

STATE BAR OF MICHIGAN

# PUBLIC POLICY



**SBM**  
STATE BAR OF MICHIGAN

p 517-346-6300

p 800-968-1442

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www.michbar.org

The Public Policy Handbook is designed to provide sections and committees with a comprehensive informational tool and reference guide to public policy advocacy as a section or committee member of the State Bar.

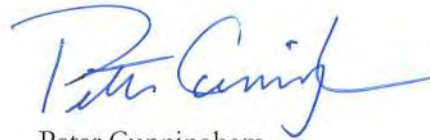
In addition to the handbook, online resources are available at the Public Policy Resource Center located at <http://www.michbar.org/publicpolicy/>. For up-to-date public policy information, subscribe to the weekly electronic newsletter, the Public Policy Update.

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We are also always available to assist you and encourage you to contact us.



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# **Advocacy for Section Members**

# Taking a Stand: Public Policy Advocacy for Section Members

## What is Your Role in Public Policy Advocacy?

### **As a Citizen-Lawyer**

The State Bar recognizes that lawyers have played a critical role in the creation and preservation of our democratic government, and has taken the following steps to help and encourage our members to play an active role as citizen-advisors:

- Providing up-to-date information on legislation and public policy developments. (E-Journal, daily newsletter, and weekly Public Policy Update.)
- Offering on-line information and convenient links for contacting for public officials.

These resources are provided to allow members to freely advocate their opinions, regardless of whether the State Bar has an official position. In communicating with public officials, members are free to call attention to their professional status and to preface their views with expressions like: “As a \_\_\_\_\_ lawyer, I know...; As a \_\_\_\_\_ lawyer, I believe...” They should not, however, characterize their personal views as the views of all lawyers, or of the section to which they belong.

### **As an Officer or Member of the Section’s Decision-Making Body**

- Be aware that all representatives of the section are responsible for complying with Supreme Court Administrative Order 2004-01 and State Bar Bylaw Article VIII. These require
  - notice to the State Bar before a position can be publicly advocated;
  - certain information to be conveyed before any communications to “outsiders” about the section’s position.
- Use the on-line template provided by the State Bar for recording and communicating section positions.
- Educate subcommittee members about the need for compliance with the Administrative Order and State Bar Bylaws.
- Designate a Public Policy Liaison. State Bar staff will contact this individual on occasion, primarily when the State Bar is considering legislation and is seeking input before adopting an official position.

### **As a General Member of a Section of the State Bar**

- Identify legislation of interest to the section. Watch for legislation classified under the applicable practice field either in the E-Journal or on the Public Policy Resource Center. You may choose to subscribe to receive email notifications of relevant legislative committee hearing notices. Check out the Michigan Legislature website for additional search and tracking resources ([www.michiganlegislature.org](http://www.michiganlegislature.org)).
- Identify rule amendments, proposed rule amendments and administrative actions of interest to the section. Michigan Supreme Court orders for rule amendments and administrative orders are available online at <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm>.
- Be active in the development of your section’s positions.
- Know your section’s positions, and advocate for them with the appropriate public official. Member tools on the Public Policy Resource Center and State Bar staff can help you identify the appropriate legislators to contact. (You will be most effective with your local legislator.) Comments to the Supreme Court can be submitted in writing or electronically (see the above Court website address). Coordinate with other sections members to ensure public policy advocacy efforts are not duplicated and are cohesive.
- If you have a position that is contrary to that of the section or of the State Bar as a whole, when you advocate your contrary view, make clear that you are speaking as an individual, not as a member of a section or as a representative of the State Bar.

**As a Member of a Subcommittee (may not be relevant for all sections)**

- Understand that the subcommittee's positions must be approved by the section's decision-making body and recorded with the State Bar before they may be publicly advocated.
- Work with the section's decision-making body and State Bar staff to maximize your impact in communicating with legislators and the Supreme Court.

## The Section Adopts a Position, What's Next?

### **Determine if the Section will Recommend the Position to the State Bar**

The section may wish to recommend that the State Bar consider its position for adoption. Parallel positions of the section and the State Bar may help give the position more weight in the legislature or Supreme Court.

The State Bar is able to take a position on any proposals before the Supreme Court but is limited to considering only legislation that falls within one or more of the following five “Keller” categories:

#### **The regulation and discipline of attorneys**

Example: SB 0815’05 – Civil procedure; evictions; property managers and other nonlawyers to represent businesses in certain eviction proceedings; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

SBM Position: Oppose.

