

# 2019/2020 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](http://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](http://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](http://www.michiganlegislature.org).

**HB 4296** (Filler) Civil procedure: costs and fees; Courts: other. Civil procedure; costs and fees; e-filing fee; extend sunset. Amends sec. 1993 of 1961 PA 236 (MCL 600.1993).

**POSITION:** Support to ensure that e-filing is adequately funded.

**SB 0076** (LaSata) Courts: other; Courts: juries; Crime victims: other; Occupations: other. Courts; other; certain crime victims; exempt from jury duty and provide that certain individuals are not practicing law in violation of the revised judiciary act. Amends secs. 916 & 1307a of 1961 PA 236 (MCL 600.916 and 600.1307a).

**POSITION:** Oppose because it creates an additional exemption to jury service; courts already have the ability to excuse these individuals from jury service.

## In the Hall of Justice

**Proposed Amendment of Rule 1.109 of the Michigan Court Rules (ADM File No. 2002-37)**—Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access (See *Michigan Bar Journal* May 2019, p 66.)

**STATUS:** Comment Period Expired 5/1/19;

**Public Hearing to Be Scheduled**

**POSITION:** Support with the following amendments: (1) revise subsection (G)(6)(a)(ii) to provide a "non-exhaustive" list of factors that courts should consider in determining "good cause" and (2) provide that filing deadlines should be stayed pending the court's review of the e-filing exemption request.

**Proposed Amendment of Rules 1.109 and 8.119 of the Michigan Court Rules and Administrative Order 1999-4 (ADM File No. 2017-28)**—Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access; Court Records and Reports; Duties of Clerks (See *Michigan Bar Journal* February 2019, p 68.)

**STATUS:** Comment Period Expired 4/1/19;

**Public Hearing to Be Scheduled**

**POSITION:** Support the Court's efforts to address the protection of personal identifying information, oppose the current amendments as drafted, provide to the Court all the comments received from sections and committees, and request that the Court publish for comment revised amendments before adopting them.

**Proposed Amendment of Rules 1.111 and 8.127 of the Michigan Court Rules (ADM File No. 2018-06)**—Foreign Language Interpreters; Foreign Language Board of Review and Regulation of Foreign Language Interpreters (See *Michigan Bar Journal* January 2019, p 72.)

**STATUS:** Comment Period Expired 3/1/19;

**Public Hearing to Be Scheduled**

**POSITION:** Support.

**Proposed Addition of Rule 3.22X of the Michigan Court Rules (ADM File No. 2018-13)**—Friend of the Court Alternative Dispute Resolution (See *Michigan Bar Journal* February 2019, p 68.)

**STATUS:** Comment Period Expired 4/1/19;

**Public Hearing to Be Scheduled**

**POSITION:** Support in principle, but oppose the rule as drafted and request that the rules be revised to address the following concerns: (1) attorneys should be allowed to be present at any meeting in which an order may be generated; (2) the rules should provide for adequate domestic violence screening, protocols, and training; (3) confidentiality provisions should be consistent in the rule; (4) the language regarding automatic orders being generated should be stricken; (5) the language regarding protective orders in subsection (D)(1) should be clarified whether it applies to all parties that have been subject to any PPO, persons who have been subject to a PPO involving another party, or persons who have been subject to a PPO

## In the Hall of Justice (continued)

concerning domestic abuse or abuse or neglect of any child; and (6) subsection (D)(1) should be amended as follows:

Parties who are, **or have been**, subject to a personal protection order or other protective order or who are involved in a **past or** present child abuse and neglect proceeding may not be referred to friend of the court ADR without a hearing to determine whether friend of the court ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing.

**Proposed Amendment of Rule 6.001 of the Michigan Court Rules (ADM File No. 2018-23)**—Scope; Applicability of Civil Rules; Superseded Rule and Statutes (See *Michigan Bar Journal* January 2019, p 72.)

**STATUS: Comment Period Expired 3/1/19;**

**Public Hearing to Be Scheduled**

**POSITION:** Support in principle, but encourage the Court to revise the rule in light of the numerous concerns that have been raised in the comments submitted to the Court and note that implementation of electronic discovery may lessen the impact of requiring discovery in misdemeanor cases.

**Proposed Amendment of Rules 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and Proposed New Rule 6.430 of the Michigan Court Rules (ADM File No. 2017-17)**—Scope; Applicability of Civil Rules; Superseded Rule and Statutes; Video and Audio Proceedings; Sentencing; Appointment of Appellate Counsel; Judgment; Criminal Procedure Generally; Postjudgment Motion to Amend Restitution; Definitions; Authority of Court or Tribunal Appealed From (See *Michigan Bar Journal* January 2019, p 72.)

**STATUS: Comment Period Expired 3/1/19;**

**Public Hearing to Be Scheduled**

**POSITION:** Support with the following amendments: (1) to address the issue of restitution not being known at the time of sentencing, support the Michigan District Judges Association's rule language for MCR 6.427(11) and 6.425(E); (2) support the Court of Appeals' recommendations that appeals of orders amending restitution be by leave, rather than by right; and (3) remove the reference of the trial court's authority over motions to amend restitution, as it is unnecessary for the reasons stated by the Court of Appeals.

**Proposed Amendment of Rule 7.312 of the Michigan Court Rules (ADM File No. 2018-25)**—Briefs and Appendixes in Calendar Cases (See *Michigan Bar Journal* March 2019, p 74.)

**STATUS: Comment Period Expires 6/1/19;**

**Public Hearing to Be Scheduled**

**POSITION:** Support with the amendment that briefing deadlines for MOAAs be the same as full grants.

**Proposed Administrative Order 2019-XX (ADM File No. 2002-37)**—Trial Court Requirements for Providing Meaningful Access to the Court for Mandated Electronic Filers (See *Michigan Bar Journal* May 2019, p 64.)

**STATUS: Comment Period Expired 5/1/19;**

**Public Hearing to Be Scheduled**

**POSITION:** Support with the following amendments:

- Courts mandating e-filing should be required to have at least one court computer workstation at the courthouse and all workstations have assistance available;
- Courts should be required to provide in-person e-filing assistance; and
- Courts should follow the SCAO guidelines for what does and does not constitute legal advice.

**Special Administrative Inquiry Regarding Questions Relating to Mental Health on Michigan Bar Examination Application (ADM File No. 2016-46)**—(See *Michigan Bar Journal* March 2019, p 74.)

**STATUS: Comment Period Expired 5/1/19;**

**Public Hearing to Be Scheduled**

**POSITION:** Replace the mental health questions on the Character & Fitness Affidavit of Personal History (questions 54a and 54b) with the National Conference of Bar Examiners (NCBE) questions that focus on conduct (NCBE questions 29 and 31), but extend the length of inquiry of question 54b from 5 to 10 years. Recommend that the Board of Law Examiners consider the potential benefits of using an independent mental health professional in appropriate circumstances involving mental health inquiries. Recommend that the Court maintain data and monitor the new NCBE questions for five years to assess what impact the questions have on the Character & Fitness process.