



p 517-346-6300

January 27, 2020

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The Honorable Graham Filler
Chair, House Committee on Judiciary
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

Re: House Bill 5169 – Affidavits of Merit

Dear Chairman Filler:

The State Bar of Michigan's Board of Commissioners has voted to oppose HB 5169. Although the bill's intent to reduce frivolous lawsuits is a laudable goal, the Board is concerned that, as currently drafted, the bill would impair the public's access to the courts by imposing onerous restrictions on meritorious claims.

The affidavit of merit requirement in HB 5169 would create additional burdens to litigants, and possibly courts, with litigation over the affidavits of merit. The bill would also result in different rules of law for plaintiffs bringing claims against engineers and architects; absent a compelling reason for differential treatment for these cases, a uniform approach and application of the law to all litigants is favored.

Some of the specific concerns with the bill include:

- The bill requires that the individual signing an affidavit of merit must be licensed in the state of Michigan. This is unreasonably restrictive by unnecessarily limiting a plaintiff's ability to find a person willing to execute an affidavit of merit.
- The bill includes no requirement for the defendant to provide an affidavit of meritorious defense. Affidavits of meritorious defense are required when affidavits of merit are filed in medical malpractice cases (MCL 600.2912e).
- Although the bill has a requirement for the defendant to engage in good faith discovery during the period that the affidavit of merit is required, there is still a concern with plaintiffs' ability to obtain an affidavit of merit. Pursuing an architecture malpractice case is much different from a medical malpractice case because, unlike medical cases, the plaintiff does not have access to architectural records prior to discovery, which may make it difficult, even in a meritorious case, for an architect to be willing to sign an affidavit of merit prior to filing suit.

If you would like to discuss this position in further detail or have questions, please contact me directly at your convenience.

Sincerely,

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cc. Marcia Hune