Keller Explanation: This bill would allow non-lawyers to represent clients in certain eviction proceedings, which is the unauthorized practice of law.

#### **The improvement of the functioning of the courts**

Example: HB 4753’07 – Civil procedure; remedies; correction of inaccurate item in consumer credit reports; establish procedures for civil action in state court. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 8309.

SBM Position: Support.

Keller Explanation: This matter falls within the category of the improvement of the functioning of the courts because it expands the district court’s jurisdiction. It will allow more individuals, especially those who are in pro per, to access the court to try to correct their credit reports. The bill also clearly outlines what authority the judges have to provide relief to individuals.

#### **The availability of legal services to society**

Example: HB 4953’07 – Environmental protection; other; reimbursement of costs and attorney fees for actions under NREPA; provide for. Amends 1994 PA 451 (MCL 324.101 - 324.90106) by adding sec. 1111.

SBM Position: Oppose. The State Bar has a long history of opposing loser-pay legislation. Michigan law currently gives the court authority to award attorney fees and court costs on a discretionary basis in cases where the plaintiff has brought a frivolous claim. It is important to maintain a judge’s discretion to determine appropriate sanctions on a case by case basis, and to avoid a mandatory system that precludes judicial review of a specific case and circumstances.

Keller Explanation: The award of attorney fees to the party that prevails in litigation will have effects on parties’ willingness to seek redress in the courts. The award of attorney fees is a function that would be performed by the trial courts.

#### **The regulation of attorney trust accounts**

There are no examples of legislation from recent sessions that fit this category.

#### **The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession**

See SB 0815’05

After consideration of a section's recommendation for a position, the State Bar may decide to take no position, remove an item from consideration due to Keller constraints, authorize a committee of the State Bar to advocate its position or adopt a position of support or opposition.

### **Fulfill the Requirements!!!**

Use this quick check-off to ensure the section is in compliance with Supreme Court Administrative Order 2004-01 and State Bar Bylaw Article VIII.

- ❑ Notify the State Bar of the position ***within 10 days*** of the position being adopted by using the online template, "Report on Public Policy Position," located on the Public Policy Resource Center.  
***A section may not advocate a position until it notifies the State Bar.*** If the Section is requesting the State Bar to consider the position, be sure to complete the bottom of the template.
  - State Bar staff will post the report on the section's website and include it in the next Public Policy Update.
  - State Bar staff will email a final copy of the report and a cover letter containing all necessary information for communication purposes to the individual who submitted the report and will copy the chair(s) of the section.
- ❑ Begin advocacy – remember to give the cover letter to all section members who will be advocating!
  - Make certain the cover letter is used in ***all*** communications, both written and oral.

### **Failure to Fulfill the Requirements**

Administrative Order 2004-1 states:

Although the bylaws of the State Bar of Michigan may not generally prohibit sections from engaging in ideological activity, for a violation of this Administrative Order or the State Bar of Michigan's bylaws, the State Bar of Michigan may revoke the authority of a section to engage in ideological activities, or to use State Bar facilities or personnel in any fashion, by a majority vote of the Board of Commissioners. If the Board determines a violation occurred, the section shall, at a minimum, withdraw its submission and communicate the withdrawal in the same manner as the original communication occurred to the extent possible. The communication shall be at the section's own cost and shall acknowledge that the position was unauthorized.

The State Bar strongly believes that before such actions would take place against a section, steps would be taken to improve communication and strengthen the working relationship between the section and the State Bar. If the State Bar becomes aware that a section has not met the requirements for advocacy, staff will contact the section chair to begin immediate action to resolve the non-compliance. The State Bar is willing to impose these sanctions if a section is repeatedly not in compliance or fails to rectify a failure to comply.

# **Advocacy for Committee Members**



# Taking a Stand: Public Policy Advocacy for Committee Members

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These resources are provided to allow members to freely advocate their opinions, regardless of whether the State Bar has an official position. In communicating with public officials, members are free to call attention to their professional status and to preface their views with expressions like: “As a \_\_\_\_\_ lawyer, I know...; As a \_\_\_\_\_ lawyer, I believe...” They should not, however, characterize their personal views as the views of all lawyers, or of the committee to which they belong.

