The Court's proposal appears to address the RA's recommendations.	9/29/2005	



MRPC and MSILS

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2002-29	MSILS: 6.2 and 6.3 Use of Interference/Potential Interference with a Legal Proceeding or the Outcome of the Legal Proceeding within MSILS <b>Reprimanded</b>	MSILS 6.2 and 6.3 should provide that interference or potential interference with a legal proceeding or the outcome of the legal proceeding must be found before a lawyer is <b>reprimanded</b> for: (i) negligently failing to comply with a court order or rule; and (ii) being negligent in determining whether it is proper to engage in communication with an individual in the legal system.	4/16/2005	The Court's proposal appears to address the RA's recommendations.	9/29/2005	
2002-29	MSILS: 4.1 Failure to Preserve Property Held in Trust <b>Disbarment</b>	Should provide that <b>disbarment</b> is generally appropriate when a lawyer knowingly converts client property.	4/16/2005	The Court's proposal states that "disbarment is generally appropriate when a lawyer knowingly fails to preserve property held in trust." 4.11	9/29/2005	
2002-29	MSILS: 4.1 Failure to Preserve Property Held in Trust <b>Suspension</b>	Should provide that <b>suspension</b> is generally appropriate when a lawyer knowingly or negligently deals improperly with client property.	4/16/2005	The Court's proposal states that "suspension is generally appropriate when a lawyer fails to hold property in trust or commingles personal property with property that should have been held in trust." 4.12	9/29/2005	
2002-29	MSILS: 4.3 Failure to Avoid Conflicts of Interest <b>Suspension</b>	Should provide that <b>suspension</b> is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.	4/16/2005	The Court's proposal considers suspension as a sanction without the requirement of injury or potential injury to a client. 4.32.	9/29/2005	
2002-29	MSILS: 4.3 Failure to Avoid Conflicts of Interest <b>Reprimand</b>	Should provide that <b>reprimand</b> is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.	4/16/2005	The Court's proposal considers suspension as a sanction without the requirement of injury or potential injury. 4.33.	9/29/2005	
2002-29	MSILS: 4.5 Lack of Competence	Should provide sanctions for failing to provide competent representation to a client without reference to illegal or clearly excessive fees.	4/16/2005	This is included in the Court's proposal as Alternative A.	9/29/2005	
2002-29	MSILS: 5.1 Failure to Maintain Personal Integrity	Should contain the sanction provisions outlined in the ADB version, including "Alternative B" for Standard 5.13 (modified pursuant to recommendation by the SBM Special Committee on Grievance) providing for reprimand for certain criminal and other conduct.	4/16/2005	The RA supports Alternative B and opposes Alternative A.	9/29/2005	