



The Justice Policy Initiative

Promoting Access to Justice in Public Policy

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True to its mission of serving the public, the State Bar of Michigan has long recognized that it has a special responsibility to ensure that the courts are available to all who need to resolve legal problems and to protect those who are most vulnerable. The State Bar, through its staff, committees, and sections, monitors proposed legislative and court rules and, where permissible under the State Bar rules, takes positions on those items.

The ever growing volume of legislation considered by the Michigan Legislature can overwhelm full-time lobbyists, let alone the average lawyer or lay person. More than 3,500 bills were introduced in each of the last two legislative sessions. In addition, the Michigan Supreme Court publishes and invites comment on dozens of new and amended court rules each year.

Given the number of policy proposals, it is important for the Bar to monitor their impact on the public, especially those who are most vulnerable. Proposals on filing fees and costs invariably affect the ability of low-income and unrepresented persons to obtain counsel or access the courts to protect their legal rights; moreover, even seemingly neutral procedural measures can create unintended obstacles for them. It is important that attorneys and organizations who work regularly with these individuals and other special populations (including persons with limited English proficiency or disabilities) have an opportunity to inform the Bar of such unintended, adverse consequences of changes in judicial or administrative procedure.

Historically, the State Bar's input on these issues has been expressed through the Standing Committee on Legal Aid, the Access to Justice Task Force, the Open Justice Commission, and the Committee on Justice Initiatives (CJI). These entities have

identified bills and proposed rules that present concerns or opportunities related to disadvantaged groups and have recommended specific policy positions for consideration by the Board of Commissioners and Representative Assembly.

The State Bar's Public Policy Efforts

The Bar's efforts to advocate for greater access to attorneys and the courts have influenced state policy decisions. Here are a few examples of policy matters on which the Bar, based in part on recommendations from the Legal Aid Committee or CJI, weighed in on behalf of low-income and unrepresented persons:

- The Supreme Court adopted an amendment to MCR 8.120 that permits law students working for legal aid organizations—whether or not those organizations are federally funded—to practice law under certain circumstances under the supervision of one of the organization's attorneys.
- The legislature adopted a law that regulates people and organizations who are not attorneys who provide “clerical assistance” in immigration matters.
- The legislature changed a provision in a proposed bill (which was ultimately enacted) that would have prevented mortgagors from redeeming foreclosed property at their local register of deeds.
- The Supreme Court incorporated suggested revisions to its proposed MCR 2.004, which ensures that local courts implement procedures that permit unrepresented inmates to participate by telephone in hearings involving their children.
- The Supreme Court adopted an amendment to MCR 3.215 that helped ensure that low-income persons have a way to obtain an affordable record of Friend of the Court proceedings if needed for a de novo appeal.
- The Bar adopted a position in principle that legislation that includes increases in court reporting fees should also include provisions to ensure that indigent persons have access to transcripts in civil appeals.

History of the Justice Policy Initiative

Prior to 2004, the Standing Committee on Legal Aid was the State Bar entity that was designated to inform the Board of Commissioners and Representative Assembly about the needs and concerns of indigent persons and the nonprofit organizations that represent them. After the Bar reorganized its committee structure as part of its strategic plan for 2004–2005, the Legal Aid Committee and Pro Bono Committee were consolidated under the auspices of the CJI. The policy review functions of the Legal Aid Committee were assigned to a new entity called the Justice Policy Initiative (JPI).

How the JPI Works

The JPI is one of several initiatives that are volunteer entities under the CJI. The JPI members are appointed by the State Bar president, and the JPI chairperson is appointed as a member of the CJI. The JPI is not a Bar committee, but its members are responsi-

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ble for analyzing policy proposals and recommending policy positions to the CJI. Currently, the JPI includes attorneys who work in legal aid organizations, educational institutions, the public sector, and in private practice. The members' common bond is knowledge and insight on the needs and barriers encountered by indigent and unrepresented persons.

