

The Public Policy Committee of the Board of Commissioners may consider those amendments to Michigan Court Rules, the Rules of Evidence, the Michigan Rules of Professional Conduct, and the Michigan Code of Judicial Conduct published in the report, *From the Michigan Supreme Court*, in this edition of the *Michigan Bar Journal* at its next meeting. The committee's recommendation, if any, to support or oppose the proposed amendments may be voted on at the next Board of Commissioners meeting. Comments concerning any of these proposals may be directed in writing to John T. Berry, Executive Director, State Bar of Michigan, Michael Franck Building, 306 Townsend Street, Lansing, MI 48933-2083. If a position for or against is adopted by the Board of Commissioners, that action will be reported in the next available issue of the *Journal*. Please contact Janet Welch at the State Bar of Michigan for further information, (800) 968-1442.

## State Bar Positions

Following is a list of State Bar positions taken on proposed amendments to the Michigan Court Rules, the Rules of Evidence, the Michigan Rules of Professional Conduct, the Michigan Code of Judicial Conduct, and all other formal rules promulgated by the Michigan Supreme Court.

**Proposed Amendment of Rules 1.09 and 2.113—Use Only Letter Size Standards for Pleadings.** (See *Michigan Bar Journal*, May 2003, p 57.)

**Oppose**

**Proposed Amendment of Rule 2.102** (file No. 01-47)

**Actively Support**

**Proposed Amendment of Rule 2.107 of the Michigan Court Rules** (file No. 01-07) regarding Service and Filing of Pleadings and Other Papers. (See *Michigan Bar Journal*, November 2001, p 62.)

**Oppose—Support Amendment Recommendation of the Civil Procedure Committee**

**Proposed Amendments of Rules 2.401, 2.410, 2.506 and 7.213** (file No. 01-33)

**The Board of Commissioners reconsidered their prior position of support of these amendments, and voted to support provided that the provisions concerning “good faith” are eliminated, for the reasons advanced by the Alternative Dispute Resolution Section and previously communicated to the Supreme Court.**

**Proposed New Rule 2.406 of the Michigan Court Rules** (file No. 02-44) regarding Use of Facsimile. (See *Michigan Bar Journal*, May 2003, p 57.)

**Support**

**Proposed Amendment of Rule 2.502** (file No. 02-32)

**Defer**

**Proposed Amendment of Rule 3.203—Service of Notice and Court Papers in Domestic Relations Cases.** (See *Michigan Bar Journal*, March 2003, p 65.)

**Support**

**Proposed Amendment of Rule 3.206 of the Michigan Court Rules** (file No. 02-22) regarding attorney fees and expenses. (See *Michigan Bar Journal*, November 2002, p 64.)

**Support**

**Proposed New Rule 3.221—Hearings on Support and Parenting Time Enforcement Act Bench Warrants.** (See *Michigan Bar Journal*, May 2003, p 58.) (consistent with 2 nonsubstantive stylistic changes recommended by sections)

**Support in Principle**

**Proposed Amendment of Rule 3.603 of the Michigan Court Rules** (file No. 01-11) regarding Interpleader. (See *Michigan Bar Journal*, March 2002, p 60.)

**Support in principle, except for subsection E-4**

**Proposed Amendments of Rules 3.973, 3.974, 3.975 and 3.977—Dispositional Hearing, Review, Procedures, Child at Home, Child in Foster Care; Alternative A and Alternative B** (See *Michigan Bar Journal*, March 2003, p 66.)

**Support Alternative A**

**Proposed Amendment of Rules 5.408—Review and Modification of Guardianships of Legally Incapacitated Individuals** (See *Michigan Bar Journal*, July 2003, p 73.)

**Support**

**Proposed Amendment of Rule 6.005 and Proposed New Rule 8.123 of the Michigan Court Rules** (file No. 01-10) regarding Sub-rule Letter Re-designation: Proposed New Rule re Records of Counsel Appointments. (See *Michigan Bar Journal*, June 2002, p 65.)