### **As a General Member of a Committee of the State Bar**

Committees of the State Bar face unique challenges in public policy advocacy because they, like the State Bar, are subject to the limitations outlined in Administrative Order 2004-01. Committees may take a position on legislation if a bill arguably falls into one of the five Keller categories and is within its jurisdiction. Committees may take a position on any rule amendment, proposed rule amendment or administrative action that is within its jurisdiction. Before a committee may communicate or begin advocating a public policy position, it must have authorization from either the Board of Commissioners or the Representative Assembly. The Executive Committee may grant authorization for positions concerning rule amendments or administrative actions. Positions submitted by committees are invaluable to the State Bar in its review of public policy items. As a member of the Committee of the State Bar, your role is to:

- Help identify legislation of interest to the committee. State Bar staff has primary responsibility for identifying legislation within the jurisdiction of the committee, but members can provide valuable assistance. (State Bar staff reviews all new legislation to determine which bills may be Keller permissible. Bills are then referred to committees for comment before the State Bar takes an official position.) You may wish to watch for legislation classified under the applicable practice field either in the E-Journal or on the Public Policy Resource Center. You may choose to subscribe to receive email notifications of relevant legislative committee hearing notices. Check out the Michigan Legislature website for additional search and tracking resources ([www.michiganlegislature.org](http://www.michiganlegislature.org)).
- Help identify rule amendments, proposed rule amendments and administrative actions of interest to the committee. The process taken to review issues being considered by the Supreme Court is the same as the process for reviewing legislation. State Bar staff will refer rule amendments, proposed rule amendments and administrative actions to committees for comment before the State Bar takes an official position. Michigan Supreme Court orders for rule amendments and administrative orders are available online at <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm>.
- Be active in the development of your committee’s positions. The more detailed a position submitted to the State Bar for review is the better, especially in committee’s Keller analysis for bills.
- Know your committee’s positions, and advocate for them with the appropriate public official once the committee has been authorized to do so. Member tools on the Public Policy Resource Center and State Bar staff can help you identify the appropriate legislators to contact. (You will be most effective with your local legislator.) Comments can be submitted to the Supreme Court in writing or electronically (see the above Court website address). Stay in contact with your committee chair or public policy liaison or read the Public Policy Update to know when a position is authorized. Coordinate with other committee members to ensure public policy advocacy efforts are not duplicated and are cohesive.

**As a Member of a Subcommittee (may not be relevant for all committees)**

- Understand that the subcommittee's positions must be approved by the committee's decision-making body before they can be recommended to the State Bar.
- Work with the committee's decision-making body and State Bar staff to maximize your impact in communicating authorized positions to legislators and the Supreme Court.

**As an Officer or Member of the Committee's Decision-Making Body**

- Be aware that all representatives of committees are responsible for complying with Supreme Court Administrative Order 2004-01 and State Bar Bylaw Article VIII. These require
  - authorization from the State Bar before a position can be publicly advocated;
  - certain information to be conveyed before any communications to "outsiders" about the committee's position.
- Use the online template provided by the State Bar for recording and communicating committee positions.
- Educate subcommittee members about the need for compliance with the Administrative Order and State Bar Bylaws.
- Designate a Public Policy Liaison. State Bar staff will contact this individual on occasion, primarily when the State Bar is considering a public policy issue and is seeking input before adopting an official position.

## **Reporting a Position to the State Bar**

The preferred method of communicating a position is the online reporting template, found on the Public Policy Resource Center. When reporting a position to the State Bar, the entire online template must be completed, including the section “If Recommending State Bar Action on this Issue, Please Complete the Following.”

The State Bar and its committees are able to take a position on any proposals before the Supreme Court but are limited to considering only legislation that falls within one or more of the following five “Keller” categories:

### **The regulation and discipline of attorneys**

Example: SB 0815’05 – Civil procedure; evictions; property managers and other nonlawyers to represent businesses in certain eviction proceedings; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

SBM Position: Oppose.

Keller Explanation: This bill would allow non-lawyers to represent clients in certain eviction proceedings, which is the unauthorized practice of law.

### **The improvement of the functioning of the courts**

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### **The regulation of attorney trust accounts**

There are no examples of legislation from recent sessions that fit this category.

### **The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession**

See SB 0815’05

After consideration of a committee's recommendation for a position, the State Bar may decide to take no position; remove an item from consideration due to Keller constraints; take no position and authorize a committee to advocate its position; or adopt a position of support or opposition.

