

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.

Executive Budget Recommendation for the Michigan Indigent Defense Commission

POSITION: Support.

SB 895 (Bieda) Civil procedure: other. Civil procedure; other; court of claims notification requirements and statute of limitations; exempt claims under the wrongful imprisonment compensation act. Amends secs. 6431 & 6452 of 1961 PA 236 (MCL 600.6431 & 600.6452).

SB 896 (Jones) Civil procedure: other. Civil procedure; other; wrongful imprisonment compensation act; extend the time for claims by individuals who were released before the effective date of the act. Amends sec. 7 of 2016 PA 343 (MCL 691.1757).

POSITION: Support.

In the Hall of Justice

Proposed Adoption of Administrative Order 2018-XX (ADM File No. 2017-14)—Mistrial (See *Michigan Bar Journal* March 2018, p 70.)

STATUS: Comment Period Expired 5/1/18;

Public Hearing to Be Scheduled

POSITION: Support the concept provided in ADM File No. 2017-14 compelling the administrator and the court to enter into an agreement. However, courts that already have an agreement in place should not be forced to renegotiate that agreement until and unless a dispute arises, and State Court Administrator's Office should also provide a model agreement as an example.

Proposed Amendment of Rule 2.228 of the Michigan Court Rules (ADM File No. 2017-12)—Mistrial (See *Michigan Bar Journal* March 2018, p 70.)

STATUS: Comment Period Expired 5/1/18;

Public Hearing to Be Scheduled

POSITION: Support with further amendments:

MCR 2.228 Transfer to Court of Claims

(A) A notice of transfer to the Court of Claims must be provided before or at the time the defendant files an answer. After that time, the defendant may seek a transfer to the Court of Claims by motion under MCR 2.221.

(B) After the time provided in subrule (A)—

(1) If the court in which a civil action is pending has concurrent jurisdiction with the Court of Claims, the defendant must seek leave to file a notice of transfer and the court may grant leave if it is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.

(2) If the court in which a civil action is pending does not have subject matter jurisdiction because the case is within the exclusive jurisdiction of the Court of Claims, MCR 2.227 governs.

Proposed Amendment of Rules 5.125 and 5.409 of the Michigan Court Rules (ADM File No. 2016-19/2016-28)—Interested Persons Defined; Report of Guardian; Inventories and Accounts of Conservators (See *Michigan Bar Journal* February 2018, p 70.)

STATUS: Comment Period Expired 4/1/18;

Public Hearing to Be Scheduled

POSITION: Support the amendments to MCR 5.125 with the recommendation that "adult child" is defined in MCR 5.125(C)(1).

No position on the amendments to MCR 5.409 as currently drafted and recommend that it be amended for clarification and correction.

(Continued on the following page)

In the Hall of Justice (continued)

Proposed Amendments of Rules 6.310, 6.429, and 6.431 of the Michigan Court Rules (ADM File No. 2016-42)—Withdrawal or Vacation of Plea; Correction and Appeal of Sentence; New Trial (See *Michigan Bar Journal* February 2018, p 70.)

STATUS: Comment Period Expired 4/1/18;

Public Hearing to Be Scheduled

POSITION: Support the proposed amendments with the following corrections as presented in bold font:

MCR 6.310—Timely filing may be shown by a sworn statement filed with the motion, which must set form the date of deposit...

MCR 6.429—If a motion to withdraw correct an invalid sentence is received.

Timely filing may be shown by a sworn statement filed with the motion, which must set form the date of deposit...

MCR 6.431—Timely filing may be shown by a sworn statement filed with the motion, which must set form the date of deposit...

Proposed Addition of Rule 6.417 of the Michigan Court Rules (ADM File No. 2017-10)—Mistrial (See *Michigan Bar Journal* March 2018, p 70.)

STATUS: Comment Period Expired 5/1/18;

Public Hearing to Be Scheduled

POSITION: Support with amendments:

Before ordering a mistrial, the court must give each defendant and the government prosecutor an opportunity to comment on the record regarding the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

Proposed Amendment of 6.429 of the Michigan Court Rules (ADM File No. 2015-04)—Correction and Appeal of Sentence (See *Michigan Bar Journal* March 2018, p 70.)

STATUS: Comment Period Expired 5/1/18;

Public Hearing to Be Scheduled

POSITION: Support the proposed amendments recommended by Timothy A. Baughman, which differentiate between an invalid and an illegal sentence.

Proposed Amendment of Rule 6.610 of the Michigan Court Rules (ADM File No. 2016-08)—Criminal Procedure Generally (See *Michigan Bar Journal* February 2018, p 71.)

STATUS: Comment Period Expired 4/1/18;

Public Hearing to Be Scheduled

POSITION: Support.

Proposed Amendments of Rules 9.112 and 9.131 of the Michigan Court Rules (ADM File No. 2016-30)—Requests for Investigation; Investigation of Member or Employee of Board or Commission; Investigation of Attorney Representing Respondent or Witness; Representation by Member or Employee of Board or Commission. (See *Michigan Bar Journal* February 2018, p 72.)

