

2017/2018 At the Capitol

The results of all Board and Assembly votes on proposals to support or oppose legislation will be posted on the State Bar website as soon as possible after the vote and published in the next *Michigan Bar Journal*. A comprehensive list of all State Bar positions can be found on the website at www.michbar.org/publicpolicy/home.

The vote by which the position on a bill was adopted will be listed, if not unanimous. Any member who would like more information concerning the rationale for positions taken can refer to the website at www.michbar.org/publicpolicy/home or contact Peter Cunningham at the State Bar of Michigan, 306 Townsend St., Lansing, MI 48933-2012, (800) 968-1442. For the most current status information, visit www.michiganlegislature.org.

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

POSITION: Support with amendments to address the following issues:

- 1) clarify which offenses qualify for the summary procedure on an application to set aside an adjudication; 2) provide an opportunity for victims of the offense at issue to request a hearing on the application; 3) expand the list of crimes that are disqualified from the bill's summary procedure to include crimes committed in the context of dating violence, sexual abuse, and family violence; and 4) exempt victims of the offense at issue from any misdemeanor penalty for disclosing information about the offense after the adjudication has been set aside.

Payee Notification

The Board of Commissioners considered a proposal for legislation that would enact a payee notification system, requiring an insurer to notify a claimant when it remits settlement proceeds to the claimant's attorney. The Board of Commissioners voted to support the proposal and submit it to the Representative Assembly for consideration at its next meeting.

(Position adopted by roll call vote. Commissioners voting to support the position: Anderson, Danielle; Anderson, David; Barnes; Buchanan; Burrell; Christenson; Cunningham; Dunnings; Fink; Gardella; Grieco; Haroutunian, Edward; Haroutunian, Krista; Hart-Negrich; Hohaus; McCarthy; Moss; Olsman; Quick; Radke; Riordan; Rockwell; Warnez; and Washington. Commissioners voting against the position: Baumann; McGill; Shekell; and Ulrich. Commissioners excused: Davidson and Heath. Commissioners absent at time of vote: Canady; McGinnis; and Perkins.)

HB 5244 (Kesto) Mental health: other; Mental health: forensic; Criminal procedure: mental capacity. 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; Mental health: forensic; Criminal procedure: mental capacity. 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).

POSITION: Oppose. Although the Board of Commissioners supports the goals of improving the speed and accuracy of competency evaluations, these bills would not improve the current system due to lack of deadlines, funding, and standards (unanimous support with the abstention of Commissioner Brian Shekell).

In the Hall of Justice

Proposed Amendment of Rules 2.410 and 2.411 and Proposed Addition of Rule 3.970 of the Michigan Court Rules (ADM File No. 2017-19)—Alternative Dispute Resolution; Mediation; Child Protection Mediation (See *Michigan Bar Journal* December 2017, p. 60.)

**STATUS: Comment Period Expired 2/1/18;
Public Hearing to Be Scheduled**

POSITION: Support with the following amendments:

1. Provide for cost sharing between parties and add the following language to Rule 3.970(C)(3) to protect low-income parties:

If a party qualifies for a waiver or suspension of fees under MCR 2.002 or the court determines that the party is unable to pay the cost of the mediator provider and free or low-cost mediation services are not available, the court shall not order a party to pay any portion of the mediation fees.

In the Hall of Justice (continued)

2. Insert language from Rule 3.216(D), the domestic relations mediation rule, that sets out specific reasons for objecting in addition to a ground based on past efforts (subparagraph (e) below):

Cases may be exempt from mediation on the basis of the following:

- (a) domestic abuse, unless attorneys for both parties will be present at the mediation session;
 - (b) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
 - (c) reason to believe that one or both parties' health or safety would be endangered by mediation;
 - (d) a showing that the parties have made significant efforts to resolve the issues such that mediation is likely to be unsuccessful; or
 - (e) for other good cause shown.
3. Add the following to the end of the second sentence of Rule 3.970(F)(1):
- "... provided that the parties can demonstrate to the court that the mediator is otherwise qualified for the specific issues in the case."
4. Amend Rule 3.970(G)(6) to require any mediation agreement to comply with Rule 3.971, which requires the court to advise a parent of the effect of a plea.
5. Correct language referencing Rule 3.974 to 3.970.

Proposed Addition of Rule 3.808 of the Michigan Court Rules (ADM File No. 2015-26)—Finalizing Adoption; Findings of Court (See *Michigan Bar Journal* December 2017, p 61.)

STATUS: Comment Period Expired 2/1/18;

Public Hearing to Be Scheduled

POSITION: Support with a recommendation that these appeals be expedited

Proposed Addition of Rule 3.810 of the Michigan Court Rules (ADM File No. 2016-13)—Transcripts for Purposes of Appeal (See *Michigan Bar Journal* December 2017, p 61.)

STATUS: Comment Period Expired 2/1/18;

Public Hearing to Be Scheduled

POSITION: Support with the following 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.

Proposed Amendment of Rule 3.903 of the Michigan Court Rules (ADM File No. 2017-18)—Definitions (See *Michigan Bar Journal* December 2017, p 62.)

STATUS: Comment Period Expired 2/1/18;

Public Hearing to Be Scheduled

POSITION: Support

Proposed Amendment of Rules 3.977 and 6.425 of the Michigan Court Rules (ADM File No. 2017-08)—Termination of Parental Rights; Sentencing; Appointment of Appellate Counsel (See *Michigan Bar Journal* December 2017, p 62.)

STATUS: Comment Period Expired 2/1/18;

Public Hearing to Be Scheduled

POSITION: Support

Proposed Amendment of Rule 7.212 of the Michigan Court Rules (ADM File No. 2016-25)—Briefs (See *Michigan Bar Journal* December 2017, p 63.)

STATUS: Comment Period Expired 2/1/18;

Public Hearing to Be Scheduled

POSITION: Support

Model Criminal Jury Instructions

Proposed Model Criminal Jury Instructions 10.9, 10.9a, 10.9b, 10.9c and 10.9d (See *Michigan Bar Journal* December 2017, p 56.)

POSITION: Support

Proposed Model Criminal Jury Instructions 11.39, 11.39a and 11.39b (See *Michigan Bar Journal* December 2017, p 57.)

POSITION: Support

Proposed Model Criminal Jury Instructions 15.11a and 15.12a (See *Michigan Bar Journal* September 2017, p 72.)

POSITION: Support

Proposed Model Criminal Jury Instructions 17.20 and 17.20c (See *Michigan Bar Journal* September 2017, p 72.)

POSITION: Support

Proposed Model Criminal Jury Instruction 17.33 (See *Michigan Bar Journal* September 2017, p 72.)

POSITION: Support

Proposed Model Criminal Jury Instruction 36.5 (See *Michigan Bar Journal* September 2017, p 72.)

POSITION: Support

Michigan Indigent Defense Commission

Standard 8—Economic Disincentives or Incentives

STATUS: Comment Period Expired 2/1/18

POSITION: Support