**If the State Bar adopts the same position recommended by a committee, the committee does not need authorization to advocate that position. A committee may advocate any position that has been adopted by the State Bar. If a committee is authorized to advocate a position on for which there is no State Bar position, State Bar staff will provide the committee with a cover letter to be used as the first page in any written communications regarding the position. The cover letter must be read before any oral communications regarding the position.**

# Tips for Advocacy

# Tips for Advocacy

## Before the Legislature

### **Write letters to legislators explaining your position.**

Your best audience will be the sponsor of the bill, the chair and members of the committee considering the bill, or your local legislator.

- Use the SBM cover letter as the first page.
- Try to keep your letter to one page - busy legislators may not be able to read lengthy letters.
- Address mail to State Senators to:  
The Honorable (full name), State Senator, State Capitol  
P.O. Box 30036, Lansing, MI 48909-7536
- Address mail to State Representatives to: The  
Honorable (full name), State Representative, State  
Capitol, P.O. Box 30014, Lansing, MI 48909-7514

### **Participate at a legislative hearing.**

Before an entire legislative body considers a bill, it is taken up by a committee. At committee hearings, individuals are able to have their position recorded and may provide oral testimony.

- If you attend a hearing and wish to have your position on record, submit a comment card to the committee clerk. Comment cards are available outside of the hearing rooms or in the room at the front small desk facing the committee. On the card, you will indicate several items. It is important that you state your position and whether or not you will provide oral testimony. If you do not provide oral testimony, your position will still be recorded in the committee minutes. You must provide a copy of the cover letter when submitting the card. If you opt to not offer oral testimony, it is possible that the chair of the committee may still call your name. If this occurs, politely state that you do not have prepared testimony at this time but did want to have the position on record.
- If you decided to provide oral testimony...
  - Bring 30 copies of any written materials that include your contact information.
  - Don't be surprised by interruptions or distractions. There can be a lot of traffic in committee rooms but stayed focused. Consider providing written materials as a solution to this problem.
  - Begin your testimony by reading the cover letter.
  - Thank the chair of the committee and members for their time.
  - Limit your testimony to 3-5 minutes. If the committee is busy that day, be prepared to shorten your testimony at the request of the chair. Do not repeat points made by previous speakers.
  - Be prepared to answer questions to the best of your ability. If you do not know an answer, it is better to tell the committee you will provide them that information as soon as possible than to provide inaccurate information.

## Before the Supreme Court

### **Send written comment.**

You can provide written comment to the Clerk of the Supreme Court by email to [MSC\\_Clerk@courts.mi.gov](mailto:MSC_Clerk@courts.mi.gov) or by letter to Michigan Supreme Court, Clerk's Office, PO Box 30052, Lansing, MI 48909. Your comments will be posted on the Supreme Court website:  
<http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm>.

- Use the SBM cover letter as the first page. The cover letter will suffice for oral comment at the administrative public hearing as well.
- Be concise and specific. If you think a proposal is flawed, explain how, and whenever possible, suggest language to correct the problem.

### **Appear at the Administrative Public Hearing.**

The Supreme Court holds an administrative public hearing on every proposed court rule or administrative order. The hearings are in the Supreme Court courtroom and are conducted formally. Each speaker is allowed three minutes of uninterrupted remarks, and there may be no further opportunity to provide oral comment.

- Notify the Clerk of the Supreme Court at least the day before the scheduled administrative public hearing of your intent to appear. [MSC\\_Clerk@courts.mi.gov](mailto:MSC_Clerk@courts.mi.gov).
- Prepare by reading the comments submitted online on the Supreme Court website.  
<http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm>.
- Be prepared to make your key points in 3 minutes or less, and anticipate the questions that may arise after that point.

# Sample Online Reporting Template

# Report on Public Policy Position

Name of section or committee:

Contact person:

e-Mail or phone:

## Complete only one:

- Bill Number:
- Proposed Court Rule or Administrative Order Number:
- Other:

Date position was adopted:

Process used to take the ideological position:

- Position adopted after discussion and vote at a scheduled meeting.
- Position adopted after an electronic discussion and vote.
- Other, please explain:

Number of members in the decision-making body:

Number who voted in favor and opposed to the position:

- Voted for position
- Voted against position
- Abstained from vote
- Did not vote

## For sections only:

- The subject matter of this position is within the jurisdiction of the section.
- The position was adopted in accordance with the Section's bylaws.
- The requirements of SBM Bylaw Article VIII have been satisfied.

*If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.*



Position:

- Support
- Support with recommended amendments
- Oppose
- Oppose with recommended amendments
- Other, please specify: (If position is in the form of a report or amicus brief, the document may be attached in a separate e-mail to [pcunningham@mail.michbar.org](mailto:pcunningham@mail.michbar.org))



Explanation of the position, including any recommended amendments:



Copy and paste the text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. Text may be provided by hyperlink.