STATUS: Comment Period Expired 4/1/18;

Public Hearing to Be Scheduled

POSITION: Support the proposed amendments while suggesting that the Court consider expanding the rule to include other relations, such as domestic partners, significant others, and adult relatives.

Proposed Amendment of Rule 9.122 of the Michigan Court Rules (ADM File No. 2016-45)—Review by Supreme Court (See *Michigan Bar Journal* February 2018, p 73.)

STATUS: Comment Period Expired 4/1/18;

Public Hearing to Be Scheduled

POSITION: Support the proposed amendment with the recommendation to extend the deadline from 56 days to 180 days.

Alternative Proposed Amendments of Rule 1.16 of the Michigan Rules of Professional Conduct (ADM File No. 2016-31)—Declining or Terminating Representation (See *Michigan Bar Journal* February 2018, p 73.)

STATUS: Comment Period Expired 4/1/18;

Public Hearing to Be Scheduled

POSITION: Oppose the proposed amendments to this rule and recommend that the rule be amended to follow the American Bar Association Model rule, and include the language proposed by the Criminal Jurisprudence & Practice Committee:

Rule 1.16(b)

(a) Unchanged

(b) Except as stated in paragraph (c), after informing the client that he cannot do so without permission from the court, a lawyers may withdraw from representing a client if withdrawal can be accompanied without material adverse effect on the interests of the client, or if:

(1)–(2) Unchanged

(3) the client insists upon taking action pursuing an objective that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement imprudent;

(4)–(6) Unchanged

Proposed Alternative Amendments of Rule 7.2 of the Michigan Rules of Professional Conduct (ADM File No. 2016-27)—Advertising (See *Michigan Bar Journal* March 2018, p 73.)

STATUS: Comment Period Expired 5/1/18;

Public Hearing to Be Scheduled

POSITION: Support Alternative A.

Model Criminal Jury Instructions

M Crim JI 11.40, 40a, and 40.b

STATUS: Comment Period Expired 5/1/18

POSITION: Support with amendments to provide clarity to "serious impairment of a body function."

M Crim JI 11.41

STATUS: Comment Period Expired 5/1/18

POSITION: Support with amendments to provide clarity to "serious impairment of a body function."

M Crim JI 11.42 and 11.42a

STATUS: Comment Period Expired 5/1/18

POSITION: Support with amendments to provide clarity to "serious impairment of a body function."

Federal Legislation

Funding for the Legal Services Corporation (LSC)

LSC grantees provide civil legal aid to constituents who struggle to get by on incomes below or near the poverty line. The President's FY 2019 Budget proposes the elimination of LSC funding, while the Legal Services Corporation FY 2019 funding request is \$564.8 million. (Current funding is at \$385 million.) Last year, in accordance with the ABA, the State Bar of Michigan advocated to restore funding at least the inflation-adjusted FY 2010 level of \$482 million.

(Position adopted by roll call vote. Commissioners voting in favor: Rockwell; Anderson, Danielle; Anderson, David; Barnes; Baumann; Buchanan; Burrell; Canady; Christenson; Cunningham; Davidson; Dunning; Fink; Gardella; Grieco; Haroutunian, E.; Haroutunian, K.; Hart-Negrich; Heath; Hohaus; McCarthy; McGill; McGinnis; Moss; Perkins; Quick; Radke; Riordan; Shekell; Ulrich; Warnez; and Washington.)

Public Service Loan Forgiveness

The ABA supports preservation of the federal public service loan forgiveness program (PSLF) as a vital source of immediate support to state, local, and tribal communities that enables them to provide critical services to their residents. The ABA opposes efforts to repeal or end the program, such as in H.R. 4508, PROSPER Act, absent any impact analysis or alternative strategy for addressing the underlying problem for which the program was created.

(Position adopted by roll call vote. Commissioners voting in favor: Rockwell; Anderson, Danielle; Anderson, David; Barnes; Baumann; Buchanan; Burrell; Canady; Christenson; Cunningham; Davidson; Dunning; Grieco; Hart-Negrich; Heath; Hohaus; McCarthy; McGinnis; Moss; Quick; Radke; Shekell; Ulrich; Warnez; and Washington. Commissioners voting against: Fink; Gardella; Haroutunian, E.; Haroutunian, K.; McGill; and Riordan. Commissioner abstaining: Perkins.)

Representative Assembly

On April 21, 2018, the Representative Assembly met and voted on the following resolutions:

Support proposing state legislation to enact payee notification when a claim is paid with insurance funds, including self-insured municipalities and other insurers.

Support amending Rule 2.002 of the Michigan Court Rules to provide consistency across jurisdictions in the treatment of fee waiver repeats made by indigent persons lacking the ability to pay filing fees in Michigan courts.

Support proposing changes to the Michigan civil discovery rules to improve the civil discovery process by making it more cost effective; increasing access to courts; better enabling active, informed, and efficient judicial case management; and encouraging parties and lawyers to cooperate and act reasonably during the discovery process.