**The Board of Commissioners voted to oppose the proposed amendment in principle. The Bar has convened an ad hoc committee to address the concerns raised, and expects to be providing further input to the court in the near future.**

**Proposed Amendments of Rules 6.445 and 6.610 of the Michigan Court Rules** (file No. 02-25) regarding Probation Revocation and Criminal Procedure Generally. (See *Michigan Bar Journal*, August 2002, p 64.)

**Support in Principle**

**Proposed Amendment of Rule 6.508 of the Michigan Court Rules** (file No. 01-27) regarding Procedures, Evidentiary Hearing, Determination. (See *Michigan Bar Journal*, March 2002, p 60.)

**Support**

**Proposed Amendment of Rules 7.203, 7.210, 7.219, 7.211, 7.215, and 7.217** (file No. 01-48)

**Support in principle with the following exceptions:**

- a) **The Board is concerned that the proposed amendment of 7.215(H) eliminates the court's discretion to consider late motions for reconsideration, even in cases that may present compelling circumstances.**
- b) **The Board is concerned that the provision of 7.217(D) shortening the time to seek reinstatement of a case dismissed for lack of progress could be prejudicial to litigants who are unable, for compelling reasons, to seek reinstatement within the shortened time period.**

**Proposed Amendment of Rules 7.204, 7.210, 7.211, 7.212 and 7.216 of the Michigan Court Rules** (file No. 02-34) regarding Filing Appeal of Right; Appearance, Transcript, Duties of Court Reporter or Recorder. (See *Michigan Bar Journal*, May 2003, p 59.)

**Concerning the amendments relating to intake proceedings only, the Board of Commissioners voted to:**

- **Support generally the ongoing efforts of the Court of Appeals to reduce appellate delay.**
- **Support funding for appellate delay reduction initiatives to reduce the “warehouse.”**
- **Oppose the published revisions to MCR 7.212 that eliminate stipulated extensions of time to file briefs and shorten the time for filing briefs and reply briefs.**
- **Recommend further study, and urge attention to the recommendations of the Report of the State Bar of Michigan Task Force on Appellate Delay Reduction.**

The Law School Deans Committee of the State Bar of Michigan has recommended that the State Bar of Michigan support legislative changes that would eliminate a U.S. residency requirement for applicants to the State Bar of Michigan. An explanation of the recommendation can be found on the State Bar website at [www.michbar.org/](http://www.michbar.org/). The recommendation may be considered at future meetings of the Board of Commissioners or Representative Assembly. Comments concerning this recommendation may be directed in writing to John T. Berry, Executive Director, State Bar of Michigan, Michael Franck Building, 306 Townsend Street, Lansing, MI 48933-2083.

## Bills to be Considered by the Board of Commissioners

The following bills introduced in the Michigan Legislature may be considered at the next scheduled Board of Commissioners meeting. Please contact Janet Welch at the State Bar of Michigan for information on date, time, and location of meetings where legislation may be considered. Their listing here does not necessarily mean that a position will be taken, nor that the subject matter has been determined to be within the scope of permissible State Bar advocacy. If a position for or against is adopted by the required two-thirds vote, that action will be reported in the next available issue of the *Journal*. This information, also located on the State Bar of Michigan website ([www.michbar.org/](http://www.michbar.org/)), is updated regularly. Comments concerning any of these bills may be directed in writing to John T. Berry, Executive Director, State Bar of Michigan, Michael Franck Building, 306 Townsend St., Lansing, MI 48933-2083. Appearances before the board to comment can also be arranged.

**HB 4770 (Milosch)**—Creates childcare support bench warrant enforcement fund.

**STATUS: Referred to the House Families and Human Services Committee**

**HB 4810 (Pastor)**—**Attorney Fees.** Increases threshold for requiring attorney fee to be paid by party that rejects mediation to 20 percent from 10 percent.

**STATUS: Referred to the House Judiciary Committee**

**HB 4899 (Julian)**—**Civil Process.** Fees and mileage allowed for service of civil procedure process.

**STATUS: Referred to the House Criminal Justice Committee**

**HB 4915 (Meyer)**—**Public Records Fees.** Creates new act to require fee for copies of public records.

**STATUS: Referred to the House Government Operations Committee**

**HB 4931 (Howell)**—**No-Fault Explanations.** Explains liability, uninsured and underinsured no-fault insurance coverages.