**IF RECOMMENDING STATE BAR ACTION ON THIS ISSUE, COMPLETE THE FOLLOWING:**

List any arguments against the position:

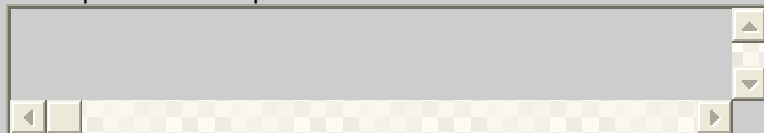


**FOR LEGISLATIVE ISSUES ONLY:**

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:



# Sample Cover Letter

ABCD LAW SECTION  
Respectfully submits the following position on:

\*

SB 1234

\*

The ABCD Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the ABCD Law Section only and is not the position of the State Bar of Michigan.

*To date, the State Bar does not have a position on this matter.*

-OR-

*The State Bar position on this matter is \_\_\_\_\_.*

The total membership of the ABCD Law Section is \_\_\_\_\_.

The position was adopted by (*describe process/vote*). The number of members in the decision-making body is \_\_\_\_\_. The number who voted in favor to this position was \_\_\_\_\_. The number who voted opposed to this position was \_\_\_\_\_.

ABCD COMMITTEE  
Respectfully submits the following position on:

\*  
SB 1234

\*

The ABCD Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the ABCD 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.

*To date, the State Bar does not have a position on this matter.*

-OR-

*The State Bar position on this matter is \_\_\_\_\_.*

The total membership of the ABCD Committee is \_\_\_\_\_.

The position was adopted by (*describe process/vote*). The number of members in the decision-making body is \_\_\_\_\_. The number who voted in favor to this position was \_\_\_\_\_. The number who voted opposed to this position was \_\_\_\_\_.

# Internal Operating Procedure



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## INTERNAL OPERATING POLICY ON PUBLIC ADVOCACY

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### Internal Operating Procedures for Public Policy Communication and Advocacy

*Because of its advantages in terms of speed, record retention, and dissemination of information, e-mail is the preferred method of formal communication between the State Bar and committee/section chairs.*

#### Responsive Positions

- When a proposed court rule or administrative order is published for comment, or the State Bar staff identifies a newly-introduced piece of legislation as arguably Keller-permissible and within the jurisdiction of a committee or section, the State Bar will notify the designated public policy liaison of the committee/section by e-mail. The notice will include a hyperlink to the text and status of the court rule/administrative order or legislation. If action by the Board of Commissioners or Representative Assembly on the proposed court rule or legislation is contemplated on a date certain, the notice will include that date and a date by which comments are needed.
- A committee/section may submit comments and recommendations on any proposed court rule/administrative order or legislation to the appropriate Commissioner Standing Committee at any time, whether or not the committee/section has received notification from the State Bar.
- Once a section has notified the State Bar of a position, it may advocate the position publicly, provided the position is not in conflict with the State Bar's position. A committee, by contrast, must receive authorization from the State Bar. If the comment period for a proposed **court rule/administrative order** will expire before a regularly scheduled meeting of the Commissioner Standing Committee in whose jurisdiction the rule or order falls and before a regularly scheduled meeting of either of the State Bar's policy making bodies, the Board of Commissioners or the Representative Assembly, a committee or section may request expedited action. When the State Bar receives a request for expedited action on a court rule or administrative order, staff will immediately prepare for the Executive Director a recommendation on a course of action. The recommendation will be copied to the Board of Commissioners, the Commissioner Standing Committee chair, and the requester. The recommendation will advocate one of the following responses, which may include approval of a committee to advocate its position in the absence of a State Bar position:
  - Approval/denial of the request by the Executive Director, after consultation with the Chair of the appropriate Commissioner Standing committee.
  - Approval/denial of the request by the Executive Director, after consultation with the State Bar officers.
  - Approval/denial of the request by the Executive Committee.
- If the committee/section has information that immediate State Bar action on **legislation** is desirable, it may request that the Bar take expedited action on a position. The request should be as specific as possible about the reason for the request and the date by which action should be taken. When the State Bar receives a request for expedited action on legislation, staff will immediately prepare for the Executive Director a recommendation on a course of action. The recommendation will be copied to the Board of Commissioners, the Commissioner Standing Committee chair, and the requester. At the direction of the Executive Director or an officer of the State Bar, the position recommended by the section or committee will be posted on the State Bar website and an electronic vote of the Board of Commissioners on the position will be scheduled to take place after 48 hours.
- A request for expedited action will be answered within 5 working days of the receipt of the request.

