

CIVIL PROCEDURE & COURTS COMMITTEE

Respectfully submits the following position on:

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HB 5813

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The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Civil Procedure & Courts Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan.

The State Bar position on this matter is to oppose HB 5813.

The total membership of the Civil Procedure & Courts Committee is 17.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 17. The number who voted in favor to this position was 10. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of committee:

Civil Procedure & Courts Committee

Contact person:

Daniel D. Quick

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Bill Number:

[HB 5813](#) (Damrow) Courts; other; Communications, technology. Courts; other; audio recording of court proceedings by parties; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1488.

Date position was adopted:

October 13, 2012

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

17

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Committee believes it best, as reflected in MCR 8.109, to leave these matters to the discretion of the court, which is in the best position to assess the particular circumstances of each case. A mandatory rule fails to take into consideration any number of factors which might militate against access in some cases, including PPO hearings, child custody matters or certain criminal proceedings. Moreover, to the extent the bill conflicts with the court rule, the proposal violates the principle stated in *McDougall v Schantz* and the court's right to govern its own proceedings.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2012-HB-5813>

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:

The bill affects the functioning of the courts in that it removes the court's discretion in the allowance of independent audio recording of proceedings.