**STATUS: Referred to the House Insurance Committee**

**HB 4983 (Tobocman)**—**Immigration Clerical Assistant Act.** Provides for licensure of immigration clerical assistants.

**STATUS: Referred to the House Criminal Justice Committee**

## State Bar of Michigan Legislative Program 2003–2004 Legislative Session

Following is a list of bills on which the State Bar of Michigan has taken an official position. The vote by which the position on a bill was adopted will be listed, if not unanimous. Any member wishing further information concerning the rationale for positions taken may contact Janet Welch at the State Bar of Michigan, Michael Franck Building, 306 Townsend St., Lansing, MI 48933-2083, (800) 968-1442. For the most current status information visit [www.michiganlegislature.org](http://www.michiganlegislature.org).

### DEFINITION OF STATE BAR POSITIONS

**Active Support**—Pending legislation which the State Bar supports and which is the subject of active lobbying effort.

**Support in Principle**—Pending legislation which the State Bar supports, but which is not the subject of active lobbying effort. The State Bar is on record on this position and will explain it upon request.

**Active Opposition**—Pending legislation which the State Bar opposes and which is the subject of active lobbying effort.

**Oppose in Principle**—Pending legislation which the State Bar opposes, but which is not the subject of active lobbying effort. The State Bar is on record on this position and will explain it upon request.

**No Position**—Pending legislation that falls within Administrative Order 1993-5, but deferred to SBM sections to advocate their positions directly to the appropriate legislative committees.

**HB 4016—Oppose in Principle (Stewart)**—**Guardianship Ombudsman.** Creates guardianship ombudsman.

**STATUS: Referred to the House Committee on Family and Children Services**

**HB 4018—Support in Principle (Stewart)**—**District Court Bond.** Requires bond for district court magistrates to be filed with local funding unit.

**STATUS: Referred to the House Judiciary Committee**

**HB 4032—Support in Principle (Shulman)**—**Supplemental Appropriations.** Provides for supplemental appropriations for 2002–2003 fiscal year, and provides for expenditure of the appropriations.

*(Consistent with judicial funding and SBM Draft principles of court funding.)*

**STATUS: Reconsider—vote withdrawn—May 6, 2003**

**HB 4066—Active Opposition (Wojno)**—**Protection Orders.** Allows issuance of personal protection orders after one incident of stalking.

**STATUS: Referred to the House Judiciary Committee**

**HB 4521—Defer to July 25 Board Meeting** (Koetje)—**Conservator Appointments.** Allows court to pass over person having priority in the appointment of a conservator or protected individual's estate if clear and convincing evidence to prevent appointment is found.

**STATUS:** Referred to the House Judiciary Committee

**SB 345—Referred to Sections** (Patterson)—**Joinder Allowance.** Allows joinder of a licensee or registrant in administrative actions if law hearing examiner makes a determination of fault regarding a respondent and at least one other respondent.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 359—Defer to July 25, 2003 Board Meeting** (Jacobs)—**Filing Fees.** Amends limited liability company act to establish filing fees in appropriations acts.

**STATUS:** Presented to Governor 7/9/2003

**SB 433—Support in Principle** (Switalski)—**Courts, funding, Traffic Control.** Replaces district or municipal referee assessments imposed under the Vehicle Code with justice system assessments.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 434—Support in Principle** (Switalski)—**Courts, funding; Civil Procedure.** Provides for justice system assessment.

**STATUS:** Assigned PA 0095'03 with immediate effect

**SB 435—Support in Principle** (Clarke)—**Civil Procedure, costs and fees.** Revises costs imposed in district court to at least \$45 paid by defendant for each serious misdemeanor and at least \$35 paid for each misdemeanor.