#### Pro-active Positions by Committees

A committee recommendation that advocates initiating court rule/administrative order or statutory change may not be advocated externally by the committee before consideration by the Board of Commissioners or Representative Assembly.

# **Bylaw Article VIII**

## BYLAW ARTICLE VIII

### Article VIII—Section And State Bar Entity Activity; Public Policy

#### Section 1—Annual Reports.

For purposes of this Article:

- (1) “State Bar entity” means a body created by action of the Board of Commissioners or Representative Assembly, and any suborganization of such a body, but does not include a Section or suborganization of a Section.
- (2) Every Section and State Bar entity so directed by the Board of Commissioners or Representative Assembly shall annually make a written report containing a summary of its activities during the association year which shall be submitted to the Secretary on or before May 31. Annual reports may not exceed five 8 1/2" x 11" pages unless a waiver of this limitation is approved by the Executive Director.
- (3) “Keller-permissible policy” means subject matter upon which the State Bar is permitted to advocate by order of the Supreme Court.<sup>1</sup>
- (4) “Publicly advocate” means to express a formal opinion about a public policy issue on behalf of a Section or State Bar entity of the State Bar to an individual or body external to the State Bar.

#### Section 2—Reports Containing Recommendations.

(1) Every Section or State Bar entity requesting State Bar endorsement of a recommended position shall submit a report to the Board of Commissioners and/or Representative Assembly using a template format provided by the State Bar. The report may be submitted electronically. Any report containing a recommendation shall:

- (a) Contain no language that may be construed as committing the State Bar of Michigan to any policy not contained in the recommendation.
  - (b) Include the process by which the position was taken and the vote by which the position was adopted.
  - (c) Contain a statement of the reasons for the recommendations as well as the arguments against, if any.
  - (d) Describe why the recommendation should be considered Keller-permissible policy.
  - (e) Include the text of any legislation, court rule, or administrative regulation that is the subject of the request or is otherwise referenced in the report. If the report is submitted electronically, the text and references may be included by hyperlink.
  - (f) Not exceed the equivalent of five 8 1/2" x 11" typewritten pages unless a waiver of this limitation is obtained from the Executive Director.
- (2) A report requesting State Bar endorsement of a position by the Board of Commissioners or Representative Assembly shall be reproduced and distributed by the State Bar of Michigan to the members of the body from whom the endorsement is requested prior to the session at which the report is to be considered. If the report is from a Section, the expense of the reproduction and distribution shall be borne by the Section. A report to the Board of Commissioners shall be provided to the members of that body at least 10 days before the meeting at which the matter is to be considered, and a report to the members of the Representative Assembly at least 30 days before the meeting at which the matter is to be considered.

#### Section 3—Waiver.

No written reports shall be received or considered by the Board of Commissioners or Representative Assembly that do not meet the requirements of Section 2 of this Article, unless the Board or Assembly authorizes a waiver by a two-thirds vote. Any Section or State Bar entity seeking a waiver of any of the requirements shall give written notice stating its reason to the Board or the State Bar entity on Rules and Calendar of the Representative Assembly at least forty-eight hours before the meeting at which the report is to be considered. A waiver shall not be granted by the Board or Assembly unless action by the Board or Assembly at its forthcoming meeting is desirable because of pending legislation or unless such action for some other reason is considered by the Board or Assembly to be of sufficient importance to justify its consideration at the meeting.

#### Section 4—Related State Bar entities or Sections.

When the State Bar receives a report requesting State Bar endorsement of a position by the Board of Commissioners or Representative Assembly, the State Bar shall post the report on its website, and notify any Section or State Bar entity whose jurisdiction includes subject matter affected by the report of its posting and of the opportunity for comment.

#### Section 5—Consideration by Representative Assembly.

The determination of the Board of Commissioners with respect to any recommendation submitted by a Section or Committee may be

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<sup>1</sup> Supreme Court Administrative Order 2004-1 provides:

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:

- (A) the regulation and discipline of attorneys;
- (B) the improvement of the functioning of the courts;
- (C) the availability of legal services to society;
- (D) the regulation of attorney trust accounts; and
- (E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.



placed on the calendar of the Representative Assembly by action of the Board or upon written petition of one-third of the members of the Section Council or Committee concerned or upon motion duly made and seconded by members of the Assembly other than members of the Section or Committee concerned. The action of the Representative Assembly with respect to any such matter shall be final and shall constitute the action of the State Bar of Michigan.

