

Use of "Interference or Potential Interference with a Legal Proceeding or the Outcome of the Legal Proceeding" within MSILS:

MSILS 6.2

Abuse of the Legal Process

MSILS 6.3

Improper Communications with Individuals in the Legal System

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 16, 2005**

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 disbarred 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. [*ADB version*]

- (a) Yes.
- (b) No.

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- (a) 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 **suspended** 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. [*ADB version*]
- (b) MSILS 6.2 and 6.3 should provide that **prejudice to the administration of justice** is sufficient grounds for **suspension** when a lawyer knowingly violates a court order or rule without the intent to obtain a benefit or advantage for the lawyer or another. [*Supreme Court and Campbell version*]

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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 **reprimanded** 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. [*ADB version*]

- (a) Yes.
- (b) No.

Synopsis

The versions proposed by the Supreme Court do not require interference with a legal proceeding or interference with the outcome of a the legal proceeding as a prerequisite to the issuance of sanctions pursuant to MSILS 6.2 and 6.3 The ADB version incorporates a two-prong test requiring (1) injury or potential injury; or (2) interference or potential interference with a legal proceeding. One of the prongs must be met before the relevant sanction may be imposed.

Supreme Court Version (also Campbell Version)

The Supreme Court version does not include interference with a legal proceeding or interference with the outcome of the legal proceeding as a prerequisite to imposing sanctions for violating MSILS 6.2 and 6.3. The only reference to the effect of a violation of these standards is found in MSILS 6.22(a), which permits suspension when the result of a lawyer's knowing violation of a court order or rule without the intent to obtain a benefit or advantage for the lawyer or another results in prejudice to the administration of justice.

ADB Version

The above proposals outline the ADB version.