In most cases, the JPI reacts to pending bills and proposed court rules. In some cases, the State Bar's public policy staff notifies the JPI about proposals that may be of interest; in others, JPI members identify bills or rules by reading the Bar's *Public Policy Update* newsletter. The JPI may identify a problem or need that could be addressed through a new court rule or piece of legislation. In this case, the JPI makes a proactive policy recommendation. Information about resources on legislation and rules is available at the State Bar's Public Policy Resource Center at <http://www.michbar.org/publicpolicy>. The site includes links to the *Public Policy Update* newsletter, which is sent out electronically each week to subscribers.

Before the JPI can take a position on any legislative issue, its members must first determine whether the legislation is within the scope of Supreme Court Administrative Order 2004-01. That Order sets out the types of policy matters on which the Bar or Bar entities (such as committees) that are financed by mandatory dues may lawfully take public positions under *Keller v State Bar of California*.¹ The permissible policy areas in which the JPI is most likely to recommend a position are those “reasonably related to . . . the regulation . . . of attorneys . . . the improvement of the functioning of the courts, the availability of legal services to society, and the regulation of the legal profession.”²

The State Bar is allowed to comment on all proposed court rules, which by definition relate to the functioning of the courts or legal profession. A list of bills that are considered eligible for action by the Board of Commissioners (“*Keller*-permissible”) is posted on the State Bar's Public Policy Resource Center website. Additional bills may be deemed *Keller*-permissible if the JPI or CJI can show how they fall within the scope of AO 2004-01. Sections, which are financed by voluntary dues and are not subject to *Keller*, may take a position on any matter as long as that position does not conflict with the “official” State Bar policy.³

If the JPI believes that a policy proposal is reasonably related to one of the permitted topics, it analyzes whether the policy proposals



create opportunities or barriers for low-income persons, pro bono attorneys, or legal aid organizations in their efforts to ensure that all low-income persons (whether represented or not) have access to an efficient and effective judicial system and, when possible, to counsel. The JPI has also recommended positions on rules that affect the Bar itself; e.g., the Code of Professional Responsibility.

As part of its work, the JPI is now conferring regularly with Bar committees and sections that are concerned about the criminal justice process to exchange ideas on how proposed changes to criminal laws or procedures may affect low-income persons, either in the criminal proceeding or due to civil consequences of a criminal action.

If JPI members vote to support a particular policy position, the JPI submits its recommendation to the CJI. If the CJI votes to support the recommendation (with or without modifications), it submits its recommendation in writing to the Board of Commissioners' Public Policy, Image and Identity (PPII) Committee. The PPII Committee reviews policy recommendations submitted from any interested person or entity within the Bar. The PPII Committee confirms whether the Bar is allowed to take a position on the matter and, if so, it decides whether to recommend a policy position to the full Board of Commissioners. If the CJI is recommending a proactive proposal (e.g., a new law or court rule change), then it submits this recommendation to the Representative Assembly for approval. The Board of Commissioners or Representative Assembly will decide whether to support a policy position and, if so, whether to do so "actively" or "in principle." Even if a matter can be addressed by the Bar under AO 2004-1, the Board of Commissioners may decide that it is not appropriate for the Bar to take a single, unified position. In such cases, the Board may authorize sections or committees to advocate their respective positions (which may or may not differ) to the Supreme Court or legislature.

Once the Board of Commissioners or Representative Assembly has adopted a policy position or has authorized the CJI to advocate its policy position, the position is communicated in writing to appropriate legislators or to the Supreme Court. The CJI members may also submit written or oral testimony at legislative hearings or testify at the Supreme Court's public hearings concerning proposed court rules. The State Bar's lobbyist becomes involved only in the

small handful of issues in which the Bar has taken a position of active support or opposition.

Work with the JPI and CJI

Any member of the Bar who has concerns or recommendations on a proposed court rule or legislative proposal's effect on the ability of low-income persons to access the courts or counsel may send a communication to the State Bar of Michigan's CJI to the attention of Terri Stangl, Justice Policy Initiatives chairperson, or by e-mail to tstangl@ccj-mi.org. ♦



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Footnotes

1. *Keller v State Bar of California*, 496 US 1, 110 S Ct 2228 (1990).
2. Administrative Order 2004-01.
3. See the Bylaws of the State Bar of Michigan, Article VIII at <http://www.michbar.org/generalinfo/bylaws.cfm>.