### **Section 6—Representation of the State Bar of Michigan**

A Section or State Bar entity or its members, individually or collectively, shall not represent the State Bar of Michigan before any legislative body, in any court or before any other tribunal, in any other forum, or to the public, unless authorized to do so by the Board of Commissioners. State Bar policy may be adopted and declared only by the Board or the Representative Assembly.

### **Section 7—Public Advocacy by Sections**

(1) The only State Bar bodies permitted to take positions on policy issues other than Keller-permissible policy issues are Sections funded by the voluntary dues of their members.

A Section shall notify the Executive Director of the adoption of a public policy position within 10 days of taking the position. A Section may not publicly advocate a public policy position unless the following requirements are met:

- (a) The subject matter is within the jurisdiction of the Section.
- (b) The policy position is adopted in accordance with the Section's bylaws and the requirements of this Article;
- (c) The Executive Director of the State Bar has received the following by mail or e-mail:
  - (i) a copy of the report, recommendation, amicus brief, or other written declaration of the policy;
  - (ii) a statement that the requirements of this Article have been satisfied.

(2) A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by a majority vote of the Board of Directors or Representative Assembly.

(3) If the public policy position is Keller-permissible and the Section is requesting that the State Bar take a position on the policy, the Section must comply with the requirements of section 2.

(4) A Section that has adopted a position on a Keller-permissible policy in accordance with this Article may publicly advocate the position on behalf of the Section unless expressly directed otherwise by the Board of Commissioners, the Representative Assembly, or, if the matter requires urgent attention, the Executive Committee of the State Bar.

(5) Upon receiving the notice and information on a Keller-permissible policy required by subsection (1), the Executive Director shall cause the matter to be included for notice on the next available agenda of the Board of Commissioners and Representative Assembly, and, if, in the determination of the Executive Director the matter requires urgent attention and consideration, on the next available agenda of the Executive Committee of the Board of Commissioners.

### **Section 8 – Public Policy Activity by Entities other than Sections Funded by Voluntary Member Dues**

A State Bar entity created by the Board of Commissioners or Representative Assembly may make recommendations to the Board of Commissioners or Representative Assembly on a Keller-permissible policy as directed by the Board of Commissioners or Representative Assembly, respectively. The State Bar entity shall not publicly advocate a public policy position that has not been adopted by the Board of Commissioners or Representative Assembly unless authorized to do so.

### **Section 9 – Conditions for Public Advocacy**

(1) A Section or entity of the State Bar that publicly advocates a public policy position on a matter must include the following information in its written communication to any external entity concerning the public policy position:

- (a) If the State Bar has no position on the matter, a statement that the position expressed is that of the State Bar entity only, and that the State Bar has no position on the matter.
- (b) If the State Bar has a position on the matter, a statement of the State Bar entity's position and a statement of the position of the State Bar.

(2) In any oral public advocacy, sections and entities of the State Bar are responsible for ensuring that the information above has been effectively communicated to the audience to which the advocacy is addressed.

(3) For written communications other than amicus briefs, a Section publicly advocating a public policy position shall also include the following information:

- (a) The number of members of the Section.
- (b) The process by which the position of the State Bar entity was taken.
- (c) The vote by which the position was adopted.

(4) If a Section advocates for a position in violation of any of the provisions of this Article, the position of the Section on the State Bar of Michigan website shall be removed from the website, and the Executive Director shall be responsible for correcting any misunderstanding or confusion that may have resulted from the violation.

# **Administrative Order 2004-01**

# Order

Entered: February 3, 2004

ADM File No. 2003-15

Administrative Order No. 2004-01

State Bar of Michigan Activities

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Administrative Order 2004-01 is adopted, effective immediately. Administrative Order 1993-5 is rescinded, effective immediately.

I. Ideological Activities Generally.

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund the activities of an ideological nature that are not reasonably related to:

- (A) the regulation and discipline of attorneys;
- (B) the improvement of the functioning of the courts;
- (C) the availability of legal services to society;
- (D) the regulation of attorney trust accounts; and
- (E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

The State Bar of Michigan shall permanently post on its website, and annually publish in the Michigan Bar Journal, a notice advising members of these limitations on the use of dues and the State Bar budget.

