

Name of committee:

Committee on Justice Initiatives

Contact person:

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Bill Number:

HB 4501 (Cushingberry) Civil procedure; costs and fees; costs and fees in the court of appeals and of court transcripts; increase. Amends secs. 321 & 2543 of 1961 PA 236 (MCL 600.321 & 600.2543).

Date position was adopted:

April 12, 2007

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:

19

Number who voted in favor and opposed to the position:

11 Voted for position

0 Voted against position

0 Abstained from vote

8 Did not vote

Position:

CJI opposes the portion of the bill related to increases in transcript costs until and unless the legislation includes a mechanism to pay for transcripts for indigent appellants in civil cases.

Explanation of the position, including any recommended amendments:

The CJI has previously recognized that periodic increases in transcript fees would generally be appropriate. However, a substantial increase in transcript fees would make it extremely difficult, if not impossible, for many indigent persons to merit appeals. In most cases, such appeals are filed by Legal Services providers and pro bono attorneys, whose resources to pay for trial transcripts are very limited. Legal Services programs in Michigan, many of whom have lost staff over the past several years due to funding cuts, report that the cost of transcripts are a very real barrier to filing appeals. Due to their limited resources, legal services are not able to handle a high volume of appeals. However, it is important that their clients have access to the appellate courts to resolve open questions of law, and to reverse significant errors of law at the trial level. Erroneous or inconsistent interpretations of law can hurt hundreds of persons in the Circuit Courts, until and unless the rulings are appealed and questions of law resolved.

The Committee recognizes that transcript fees can be a substantial expense in any civil appeal, and that the

resources to pay for such fees are limited. However, if the question of how to pay for transcripts is not resolved, then only a very few indigent civil litigants will have access to the appellate court system.

A recent informal inquiry about the practice in other states shows that many other states do have language in their statutes or court rules that provide for payment of transcript fees. (See attached summary). The State Bar of Michigan should study these and other models and support legislation and/or court rules that address the question of transcript fees for indigent appellants.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://legislature.mi.gov/doc.aspx?2007-HB-4501>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments against the position (if any):

None reported.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

The State Bar has previously taken the position that the courts need to find a mechanism to ensure that indigent litigants can obtain transcripts.

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:

This is Keller permissible because it deals with the functioning of the courts.

Examples of Models in Other States

In Massachusetts, for example, there is an Indigent Court Costs statute, which is found at Mass. Gen Law ch. 261, sec. 27A - 27G. Under this law, the state will pay not only filing fees and service paid by the state, but also, upon a showing of reasonable necessity, costs of depositions, experts, transcripts for appeals, etc.

Minnesota has an in forma pauperis statute for civil cases that covers filing fees, service, as well as expert witnesses, depositions including transcripts, and transcripts of court proceedings. See

<http://www.revisor.leg.state.mn.us/stats/563/01.html>

West Virginia has a law that requires waiver of transcript fees in civil appeals. See Section 59-2-1 at <http://129.71.164.29/wvcode/59/masterfrm2frm.htm>.

Maine also has a court rule that requires the District or Superior Court to order that transcript expenses be waived or paid as an administrative expense of the court if the appellant meets the in forma pauperis guidelines and the appeal is brought in good faith and is not frivolous. The court may also limit the record on appeal as it deems appropriate. M.R. Civ. P. 91

Louisiana also provides for a free transcript and record on appeal in civil cases. La. C.C.P. art 5185(A)(1).

California set up a different approach, creating the Transcript Reimbursement Fund, underwritten by a small tax on shorthand reporter fees, that then pays reporters for the transcripts in proceedings by legal-services providers. The California Court Reports Board administers the Fund and reimburses the reporters upon the respective legal services programs' submissions of the invoices. The Fund covers only the transcript costs (including a limited number of copies) and does not reimburse for the reporter's per diem or other expenses incurred. The Transcript Reimbursement Fund is codified at California Business & Professions Code Sections 8030.2 to 8030.8.