

SBM

S T A T E B A R O F M I C H I G A N

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December 5, 2005

The Honorable Alan L. Cropsey
State Representative
State Capitol
P.O. Box 30036
Lansing, MI 48909-7536

Re: SB 815 Allow property managers and other nonlawyers to represent businesses in certain eviction proceedings

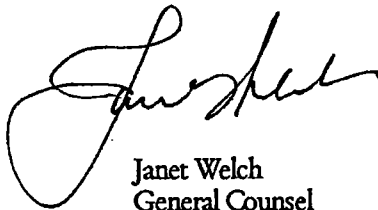
Dear Senator Cropsey:

At its November 18, 2005 meeting, the Board of Commissioners unanimously voted to actively oppose¹ SB 815. This position is identical to the position adopted in July 2005 on HB 4732.

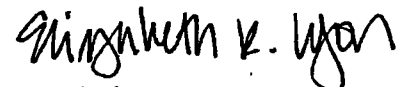
For your information, enclosed are the public policy reports submitted to the State Bar from its Standing Committee on Justice Initiatives and Unauthorized Practice of Law Committee on HB 4732. Please note that the opinions expressed are that of the Committees and not necessarily that of the State Bar.

If you would like to discuss this position in further detail or have questions, please contact Janet Welch directly at (517) 346-6375, jwelch@mail.michbar.org; or Elizabeth Lyon directly at (517) 346-6325, elyon@mail.michbar.org.

Sincerely,



Janet Welch
General Counsel



Elizabeth K. Lyon
Public Policy Program Analyst

CC. Thomas W. Cranmer, President
John T. Berry, Executive Director
Richard D. McLellan, Co-Chair, Standing Committee on Justice Initiatives
Hon. Cynthia D. Stephens, Co-Chair, Standing Committee on Justice Initiatives
John E. Anding, Chair, Unauthorized Practice of Law Committee
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

¹ Definition of active opposition: Pending legislation which the State Bar opposes and which is the subject of active lobbying effort.



Report on Public Policy Position

Name of Committee:

Standing Committee on Justice Initiatives

Contact Person:

Hon. Cynthia Stephens

Email:

judgecyn@yahoo.com

Bill Number:

HB 4732 (Sak) Civil procedure; evictions; property managers and other nonlawyers to represent businesses in certain eviction proceedings; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

Date position was adopted:

May 24, 2005

Process used to take the ideological position:

In-person discussion and vote

Number of members in the decision-making body:

Nine in favor, one abstention

Number who voted in favor and opposed to the position:

Fifteen in favor, none opposed

Position:

The SCJI opposes this bill.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4732>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The bill permits non-lawyers to represent corporations in certain proceedings without providing the regulation of these individuals by the State Bar of Michigan and the court rules pertaining to lawyers. This process would permit corporations, through their agents, to act as quasi-professionals in summary proceedings while the defendants in such cases are not permitted to send non-lawyers to represent them if they have difficulty attending court proceedings, and they would be at a disadvantage when up against professional agents who regularly appear in a quasi-lawyer role in these venues.

Arguments against the position (if any):

None reported.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the State Bar of Michigan unanimously adopted a position of active opposition.

Fiscal implications of the recommended policy to the State Bar of Michigan:

This will have a negative financial consequences to bar members who are retained by corporations to represent them in these proceedings.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- ✓ **The regulation and discipline of attorneys**
- ✓ **The improvement of the functioning of the courts**
 - The availability of legal services to society**
 - The regulation of attorney trust accounts**
- ✓ **The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.**

Keller- permissible explanation:

None provided.



Report on Public Policy Position

Name of Committee:

Unauthorized Practice of Law Committee

Contact Person:

John E. Anding or W. Josh Ard

Email or Phone:

janding@dcadvocate.com or ardw@cooley.edu

Bill Number:

HB 4732 (Sak) Civil procedure; evictions; property managers and other nonlawyers to represent businesses in certain eviction proceedings; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

Date position was adopted:

07/06/05

Process used to take the ideological position:

Discussion via e-mail

Number of members in the decision-making body:

22

Number who voted in favor and opposed to the position:

11 in favor, 1 opposed, 10 did not vote

Position:

The Unauthorized Practice of Law Committee is opposed to this Bill. See below for arguments against the Bill.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4732>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

If we were going to make exceptions to UPL, landlords are not the underprivileged class in need of help. This would not help judicial efficiency, it would not help access to justice, and is not at all equitable. There is no provision for tenants to appoint non-attorney representatives to speak for them. Attorneys are less likely to disrespect due process matters than mere employees would be.

There are probably not many lawyers that practice exclusively in the landlord-tenant area, and it may seem as a vulnerable area to start chipping away at the practice of law. However, we must protect this area because it

does share characteristics and concepts which are extremely important to most attorneys, such as trial practice. While most landlord-tenant cases are decided quickly via summary proceedings, they are still governed by the Court Rules and have some of the characteristics of 'regular' civil litigation, such as trials. Imagine a high school dropout (no disrespect to high school dropouts) calling his first witness to the stand on behalf of a Corporation? That would be ridiculous.

The only argument in favor of this proposed legislation would be a perceived 'efficiency', However, such perceived efficiency is a pipe dream as non-lawyers have no formal training in the Court Rules or Rules of Evidence, leaving it to the Courts to raise objections or increase their workload in having to realistically train these non-lawyers.

As far as arguments against this, we could have situations where non-lawyers are calling parties as witnesses and possibly having the power to subpoena persons to testify and obtain records (while the bill does not state so, it is a natural progression of the same); situations where non-lawyers (particularly property managers) will be able to set up a practice of exclusive landlord-tenant litigation, putting properly trained lawyers out of business and causing havoc for the Courts; situations where 'schools' pop-up to teach prospective landlord-tenant litigators how to handle trials; and possibly other horrors which I cannot think of right now.

In landlord/tenant actions, the claim for money damages is often if not usually the smallest part of the dispute. The claim for possession (or eviction) is the more serious matter. A wrongly evicted tenant may suffer damage much greater than \$3000.

There is a difference between letting a person represent him/herself, where she submits herself to the jurisdiction of the court and may be punished as party for frivolous/unethical behavior, and allowing a person represent a distinct entity (a fictitious one at that). Who is responsible to the Court and party opponent for unethical conduct in that scenario? It would seem at a minimum any bill needs to address that question.

Attorneys are bound by ethical rules and restraints in dealing with parties no such obligation would rest on these individuals in dealing with persons who may lack an understanding of rules and procedures concerning eviction rights, etc.

Individuals do not have the right to choose a non-attorney representative. Many tenants are not capable of presenting their arguments effectively but might have a friend or relative who could. Why should businesses have this right but individuals do not?

Having mediated a fair number of Landlord Tenant cases in the past several years, many a sole proprietorship, partnership, corporation, limited liability company, trust, or other legal entity that is a party to the action may be represented in the action by an officer, partner, member, manager, trustee, or Owner of the entity or by an employee or agent of the entity who has direct and personal knowledge of the facts in dispute does not have a grasp on the law. Who will draft pleadings for these folks? Will these folks be responsible under MCR 2.114 for filing frivolous claims or vexatious litigation?

This is really bad law. When this backfires, either because landlords, not having advise or counsel from attorneys, continue bad practices, or because district court judges, dealing with pro per landlords, hand out sanctions, or when tenants, who may be represented, start winning; the perceived benefit of this legislation will be lost.

Where is the accountability of these agents? Is this now another area of the law which requires no profound legal knowledge, a la Ameribank? This legislation certainly gives those who can afford it the most, landlords, the ability to avoid hiring attorneys.

The real harm comes in the minority of cases where a tenant does want to oppose the action. There would be an increased burden on courts, where now there would normally be two sides, neither of which knows what it's doing.

Lawyers--even when they represent landlords--are a bulwark against wrongful evictions. I've seen it. The landlords would dearly love to cut these lawyers out of the action, not just to save money, but to free themselves of some of the pesky ethical objections a reputable lawyer should be raising to evictions of people without the right facts. People lose their homes every day when they oughtn't, even with lawyers in the mix, and without lawyers it will get worse.

One fear is that these landlord representatives, not subject to any professional standards of conduct, would be more abusive, misleading and misinformative than landlord attorneys are.

Arguments against the position (if any):

This bill sounds like a prudent measure akin to small claims court. If the amount in controversy is less than \$3,000 who wants to get the lawyers involved anyhow? Not the lawyers. And certainly not the litigants. As I read it, the bill really doesn't even pertain to the unauthorized practice of law as the defendant's representative must be a party or an agent of the party "with direct and personal knowledge of the facts in dispute." I support the bill.

Landlords need not hire attorneys to press these small claims if they have a representative who is either a party or an agent of the party "with direct and personal knowledge of the facts in dispute." If anything, letting landlords represent themselves may inure to the benefit of tenants who are then on a more level playing field with their non-lawyer opponents.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the State Bar of Michigan unanimously adopted a position of active opposition.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None that we are aware of.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- ✓ The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller- permissible explanation:

Not provided.