**STATUS:** Assigned PA 0096'03 with immediate effect

**SB 436—Support in Principle** (Switalski)—**Criminal Procedure, Sentencing; Courts, funding.** Assesses minimum state cost in criminal cases.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 437—Support in Principle** (Switalski)—**Courts, funding; Juveniles, Criminal Procedure.** Requires payment by juvenile of minimum state cost as a condition of probation for juveniles.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 438—Support in Principle** (Switalski)—**Courts, funding; Civil Procedure.** Creates a civil filing fee fund and increases certain court fees.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 439—Support in Principle** (Cropsey)—**Courts, funding.** Establishes a justice system fund and provides formula for distribution of funds.

**STATUS:** Assigned PA 0097'03 with immediate effect

**SB 440—Support in Principle** (Cropsey)—**Courts, funding; Health, Substance Abuse Treatment.** Establishes the Drug Treatment Court Fund and provides formula for distribution of funds.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 441—Support in Principle** (Cropsey)—**Courts, funding; Communications.** Establishes the Drug Treatment Court Fund and provides formula for distribution of funds.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 442—Support in Principle** (Garcia)—**Courts, funding; Crime Victims.** Revises order of priority of payments in Crime Victim's Rights Act.

**STATUS:** Assigned PA 0098'03 with immediate effect

**SB 443—Support in Principle** (Cropsey)—**Courts, funding; Juveniles.** Revises payment of fines, costs and other payments for juvenile criminal procedure.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 444—Support in Principle** (Brown)—**Courts, funding; Law Enforcement.** Revises forensic laboratory fund assessment.

**STATUS:** Assigned PA 0099'03 with immediate effect

**SB 445—Support in Principle** (Brown)—**Courts, funding; Criminal.** Revises funding assessments for DNA testing.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 446—Support in Principle** (Brown)—**Courts, funding; Criminal.** Revises funding assessments for DNA testing.

**STATUS:** Referred to the Senate Judiciary Committee

**SB 447—Support in Principle** (Brown)—**Courts, funding; Criminal.** Revises funding assessments for DNA testing.

**STATUS:** Assigned PA 0100'03 with immediate effect

**SB 448—Support in Principle** (Garcia)—**Courts, funding.** Requires payment by criminal of minimum state cost as a condition of probation.

**STATUS:** Assigned PA 0101'03 with immediate effect

**SB 449—Support in Principle** (Cropsey)—**Courts, funding; Criminal.** Revises allocation of payment made by criminal defendant.

**STATUS:** Assigned PA 0102'03 with immediate effect

**SB 450—Support in Principle** (Garcia)—**Courts, funding; Criminal.** Requires payment of minimum state cost as a condition of parole.

**STATUS:** Referred to the Senate Judiciary Committee

## United States Senate Bill

**S 1091 IS—Support in Principle** (Durbin)—**Prosecutors and Defenders Incentive Act.** To provide funding for student loan repayment for public attorneys.

**Proposed Amendment of Rules 7.205, 7.210, 7.215, 7.302 and 7.316 of the Michigan Court Rules** (file No. 1999050, 00-27) regarding Application for Leave to Appeal; Record on Appeal; Opinions, Orders, Judgments and Final Process from Court of Appeals; Application for Leave to Appeal; Opposing Brief, Cross Appeal; Misc. Relief Obtainable in Supreme Court. (See *Michigan Bar Journal*, June 2002, p 65.)

**The board voted to support the amendments in general, but urges the court to retain discretion with respect to late applications for leave to appeal.**

**Proposed Amendment of Rules 7.302, 7.304, 7.306 and 7.309 of the Michigan Court Rules** (file No. 02-18) regarding Application for Leave to Appeal; Briefs in Calendar Cases; Preparation, Filing and Serving Briefs and Appendices. (See *Michigan Bar Journal*, July 2002, p 63.)

**Support**

**Proposed Amendment of Rules 7.302, 7.304 and 7.315** (file No. 02-40) (See *Michigan Bar Journal*, February 2002.)

**Support**

**Proposed Amendment of Rules 7.304, 9.114 and 9.122 of the Michigan Court Rules.** Original Proceedings, Action by Administrator or Commission after Answer and Review by Supreme Court, amending the word “mandamus.”

**Support in Principle**

**Proposed Amendment of Rule 8.116** (file No. 01-38) (See *Michigan Bar Journal*, November 2002.)

**Support**

**Proposed Amendment of Rule 8.121(C) of the Michigan Court Rules** (file No. 01-12) regarding Contingent Fees and Claims or Actions for Personal Injury and Wrongful Death; Computation. (See *Michigan Bar Journal*, May 2002, p 78.)

**Support the recommendation of the Civil Procedure Committee**

**Proposed Amendment of Rule 9.110 of the Michigan Court Rules** (file No. 02-16) regarding the Attorney Discipline Board. (See *Michigan Bar Journal*, July 2002, p 63.)

**Support in Principle**

**Proposed Amendment of Rule 9.128 of the Michigan Court Rules** (file No. 02-16) regarding the Attorney Discipline Board. (See *Michigan Bar Journal*, July 2002, p 64.)

**Support in Principle**

**Proposed Amendment of Subchapter 9.200 of the Michigan Court Rules** (file No. 99-31) regarding Michigan’s Judicial System. (See *Michigan Bar Journal*, March 2002, p 61.)

**Referred to the Representative Assembly**

**Proposed Amendment of Rule 702 of the Michigan Rules of Evidence** (file No. 01-29) regarding Testimony by Experts. (See *Michigan Bar Journal*, March 2003, p 67.)

**Support Alternative A, and Oppose Alternative B**

**Proposed Amendments of Rule 1101 of the Michigan Rules of Evidence** (file No. 99-10) regarding Bases of Opinion Testimony by Experts; Applicability. (See *Michigan Bar Journal*, May 2002, p 77.)

**Deferred to Civil Procedure Committee**

**MCJC—Canon 7** (file No. 01-04) regarding Campaign Conduct. (See *Michigan Bar Journal*, August 2001, p 85.)

**Oppose**

**Proposed Amendment of Canon 7 of the Michigan Code of Judicial Conduct** (file Nos. 02-49; 02-50; 03-09). (See *Michigan Bar Journal*, May 2003, p 56.)

**Support**

**MCR 6.502** (file No. 00-31) regarding motion for relief from judgment. (See *Michigan Bar Journal*, January 2001, p 88.)

**Oppose**

**MRE 103** (file No. 99-10) regarding Rulings on Evidence. (See *Michigan Bar Journal*, July 2001, p 84.)

**Support**

**Partial Rescission of Administrative Order 1981-7** (file No. 00-18) regarding Standard 11 of the Minimum Standards for Indigent Criminal Appellate Defense Services. (See *Michigan Bar Journal*, August 2000, pp 1088–1089.)

**Oppose**

**Administrative Order 2002-5** (file No. 02-44) regarding Differentiated Case Scheduling at the Court of Appeals. (See *Michigan Bar Journal*, February 2003, p 52.)

**The Board of Commissioners voted to adopt the recommendation of the Civil Procedure & Courts Committee to support a pilot program of differentiated case management in the Court of Appeals, and to defer endorsement of permanent differentiated case management scheduling until after publication of details about how such a program would be implemented and what effect the program is expected to have on the disposition of cases.**

**Proposed Administrative Order Regarding Caseflow Management** (See *Michigan Bar Journal*, July 2003, p 72.)

**Deferred**

### **Public Policy Principles Concerning Judicial Branch Funding**

1. The judicial branch budget should be sufficient to meet constitutional requirements and to provide adequate resources for timely, fair, and efficient disposition of cases.
2. Judicial branch funding in Michigan should be funded primarily by state general fund dollars, supplemented by local general fund dollars, filing fees, and court costs.
3. The judicial branch budget should include funding for indigent civil legal assistance.
4. Filing fee amounts should not be so high as to discourage the filing of valid complaints. The determination of the appropriate level of fees should include consideration of the necessary level of service, new system needs, comparison of fees in other jurisdictions, and inflation.
5. The requirement that judges waive or suspend payment of any fee, in whole or in part, upon a showing by affidavit of indigency or inability to pay, should be strictly observed.