II. Activities Intended to Influence Legislation.

- (A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

- (B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that;
- (1) a legislator requests the assistance;
  - (2) the executive director, in consultation with the president of the State Bar of Michigan, approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and
  - (3) the executive director of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.
- (C) No other activities intended to influence legislation may be funded with members' mandatory dues, unless the legislation in question is limited to matters within the scope of the ideological-activities requirements in Section I.
- (D) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice posted on the State Bar website at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation might be discussed at the meeting. The posted notice shall include a brief summary of the legislation, a link to the text and status of the pending legislation on the Michigan Legislature website, and a statement that members may express their opinion to the State Bar of Michigan at the meeting, electronically, or by written or telephonic communication. The webpage on which the notice is posted shall provide an opportunity for members to respond electronically, and the comments of members who wish to have their comments made public shall be accessible on the same webpage.
- (E) The results of all Board and Assembly votes on proposals to support or oppose legislation shall be posted on the State Bar website as soon as possible after the vote, and published in the next Michigan Bar Journal. When either body adopts a position on proposed legislation by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

(F) Those sections of the State Bar of Michigan that are funded by the voluntary dues of their members are not subject to this order, and may engage in ideological activities on their own behalf. Whenever a section engages in ideological activities, it must include on the first page of each submission, before the text begins and in print larger than the statement's text, a disclosure indicating

(1) that the section is not the State Bar of Michigan but rather a section whose membership is voluntary,

(2) that the position expressed is that of the section only, and that the State Bar has no position on the matter, or, if the State Bar has a position on the matter, what that position is,

(3) the total membership of the section,

(4) the process used by the section to take an ideological position,

(5) the number of members in the decision-making body, and

(6) the number who voted in favor and opposed to the position.

If an ideological communication is made orally, the same information must be effectively communicated to the audience receiving the communication.

Although the bylaws of the State Bar of Michigan may not generally prohibit sections from engaging in ideological activity, for a violation of this Administrative Order or the State Bar of Michigan's bylaws, the State Bar of Michigan may revoke the authority of a section to engage in ideological activities, or to use State Bar facilities or personnel in any fashion, by a majority vote of the Board of Commissioners. If the Board determines a violation occurred, the section shall, at a minimum, withdraw its submission and communicate the withdrawal in the same manner as the original communication occurred to the extent possible. The communication shall be at the section's own cost and shall acknowledge that the position was unauthorized.

III. Challenges Regarding State Bar Activities.

(A) A member who claims that the State Bar of Michigan is funding ideological activity in violation of this order may file a challenge by giving written notice, by e-mail or regular mail, to the executive director.

- (1) A challenge involving legislative advocacy must be filed with the State Bar by e-mail or regular mail within 60 days of the posting of notice of adoption of the challenged position on the State Bar of Michigan website; a challenge sent by regular mail must be postmarked on or before the last day of the month following the month in which notice of adoption of that legislative position is published in the Michigan Bar Journal pursuant to section II(E).
- (2) A challenge involving ideological activity appearing in the annual budget of the State Bar of Michigan must be postmarked or e-mailed on or before October 20 following the publication of the budget funding the challenged activity.
- (3) A challenge involving any other ideological activity must be postmarked or e-mailed on or before the last day of the month following the month in which disclosure of that ideological activity is published in the Michigan Bar Journal.

Failure to challenge within the time allotted shall constitute a waiver.

(B) After a written challenge has been received, the executive director shall place the item on the agenda of the next meeting of the Board of Commissioners, and shall make a report and recommendation to the Board concerning disposition of the challenge. In considering the challenge, the Board shall direct the executive director to take one or more of the following actions:

- (1) dismiss the challenge, with explanation;
- (2) discontinue the challenged activity;
- (3) revoke the challenged position, and publicize the revocation in the same manner and to the same extent as the position was communicated;

(4) arrange for reimbursement to the challenger of a pro rata share of the cost of the challenged activity; and

(5) arrange for reimbursement of all members requesting a pro rata share of the cost of the challenged activity in the next dues billing.

(C) A challenger or the State Bar of Michigan may seek review by this Court as to whether the challenged activity violates the limitations on State Bar ideological activities set forth in this order, and as to the appropriate remedy for a violation.

(D) A summary of the challenges filed under this section during a legislative term and their disposition shall be posted on the State Bar's website.

#### IV. Other State Bar Activities.

The State Bar of Michigan shall:

(A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings, and

(B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated.