

CHRONOLOGICAL SUMMARY OF REPRESENTATIVE ASSEMBLY ACTION

"This review points up the many benefits the bar can expect from the Assembly's debate and review of the items placed on its agenda. . . At a time when the profession and methods of practice are undergoing rapid change, it is essential that all segments of our association be heard. The proper forum for this is our Representative Assembly." Daniel M. Clark, Representative Assembly Chairperson, 1977-1978.

September, 1972

Organizational meeting.

March 16, 1973

Approved a recommendation to the Supreme Court that all attorneys actively engaged in private practice be required to maintain a minimum malpractice insurance policy.

Defeated a proposal which would have prohibited attorneys from making financial contributions to the campaign funds of candidates for judicial office.

Defeated a report endorsing a new law school at Michigan State University, but supported a plan for an additional publicly supported law school to be established in the western part of the state at a later date "if the needs for new law graduates in Western Michigan" were not met.

Supported in principle a system of merit selection of all Michigan judges and recommended the formation of a Citizens Committee on Michigan's Judiciary.

Approved a recommendation to the Supreme Court that it amend the Code of Professional Responsibility to provide that isolated instances of negligence, unaccompanied by moral delinquency or misrepresentation or willful withholding of information, should not be a basis for discipline.

September 13, 1973

Approved a recommendation to the Supreme Court requiring registration of law students within 90 days after commencement of law school studies, to facilitate an earlier and more thorough character and fitness investigation.

Approved a recommendation that each circuit court conduct trials five days a week from 8:30 a.m. to 12:30 p.m. except in multi-county circuits, where the court must sit regularly in more than one location.

Approved in principle a proposal to amend the Constitution to provide for (1) appointment of all Michigan judges by the Governor from a list of nominees submitted to him by a nominating commission, and (2) requiring all judges so appointed to run against their record within a specified period following appointment.

Approved a recommendation to the Supreme Court that the identity of an attorney with no prior disciplinary record should not be disclosed in the State Bar Journal or to the general news media if he or she is subjected to discipline less than suspension or disbarment.

March 2, 1974

Approved a petition requesting amendment of the Supreme Court Rules Concerning the State Bar of Michigan to provide that every member of the Assembly shall cast a full vote, in place of the weighted vote system then in effect.

Approved a request that the Supreme Court Administrator, in an effort to conserve energy, direct all court personnel to cooperate with telephone inquiries.

Adopted a proposal to authorize a study of appellate representation of indigent defendants.

Approved a report recommending endorsement in principle of legislation, which would authorize the Supreme Court to grant immunity to witnesses in grievance proceedings, upon application by the State Bar Grievance Board, with notice to any affected law enforcement agency.

Approved a statement that the Assembly gives its continued support to the provision of sufficient facilities, either in private or public institutions, to make quality legal education available to all qualified applicants.

September 12, 1974

Approved a report of the State Bar Committee on Character and Fitness proposing standards for its investigations.

Approved the report of the Special Commissioner Committee on Local Bar Associations recommending standards for recognition of local bar associations, with an amendment permitting an election of local association officers by mail ballot.

Approved a proposal to the Supreme Court that it adopt a comprehensive rule of mutual discovery in criminal cases.

Approved a recommendation urging the Supreme Court of Michigan to adopt the then proposed Code of Judicial Conduct, with amendments endorsed by the Board of Commissioners.

Defeated a proposal to endorse legislation requiring certain minimum qualifications before an attorney is eligible to become a judicial candidate, including being of the age of majority and having practiced law for a minimum number of years.

March 15, 1975

Approved a proposal to furnish every member of the State Bar of Michigan with a copy of the Constitutional Oath of Office.

Endorsed a proposed amendment to the General Court Rules permitting execution of instruments by declaration under penalties of perjury, as an alternative to execution under oath.

Recommended to the Board of Commissioners that the State Bar bylaws be amended to permit members of the State Bar in each circuit to vote for fewer members of the Representative Assembly than the number of seats to be filled (but not fewer than half).

Adopted for transmittal to the Michigan Supreme Court a statement of principles and proposed rules setting maximum limits on contingency fees in all future personal injury cases.

Endorsed the recommendation of the Committee on Criminal Jurisprudence that legislation be enacted permitting the filing of a motion to expunge a criminal record without limitation as to the offender's age.

September 18-19, 1975

Adopted in principle the concept of specialization and asked the Committee on Specialization in Legal Practice to report back with a proposal revised to provide for a stronger specialization structure. Also referred to the Specialization Committee for incorporation into its plan was a proposal from the Special Committee on Trial Advocacy Certification to create a formal specialty in that field.

Referred to the Bar Journal Advisory Committee, for consideration of the costs involved, a proposal to permit the listing of specified biographical, educational and professional information in a lawyer's listing in the annual State Bar Directory, which would be available to the public. The Assembly also approved a companion recommendation to the Supreme Court that bold face listings be permitted in the telephone book white pages, as convenience to the public.

Defeated a proposal from the Family Law Section for establishment of a Family Court for Michigan, incorporating family-related aspects of the proposals to the appropriate sections or committees of the State Bar for consideration and report, and to coordinate exchange of information among the involved groups.

Recommended to the Supreme Court that it amend the Supreme Court Rules Concerning the State Bar of Michigan to provide for interim appointments to fill vacancies in the Assembly until the next election; and to provide that two consecutive unexcused absences by an Assembly member constitutes vacation of the seat, with a successor to be elected or appointed.

Approved a recommendation to the Michigan Supreme Court that the Code of Professional Responsibility be amended to permit public disclosure of specified biographical, educational and professional information by attorneys ("lawyer advertising") in telephone directory Yellow Pages.

Approved a recommendation granting the Rules and Calendar Committee authority to require that all proposals to be submitted to the Assembly be placed in resolution form stated in the affirmative, to limit supporting documentation to five typewritten pages, to attempt disposition of any problem not appearing to require submission to the Assembly, to refer jurisdiction now exercised by circuit and probate courts.

Approved an effort to obtain passage of legislation permitting a grant of immunity from prosecution, under court control, for witnesses called before the State Bar Grievance Board hearings.

Adopted a motion calling for vigorous prosecution of unauthorized practice cases.

Defeated a proposal that insureds be given the right to choose their own counsel.

Upheld a bylaw provision limiting public statements by committees and section councils to those not inconsistent with policy adopted by the Board of Commissioners or the Representative Assembly.

Defeated a proposal that the membership of the Bar be polled in every instance before a public position is taken on issues "of vital interest to the Bar and the public."

Authorized furnishing to each new member of the Bar a copy of the constitutional oath of office, suitable for framing. Present members could receive one upon request.

March 13, 1976

Adopted the recommendation of the Committee on Advertising that the Supreme Court of Michigan be petitioned for changes in the Code of Professional Responsibility permitting public disclosure by attorneys of the specific information set forth therein in a format and language uniformly applicable to all lawyers.

Adopted the recommendation by the Assembly Committee on Rules and Calendar for changes in the Assembly Rules of Procedure pertaining to the submission and consideration of items for the Assembly calendar.

Adopted a recommendation by the Assembly Committee on Rules and Calendar that the Supreme Court be petitioned to amend the Supreme Court Rules Concerning the State Bar of Michigan to provide for a procedure by which vacancies in the Assembly may be filled between election.

Referred to the Supreme Court Committee to review and consolidate Michigan Court Rules a proposal to recommend to the Supreme Court of Michigan amendments to GCR 519 making offers of judgment equally available to the parties asserting a claim as to the parties defending a claim.

Adopted a proposal to petition the Supreme Court of Michigan to amend the Supreme Court Rules Concerning the State Bar of Michigan to provide that (1) absence by a member of the Assembly at two consecutive meetings without excuse shall result in the office being declared vacant and a successor appointed or elected; and that (2) whenever an incumbent member of the Representative Assembly seeks reelection the notice of election shall disclose the fact that the candidate is an incumbent and shall further disclose the candidate's attendance record at meetings of the Assembly.

Referred to the Supreme Court Committee on Defender Services a proposal to endorse the recommendation of the Committee on Criminal Jurisprudence that any plan for representation of indigents must guarantee client selection and counsel accountability, and request for a study of the appellate defender system.

Tabled the recommendation of the Committee on Juvenile Law that HB 4704 be opposed.

June 12, 1976 (Special Meeting)

Rejected the majority and minority reports of the State Bar Special Committee on Specialization in Legal Practice.

Defeated reconsideration of the Representative Assembly's endorsement of the concept of specialization in legal practice passed at the September 18-19, 1975 meeting.

Appointed a special Representative Assembly committee to further investigate the subject of specialization and in doing so, to survey the members of the Representative Assembly concerning the subject of specialization.

September 16, 1976

Approved the recommendation of the Committee on Rules and Calendar that the chairperson of the Law Student Section be seated as a member of the Assembly.

Approved a recommendation that the prevailing party in civil cases should under certain limited circumstances be entitled to reasonable fees at the discretion of the trial court, under guidelines and limitations provided by Rule.

Recommended that the Michigan Supreme Court enter an Administrative Order recessing the courts of Michigan during the State Bar Annual Meeting.

Opposed House Bill 4704 and supported House Bill 6034, two differing comprehensive revisions of the state's juvenile code.

Approved the recommendation of the State Bar Committee on Continuing @gal Education that continuing legal education not be made mandatory for Michigan lawyers at this time; that the State Bar of Michigan renew its commitment to active and wide-ranging voluntary programs of continuing legal education; that the State Bar of Michigan continue to review specialization, certification and advertising and their effect upon the need for mandatory legal education.

April 2, 1977

Approved the report and recommendations of the Committee on Certification and Specialization proposing that the Code of Professional Responsibility be amended to provide for a system of self-designation in fields of practice for Michigan lawyers.

Adopted a proposal that the State Bar of Michigan support a state or federal experimental program designed to determine if a heroin distribution program would reduce crime and/or reduce the use of heroin.

Adopted a recommendation for federal legislation to make it unlawful for any person except police, licensed security guards, and target shooting clubs to import, manufacture, sell, buy, transfer, receive, or transport any handgun (except antiques) or handgun ammunition.

September 15, 1977

Adopted and recommended to the Michigan Supreme Court proposed amendments to the Code of Professional Responsibility establishing advertising guidelines to be used by Michigan lawyers.

Defeated a proposed amendment to the Supreme Court Rules which would have allowed an elected officer of the Representative Assembly to continue to run for election as a member of the Assembly as long as he or she held an elected position.

Adopted a motion amending Rule 5 of the Assembly Rules of Procedure allowing roll call votes to be taken any time a request for one is made and supported by at least 20 members of the Representative Assembly.

April 1, 1978

Adopted a proposal that the State Bar Committee on Economics of Law Practice be asked to investigate the utilization of computers and word processing equipment and word processing applications by the small law office and to process the books, record keeping, accounting, file storage and other administrative areas of the small law office.

Adopted a recommendation of the Assembly Review Committee that the Permanent Rules of Procedure of the Representative Assembly be amended to provide that future officers of the Assembly be limited to a Chairperson and a Clerk.

Adopted a substitute motion endorsing a Constitutional amendment providing for appointment of Supreme Court Justices and Judges of the Court of Appeals advocated by a coalition known as the Michigan Citizens to Take the Courts Out of Partisan Politics.

September 21, 1978

Adopted a proposal that the Supreme Court of Michigan be requested to adopt a rule providing that in every civil action except domestic relations cases, the prevailing party shall be awarded, in addition to other costs, a reasonable attorney fee if the trial court finds that the action was brought or was defended without foundation, vexatiously, frivolously or in bad faith.

Adopted a proposal that the Representative Assembly adopt basic goals for the State Bar of Michigan.

Rejected a proposal that there be undertaken a confidential survey of judges and other informed sources as to the general competency of lawyers to determine if Chief Justice Warren Burgers assessment of lawyer competency has validity and that the Board of Commissioners be requested to finance such survey.

Adopted a proposal that there be implemented a system for arbitrating fee disputes between attorneys and clients in the State Bar of Michigan resulting in binding awards if both parties consent, authorizing investigation of the claim and the furnishing of appropriate assistance to the client if the complaint about the fee is determined to be meritorious when only the client consents to arbitration and authorizing one public member 'to serve on three-member arbitration panels.

December 9, 1978 (Special Meeting)

Approved the nine recommendations of the Assembly Review Committee contained in its report and the Committee directed to take such action as necessary, including the preparation and submission of amendments to the Supreme Court Rules Concerning the State Bar of Michigan and the State Bar Bylaws, to implement the recommendations as soon as practicable and in no event later than the close of the 1979 Annual Meeting of the State Bar of Michigan.

March 31, 1979

Approved a recommendation of the Committee on Advertising, Certification and Specialization that the Assembly recommend to the Supreme Court that it terminate the trial period for the false, fraudulent, misleading and deceptive standard for advertising by lawyers, substitute therefore a rule substantially similar to the recommendation on advertising adopted by the Assembly in September 1977 for a one-year trial period, at the end of which the experiences under the two advertising approaches be reviewed and a permanent advertising rule.

Approved a recommendation of the Special Committee on Court Fees that the State Bar of Michigan endorse state funding of judicial pension systems at an actuarial adequate level to finance presently authorized benefits and oppose the funding of judicial retirement systems through court fees.

Approved a recommendation that the Assembly support the adoption by the Legislature of an amendment to the Paternity Act drafted by the Family Law Section which would allow married women in certain instances to obtain child support from the natural father.

Approved a recommendation of the Special Committee on Public Interest Law that the State Bar involve itself in the delivery of public interest legal services and engage in related activities and emphasize to all members of the State Bar their obligation under Canon 2 of the Code of Professional Responsibility to "assist the legal professional in fulfilling its duty to make legal counsel available."

Approved a recommendation of the Special Assembly Committee on Recognition of Local Bar Associations that State Bar recognition of such associations be governed by revised standards.

September 20, 1979

Rejected a proposal that the Representative Assembly endorse the concept of state funding of all judicial salaries.

Rejected a proposal that the endorsement on behalf of the State Bar of Michigan by the Board of Commissioners of the proposed revised criminal code be withdrawn and that the draft be considered chapter by chapter.

Rejected a proposal to amend the Permanent Rules of Procedure of the Representative Assembly to (1) authorize the Committee on Rules and Calendar to withhold from the proposed Calendar, upon notice to the proponent and to the Assembly, matters which in its judgment do not raise issues pertaining to the policy of the State Bar of Michigan; and (2) provide a method by which members of the Assembly desiring to speak on a matter calendared for consideration can advise the Committee on Rules and Calendar in advance so that the Committee can structure debate in order that proposed amendments are first considered, speakers in favor and in opposition are alternated, the Assembly is periodically and automatically asked to decide whether debate should be terminated, etc.

Amended and approved a proposal that proposed Rule 2.403 - Mediation - under consideration by the Michigan Supreme Court be endorsed with the amendments set forth in the report of the State Bar Committee on Arbitration and Alternate Methods of Dispute Resolution.

January 12, 1980

Deferred a proposal that the State Bar of Michigan design information programs for the mass media to inform the general public of the need for legal services and the availability of same in general during calendar year 1981 and that the Board of Commissioners be urged to appropriate the sums of \$50,000 for that purpose in 1981, and, commencing with the year 1982, an amount equal to \$15 per member per year for such programs.

Rejected a proposal that the State Bar of Michigan endorse a rule mandating the use of lettersize paper in all Michigan Courts.

Referred a proposal, to a special committee to be appointed by the Chairperson, that the State Bar of Michigan review its relations with the Institute of Continuing Legal Education.

Deferred a recommendation that the State Bar of Michigan endorse the proposed new juvenile code (HB 4774), provided that the Legislature appropriate adequate funding for the services and facilities mandated thereunder.

May 3, 1980

Adopted the recommendation of the Special Assembly Committee on Institute of Continuing Legal Education Liaison and Review that the Committee be dissolved, was upon motion made and seconded, amended 1) to request ICLE to submit a progress report to the Assembly at its September meeting with respect to its efforts to implement videotape courses through community colleges in order to broaden the availability of continuing legal education in more remote areas of the state; 2) to urge as a goal that continuing legal education courses be made available to every Michigan lawyer within one hour traveling time; and 3) to ask ICLE to study the feasibility of using State Bar headquarters in Lansing as a facility for the presentation of some of its courses.

Adopted a proposal to recommend to the Supreme Court an amendment to GCR 821 which would require that all Court of Appeals decisions be published. Amended to recommend that the Rule be amended to permit any person to request that the panel of judges that filed the opinion order it to be published and that if such a request is made by any counsel of record the opinion be automatically published.

Adopted a proposal to recommend to the Michigan Supreme Court an amendment to GCR 912 which would provide that when the Court Administrator assigns a judge to decide a motion to disqualify a judge any party may request that the judge so appointed be from a district or circuit other than the district or circuit in which the challenged judge sits.

Rejected a proposal to endorse the concept that parties in cases in multi-judge trial courts be permitted to exercise a peremptory challenge against the judge initially assigned.

Adopted a proposal to recommend to the Michigan Supreme Court an amendment to GCR 928 providing that the maximum allowable attorney fee for any claim or action for personal injury or wrongful death based upon the alleged conduct of another be 33-1/3% of the recovery.

September 25, 1980

Adopted a proposal that the State Bar endorse juvenile code revisions and that any such revisions be adequately funded in order to strengthen the juvenile justice system.

Adopted a proposal that the State Bar endorse the concept of deductibility of legal expenses for federal and state income tax purposes.

Adopted the report of the Committee on Communications of the State Bar of Michigan recommending that the Committee be authorized to continue to monitor developments concerning institutional advertising but that no such advertising campaign be embarked upon at this time.

Adopted a proposal to petition the Michigan Supreme Court to amend the Supreme Court Rules Concerning the State Bar of Michigan to provide that the failure of any member of the Assembly to attend three consecutive meetings for any reason shall create a vacancy requiring the member be replaced.

Adopted a proposal that the State Bar endorse the Administrative Adjudication Act proposed by the Hearing Officers and Administrative Law Judges Committee of the Administrative Law Section for submission and adoption by the Michigan Legislature, to exclude the Workers Compensation Bureau and the Employment Relations Commission from the act.

Approved the report of the Committee on Professional and Judicial Ethics recommending the submission of comments with respect to the discussion draft of Model Rules of Professional Conduct circulated by the Commission on the Evaluation of Professional Standards of the American Bar Association.

January 17, 1981

Adopted a proposal that the State Bar of Michigan recommend to the Michigan Supreme Court that the court rules be amended to require standardized pleadings on paper not to exceed 8-1/2" x 11" and that the change be phased-in over a period not to exceed three years.

Adopted a proposal to affirm that it is the policy of the State Bar of Michigan not to sponsor activities in any club, association, business or other organization (except established religious corporations and associations) which discriminate in their membership policies on the basis of race, color, sex, national origin or religion.

Adopted a proposal that the State Bar of Michigan reaffirm support for State funding of the judicial system; that the office of the Friend of the Court be specifically included in that affirmation; that the State Bar of Michigan support the Creation of an administrative office of the Friend of the Court within the State Court Administrator's office; and that the State Bar of Michigan support other changes consistent with State funding of the office of Friend of the Court fully outlined in the text of the proposal.

Consideration of a substantially similar proposal urging that the rule be rescinded to allow the taking of depositions after trial in the Metropolitan Detroit District, including Detroit, Pontiac and Mt Clemens.

Consideration of a proposal that the State Bar of Michigan endorse a new GCR 785.14 providing that no judge or person under the direct supervision of a judge shall appoint an attorney who is to represent an indigent defendant.

Defeated a proposal that the State Bar of Michigan endorse a proposed change in GCR 960.1 which would provide that all disciplinary hearing panels consist of two attorneys and one public member.

Adopted a proposal that the State Bar of Michigan communicate to the Chief Executive of the State of Michigan its opposition to the present application of Rule 10f.(a) of the administrative rules of the Bureau of Workers' Compensation, Department of Labor, under which all medical depositions in contested workers disability compensation proceedings are now required to be taken prior to the taking of lay testimony.

Withdrew a resolution urging that Rule 10f.(a) of the administrative rules of the Bureau of Workers' Compensation, Department of Labor, be amended to allow the taking of depositions after trial in the Metropolitan Detroit district.

Defeated a proposal that the State Bar of Michigan endorse a new GCR 785.14 providing that no judge or person under the direct supervision of a judge shall appoint an attorney who is to represent an indigent defendant.

May 9, 1981

Adopted a proposal that the State Bar endorse a Constitutional Amendment providing for the appointment of Supreme Court Justices, Court of Appeals Judges, and the members of the State Board of Education and the governing boards of Michigan State University, the University of Michigan and Wayne State University; and that members of the State Bar of Michigan be urged to assist efforts to place this proposal on the ballot for the 1982 general election; and (2) to permit Lt. Governor James H. Brickley to speak in support thereof.

Adopted a substitute motion to amend Rule 1.4 of the Assembly's Permanent Rules of Procedure to add a subsection (C) directing the Chairperson in consultation with the Clerk to circulate following each meeting of the Assembly with the notice of submission of calendar items for the next meeting a summary of the major policy actions taken by the Board of Commissioners between meetings of the Assembly.

Adopted a proposal that the State Bar oppose any legislation which would increase the District Court's maximum civil jurisdiction beyond its existing \$10,000 level until such time as the State of Michigan is ready to provide funds and other resources necessary for implementation of a higher jurisdictional limit.

Defeated a proposal to mandate non-smoking sections large enough to accommodate all non-smokers at all State Bar sponsored meetings.

Adopted a proposal to recommend to the Michigan Supreme Court that temporary appointment of judges be limited to those who do not leave office after a defeat in a general or special election.

Defeated a proposal to recommend an amendment to the Supreme Court Rules Concerning the State Bar of Michigan limiting the terms of members of the Board of Commissioners to two successive three-year terms.

Adopted a proposal to instruct the State Bar Committee on Advertising, Certification and Specialization to continue to develop a certification plan for consideration by the Representative Assembly, such plan to include provisions addressing the effect, if any, of certification on the right of those who are and are not certified to advertise and to practice in that field.

September 24, 1981

Deferred consideration of a proposed Constitutional Amendment which would eliminate appeals as of right for those convicted of crimes upon pleas of guilty or nolo contendere and would permit such appeals by leave only.

Adopted a proposal to direct the Standing Committee on Economics of Law Practice and/or General Practice Section to review and analyze existing legal fee financing plans, to make such inquiries as are deemed necessary to report to the Assembly on the structure and operations of such plans and to make a recommendation on the advisability of the adoption of such plans by the State Bar of Michigan.

Adopted a proposal that the Representative Assembly recommend to the Legislature that MCLA 500.3009 (1) be amended by changing the minimum limits of motor vehicle liability insurance from \$20,000 per person and \$40,000 per accident to \$50,000 per person and \$100,000 per accident.

Approved the amended report of the Committee on Professional and Judicial Ethics recommending the submission of comments with respect to the final draft of the Model Rules of Professional Conduct circulated by the American Bar Association Commission on the Evaluation of Professional Standards.

Opposed legislation to raise the jurisdiction of the small claims court from \$600 to \$1,200 and to provide penalties for a defendant who removes a case from small claims court to district court if the plaintiff nevertheless recovers a judgment.

January 9, 1982

Opposed a proposed Constitutional Amendment which would eliminate appeals as of right for those convicted of crimes upon pleas of guilty or nolo contendere and permit such appeals by leave only.

Approved a proposal to recommend to the Michigan Supreme Court adoption of an Administrative Order permitting certain proceedings to be conducted by communication equipment.

Opposed Senate Bills 187 and 188 providing for the termination of marriages by summary dissolution were opposed in their present form.

Defeated the proposed plan for certification in the field of (Family Law) drafted by the State Bar Standing Committee on Advertising, Certification and Specialization.

May 8, 1982

Approved a proposal to recommend to the Michigan Supreme Court an amendment to the General Court Rules (GCR 316.9) providing for expedited mediation of cases.

Adopted a substitute motion directing that a system for adequate compensation for attorneys appointed to represent indigent defendants be drafted, giving consideration to the three factors for determining compensation incorporated in Assembly person Walsh's proposal which brought the issue before the Assembly, to be submitted to the Assembly for its consideration at its September meeting.

Opposed HB 5285, which provides that prisoner appeals from disciplinary hearings may be made only when leave is granted by the Circuit Court.

Opposed the concept of summary dissolution of marriage.

September 23, 1982

Adopted a proposal to recommend to the Michigan Supreme Court that Standard Civil Jury Instructions 53.03 be made discretionary.

Defeated a recommendation to the Michigan Supreme Court the adoption of a new General Court Rule providing for the appointment of Masters.

Adopted a recommendation that the principles and objectives of HB 4838 regulating credit insurance be endorsed.

Adopted a recommendation to the Supreme Court that it establish the minimally adequate level of compensation for attorneys appointed to represent indigent defendants.

Opposed a proposed amendment to the Michigan Constitution eliminating the prohibition against the death penalty.

January 15, 1983

Approved a recommendation to petition the Michigan Supreme Court for an amendment to the Code of Professional Responsibility requiring lawyers to create and maintain one or more interest bearing trust accounts for client funds other than advances for costs and expenses which are nominal in amount or, at the time of receipt and deposit are expected to be held for a short period of time, the income from which is to be used to finance legal services to the indigent.

May 14, 1983

Approved the recommendations of the State Bar Committee on Scope and Correlation for the adoption of basic goals for the State Bar of Michigan.

Approved the recommendation of the General Practice Section to refer the establishment of a Legal Fee Financing Plan in Michigan to a committee designated by the Board of Commissioners.

Approved a proposal that the State Bar of Michigan actively pursue and encourage legislation amending the Michigan Tax Tribunal Act to require that all persons conducting hearings be attorneys admitted to practice in this State.

Denied a request from the University of Michigan Law School that the State Bar support an amendment to CCR 921 which would extend authorization for student practice to qualified students involved in law school clinical practice programs on behalf of nonprofit organizations.

Approved a proposal to recommend to the Michigan Supreme Court that amendments to the Code of Judicial Conduct be adopted which would permit television cameras in the appellate courts and would authorize a one-year experiment in broadcasting, televising, recording and taking photographs of trial court proceedings upon "leave granted by the Michigan Supreme Court to the trial judge with protective guidelines."

September 29, 1983

Approved a proposal to endorse the establishment of a Dispute Resolution Center in Washtenaw County and to recommend to the Board of Commissioners that State Bar funds be appropriated to partly fund its first year of operation.

Considered proposals to amend General Court Rule 932 and to adopt a new General Court Rule 931 dealing with the Judicial Tenure Commission were referred to the Assembly Committee on Hearings for evaluation and report to be circulated in writing to the Assembly no later than six weeks before the January 7, 1984 meeting.

January 7, 1984

Approved the recommendations of the Assembly Committee on Hearings concerning proposed amendments to the rules governing the judicial tenure process.

Adopted the recommendations of the State Bar Committee on Professional and Judicial Ethics to recommend to the Michigan Supreme Court the adoption of Model Rules of Professional Conduct to replace the Code of Professional Responsibility.

May 5, 1984

Approved a recommendation that the State Bar of Michigan endorse improved appellate rights for veterans and recommend to Michigan members of Congress that legislation be introduced to 1) provide access to the courts for appeals from adverse decisions of the Veterans Administration; and 2) provide for payment of legal fees sufficient to insure adequate representation of veterans by counsel.

Endorsed an amendment to the Michigan Constitution which would replace the present partisan party convention process for nominating candidates for Supreme Court justice by a non-partisan primary election.

September 20, 1984

Adopted a proposal to recommend to the Michigan Supreme Court that the Supreme Court Rules Concerning the State Bar of Michigan be amended to reduce the number of mandatory meetings of the Assembly from three to two a year.

Endorsed Senate Bill 816 which raises the jurisdictional limit of the Small Claims court to \$1,000 effective January 1, 1985 and to \$1,500 effective September 1, 1986, raises certain fees in district court and eliminates others, authorizes small claims hearings before attorney magistrates, and makes other changes in the law pertaining to the small claims courts.

Adopted the recommendations of the State Bar Special Committee on Victims of Crimes.

January 19, 1985

Approved the report of the Special Assembly Review Committee recommending that the Michigan Supreme Court be petitioned to adopt amendments in the Supreme Court Rules Concerning the State Bar of Michigan and that the Board of Commissioners be requested to adopt related amendments in the State Bar Bylaws.

Considered a request for State Bar support for legislation which prohibits the exercise of peremptory challenges of jurors on the basis of group bias and establishes procedures for determining whether such challenges have been improperly exercised was tabled until a revised proposal is submitted and reviewed by appropriate State Bar Committees and Sections.

May 11, 1985

Endorsed legislation converting part-time, part-paid probate judges in Michigan to full-time judges funded by the State of Michigan.

Defeated a motion to endorse HJR D and SJR B, which would place on the November 1986 general election ballot a proposed amendment to the Michigan Constitution eliminating the prohibition against the death penalty.

Adopted a motion to oppose HJR D and SJR B, which would place on the November 1986 general election ballot a proposed amendment to the Michigan Constitution eliminating the prohibition against the death penalty.

Defeated a proposal to recommend to the Michigan Supreme Court that MCR 2.625 be amended to provide that in any civil action in which a final disposition is rendered the prevailing party shall be entitled to reimbursement for its actual attorney fees reasonably incurred, in addition to the relief awarded and the costs otherwise provided by the Rule

Adopted a proposal that the State Bar of Michigan oppose the Uniform Marital Property Act.

September 12, 1985

Adopted a proposal to recommend to the Michigan Supreme Court a procedure for the nomination and appointment of at-large members of the Board of Commissioners and Representative Assembly.

Adopted the recommendation of the Special Assembly Review Committee to create a committee charged with the responsibility of bringing to the Assembly for consideration important policy issues not otherwise submitted, to establish the Special Assembly Review Committee as a Standing Committee charged with the responsibility of periodically reviewing the operation of the Assembly and urging the Assembly to give more meaningful consideration to legislative matters.

Adopted a proposal to petition the Michigan Supreme Court for an amendment of the Supreme Court Rules Concerning the State Bar of Michigan to increase the number of elected members of the Board of Commissioners from 19 to 20.

Adopted a recommendation that the Court of Appeals be urged to continue to formulate new procedures designed to give counsel at oral argument as much information as possible pertaining to the concerns of the panel with respect to issues on appeal.

Adopted a proposed rule to be submitted to the Michigan Supreme Court providing that whenever a court acting in an appellate capacity decides to consider any question of law or fact not raised by a participant in the proceeding, the court shall so notify the parties and provide them with an opportunity to file supplemental pleadings addressed to that issue.

Adopted the Assembly Rules of procedure were suspended by the necessary 2/3 vote to permit consideration of a motion to spread upon the records of the Assembly a letter written by President Archer to the Detroit Free Press which was printed as a column in the August 22 issue of that newspaper, to commend President Archer for that letter and to request that the letter be published in the Michigan Bar Journal.

January 11, 1986

Adopted a proposal to recommend to the Michigan Supreme Court the adoption of caseload management standards was amended to urge the adoption of caseload management goals.

Deferred to the May meeting a proposal to recommend to the Michigan Supreme Court the adoption of an amendment to Michigan Court Rule 7.215(f) concerning the precedential effect of Court of Appeal decisions while an application for leave to appeal to the Michigan Supreme Court is pending.

Adopted a proposal to recommend to the Michigan Supreme Court amendments to Michigan Court Rules pertaining to disciplinary enforcement.

September 18, 1986

Adopted a proposal to recommend to the Michigan Supreme Court the adoption of an amendment to Michigan Court Rules 7.215(C) concerning the precedential effect of Court of Appeals decisions while review by the Michigan Supreme Court is pending.

Defeated a proposed plan for Certification in the Field of (Family Law).

Deferred to the April meeting consideration of a proposal to recommend to the Michigan Supreme Court the adoption of a Michigan Court Rule authorizing summary jury trials.

April 4, 1987

Approved a proposal to recommend to the Michigan Supreme Court the adoption of a proposal for mandatory continuing legal education.

Approved a proposal to recommend to the Michigan Supreme Court the adoption of a Michigan Court Rule authorizing summary jury trials.

Adopted the legislative priorities for the current legislative session.

September 17, 1987

Opposed proposed legislation which would require that the prosecutor consent to and the trial judge approve a defendant's waiver of a trial by jury in criminal cases (HB 4534 and SB 273).

Approved proposed legislation which would exempt qualified annuity, pension, profit-sharing or other retirement plans from garnishment, attachment, execution and bankruptcy (HB 4666), with recommended amendments to extend the exemption to Individual Retirement Accounts which are non-deductible and deny the exemption to amounts contributed within 120 days before a debtor files for bankruptcy.

Endorsed for recommendation to the Michigan Supreme Court proposed Standards for Assigned Counsel.

Approved proposed legislation which would permit a person to designate another to make medical treatment decisions on that person's behalf or to execute a declaration directing that life-sustaining procedures be withdrawn or withheld in the event the person is suffering a terminal condition from which death is eminent (HB 4176 and HB 4647) subject to reservations expressed in the report of the Committee on Medicolegal Problems in its report of September 11, 1987.

Other proposed legislation concerning related subject matter (SB 2324) was not supported by a vote exceeding two-thirds of those present.

Opposed proposed legislation which would provide that the determination whether an injured person has sustained a serious impairment of body function for purposes of recovering damages for non-economic loss under the automobile no-fault law is a question of law for the court and further providing that a person shall not have suffered a serious impairment of body function unless the person has suffered an objectively manifested impairment of an important body function which affects his or her general ability to lead a normal life (SB 352).

April 23, 1988

Amended Rule 1.1 of the Assembly's Permanent Rules of Procedure to prohibit smoking at all Assembly meetings.

Amended Rule 4.6 of the Assembly's Permanent Rules of Procedure to require that all resolutions be in writing and that any proposed amendment to a resolution on the Assembly's calendar which is more than six words in length be in writing and submitted to the Clerk at or before the time it is seconded.

Adopted a proposal to recommend to the Michigan Supreme Court that Rule 7.2(c) of the Michigan Rules of Professional Conduct be amended to require that not-for-profit lawyer referral services and other legal service organizations in which lawyers participate file with the Court a written plan of operation, up date their filings within thirty days of any change and in January of each year thereafter file a statement representing that they continue to do business under the terms and conditions reflected in their prior filings.

Endorsed HB 5174 which would increase the jurisdiction of the small claims court to \$2,500; eliminate the existing prohibition against actions for fraud being instituted in the small claims court; require the district judge or magistrate to orally inform the parties of their right to remove the action to the general civil division of the court and of the rights waived if they choose not to do so; and make provision for examining a defendant against whom a money judgment has been awarded, amended to wherever appropriate substitute the term "judgment debtor" for the term "defendant" and make provision to authorize the examination of the judgment debtor by the filing under oath of a form provided for that purpose as well as by the judge.

Opposed HB 4788 through HB 4814, which would establish a family court.

September 29, 1988

Amended the proposal of a State Bar policy with respect to facilities at which State Bar meetings may not be held to also prohibit meetings in facilities which do not provide barrier free access to the handicapped.

Adopted a proposal to recommend to the Michigan Supreme Court the adoption of an amendment to Rule 1.8 (e) (1) of the Michigan Rules of Professional Conduct to permit a lawyer to advance court costs and expenses of litigation repayment of which is contingent solely upon the outcome of the matter.

Adopted a proposal to amend Rules 2.2 and 2.3 of the Assembly Rules of Procedure to provide a uniform deadline for placing matters on its calendar.

April 22, 1989

Adopted a proposal to petition the Michigan Supreme Court to amend the Supreme Court Rules Concerning the State Bar of Michigan to create a category of affiliate membership in the State Bar of Michigan for law office administrators and legal assistants, and to recommend that the Board of Commissioners adopt conforming amendments to the State Bar Bylaws.

Adopted the following legislative priorities for the current legislative session:

1. Require that candidates for judicial office must have been licensed to practice law for at least five years, and candidates for the position of hearing officer within the executive branch must

have been licensed to practice law at least three years, before they are eligible for appointment or election to office. (Unanimous).

2. Provide for statewide funding of the administration of justice.
3. Adopt express statutory provisions that durable powers of attorney may vest decision-making authority concerning medical treatment decisions, and establish a statutory hierarchy of persons authorized to make medical decisions when an adult is incapacitated and has not designated anyone to do so.
4. Enact the proposed "Michigan Domestic Relations Code" drafted by the Family Law Section codifying present Michigan law with changes:
 - a. Permitting marriage by proxy in some circumstances.
 - b. Providing that "antenuptial" agreements may be effective upon divorce.
 - c. Rewriting jurisdiction and venue provisions.
 - d. Allowing independent and post-judgment actions for custody, visitation and parenting time, child support, domestic violence orders, and conservation of marital property.
 - e. Eliminating the presumption that joint custody is always appropriate.
 - f. Restricting the freedom of a person with custody from moving more than 100 miles without consent from noncustodial parties or the court.
 - g. Specifying circumstances under which a court can order child support beyond the 18th birthday.
5. Establishing a "main rule" that each party receive his/her own individual property plus one-half of the marital property.
6. Allowing the parties to agree to nonmodifiable alimony.
7. Defining and providing for orders concerning "expenses of litigation."
8. Enact substantive revisions to update and clarify the Michigan Business Corporation Act. The proposed changes:
 - a. Revise the corporate finance provisions based on the Revised Model Business Corporation Act, including:
 - i. a unified distribution concept for determining dividend and repurchase validity under insolvency tests;
 - ii. elimination of references to par value, stated capital and surplus; and
 - iii. clarification of installment share repurchases.
 - iv. Clarify interested director transaction standards.
9. Introduce the concept of the "independent director" with special authority as an attempt to improve corporate governance.
10. Revise appraisal rights, clarify relief for oppression of minority shareholders and specify derivative litigation procedures.
11. Revise dissolution provisions to deal with post dissolution claims.
12. Standardize treatment of various forms of corporate acquisitions.
13. Generally resolve interpretative issues that have been raised by courts and commentators, and make numerous technical improvements.
14. Support income and asset ceilings at \$1,500 per month of joint income and \$60,000 of joint assets (the maximum amounts permitted under federal law) for Medicaid eligibility to avoid "spousal impoverishment" when one partner requires continuing nursing home care.

Adopted a proposal to petition the Michigan Supreme Court to amend the Supreme Court Rules Concerning the State Bar of Michigan to increase State Bar dues from \$150 to \$200 for members admitted three years or more and from \$90 to \$120 for members admitted less than three years.

Adopted a proposal to petition the Michigan Supreme Court to amend Rules 7.2 and 7.3 of the Michigan Rules of Professional Conduct to remove the blanket prohibition against targeted mail solicitation in order to conform to a decision of the United States Supreme Court declaring such prohibition unconstitutional, and to authorize participation in prepaid legal services plans which directly solicit membership so long as those marketing efforts are not directed at persons known to need legal services in a particular matter covered by the plan.

September 21, 1989

Adopted an amended proposal to request the Supreme Court of Michigan to amend the Michigan Rules of Professional Conduct 1.9 and 1.10 and related comment.

Adopted in principle a proposal to endorse legislation amending the Michigan Professional Services Corporation Act to eliminate the requirement that shareholders of professional corporations be licensed to practice in Michigan, thereby permitting Michigan professional corporations to have shareholders who are licensed in other states.

Defeated a proposal to recommend to the Michigan Supreme Court amendments to MCR 9.119(G) providing for compensation by the State Bar of Michigan to persons appointed to inventory the files.

Defeated a proposal to authorize the appointment of a joint committee of Commissioners and Assembly persons to study the proposal that MCR 9.119(G) be amended to provide for compensation by the State Bar of Michigan to persons appointed to inventory files.

April 28, 1990

Adopted a proposal that the use of the phrase "Now Comes" be discouraged.

Adopted a proposal that the State Bar of Michigan recommend that the American Bar Association adopt the ABA Model Rules of Judicial Conduct, with certain amendments proposed by the State Bar of Michigan Standing Committee on Professional and Judicial Ethics.

Adopted an amendment to delete the phrase ". . . or will be engaged frequently in adversary proceeding in any court." from Canon 4C(a) of the Model Code.

Adopted the amended proposal to adopt a voluntary standard for *pro bono* participation by all State Bar of Michigan members to broaden the options available for compliance with the standards as well as the class of recipients needing *pro bono* services.

The amendment added the following language as new item 3: "Providing a minimum of 30 hours of professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations," and renumbered former item 3 as item 4.

September 13, 1990

Adopted a proposal to petition the Supreme Court to amend the Michigan Rules of Professional Conduct to add a rule permitting and governing the sale of a law practice.

Approved a proposal to petition the Michigan Supreme Court to amend Rule 3.8 of the Michigan Rules of Professional Conduct concerning the special responsibilities of a prosecutor to require that specific procedures be followed and court approval be obtained before a prosecutor can

subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client.

Adopted a proposal to petition the Michigan Supreme Court to amend Rule 5, Section 2 (3), of the Supreme Court Rules Concerning the State Bar of Michigan to provide that the Young Lawyers Section representatives on the Board of Commissioners are the Chairperson-Elect and the Chairperson rather than the Chairperson and immediate past Chairperson.

Adopted a proposal to petition the Michigan Supreme Court to amend Rules 5 and 6 of the Supreme Court Rules Concerning the State Bar of Michigan to authorize the creation of an additional Representative Assembly officer position and to provide that the person filling that office be added to the membership of the Board of Commissioners.

Adopted a proposal to petition the Michigan Supreme Court to extend Administrative Order 1989-2 permitting the creation of the record of court proceedings by videotape and authorizing any trial court in the state to apply to the State Court Administrative Office for permission to do so.

Adopted the amended proposal to petition the Michigan Supreme Court to amend the Michigan Code of Judicial Conduct, Michigan Court Rule 9.205 and the Michigan Rules of Professional Conduct to incorporate provisions prohibiting invidious discrimination by judges and lawyers by deleting references to attending functions sponsored by or at premises owned or operated by organizations that invidiously discriminate.

Defeated a proposal to endorse the bifurcation of the investigative and prosecutorial functions in judicial discipline currently vested in the Judicial Tenure Commission.

April 20, 1991

Approved the legislative priorities for the current legislative session recommended by the Ad Hoc Legislative Review Committee.

Adopted an amended proposal to recommend to the Michigan Supreme Court the amendment of Rule 8.3 of the Michigan Rules of Professional Conduct to provide that the requirement that a lawyer having knowledge that another lawyer has committed a significant violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall inform the Attorney Grievance Commission does not require disclosure of information gained by a lawyer or judge while serving as a member of the State Bar lawyers and judges counseling program to the extent the information would be protected as a confidence if it were to constitute a communication between lawyer and client under Rule 1.6.

Adopted a recommendation that the Michigan Supreme Court be requested to amend the Supreme Court Rules concerning the State Bar of Michigan to increase the number of its at-large appointees to the Board of Commissioners from three to five to permit additional representation of women and minorities who are unlikely to be elected to the Board.

Adopted the recommendation of the Keller Task Force that the deduction/diversion dues collection option offered to members in 1990-91 be continued for at least one additional year with the understanding that a major effort will be undertaken for the 1991 dues season to persuade members to support the entire range of State Bar activities by paying full dues.

Adopted a proposal that the Michigan Supreme Court be requested to adopt the Proposed Michigan Code of Judicial Conduct (1991) to replace the Michigan Code of Judicial Conduct (1974).

September 26, 1991

Adopted the proposed amendments to the Assembly Rules of Procedure to incorporate the newly established position of vice-chairperson and to make all language gender neutral.

Defeated a proposal to amend the Michigan Rules of Professional Conduct to require lawyers to maintain trust accounts in financial institutions which agree to notify the Attorney Grievance Commission whenever a check drawn against insufficient funds is presented.

Defeated a proposal to amend the Michigan Court Rules to provide for automatic suspension of a lawyer who does not timely respond to a Request for an Investigation.

April 4, 1992

Defeated Senate Bill 460, which would increase the jurisdiction of the District Court in civil actions from \$10,000 to \$25,000 referred to the Assembly for its consideration by the Board of Commissioners.

Adopted a proposal to request the Board of Commissioners to amend the State Bar Bylaws to establish a procedure for nominating candidates to fill vacancies in the Representative Assembly in multi-member circuits.

Approved the amendment to a proposed Michigan Court Rule governing the administration of the mediation process in civil cases.

September 17, 1992

Defeated Senate Bill 688 and 689, which would permit the taking of a laboratory technician's testimony in a preliminary examination by voice communication equipment rather than in person.

Adopted to support a proposal to amend Rule 6.1 of the ABA Model Rules of Professional Conduct to provide that a lawyer should render at least 50 hours of *pro bono publico* legal services each year, at least 40 hours of which should consist of the provision of legal services without fee or expectation of fee to persons of limited means or charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

Adopted to support House Bill 5453 which authorizes the execution of a do-not-resuscitate declaration and related procedures.

Defeated House Bill 5492 which authorizes a statutory durable power of attorney. Thereafter, a motion to reconsider was adopted and upon reconsideration a motion to request the Probate and estate Planning Section of the State Bar of Michigan to draft legislation establishing a statutory durable power of attorney for future consideration by the Representative Assembly was adopted.

Adopted a motion that the State Bar of Michigan urge all Michigan law schools to increase the number of minorities serving as full time faculty.

Defeated House Bills 5436 and 5644 which declare void settlement agreements by state and local units of government that prohibit disclosure of their terms and prohibit the concealing of a public hazard in certain judgments, contracts and agreements.

April 24, 1993

Tabled the consideration of a proposal to endorse a Standard Retainer Agreement Form.

Adopted a proposal to amend the Assembly Rules of Procedure to provide additional standing committees and to establish a process for nominating candidates for the position of Clerk of the Representative Assembly.

Adopted the following State Bar legislative priorities for the 1993-94 session of the Legislature:

1. Implement statewide funding of the administration of justice.
2. Provide state funding of all indigent trial and appellate counsel costs and continued state funding of the prosecuting attorneys appellate service.
3. Amend arbitration statute to authorize arbitration of domestic relations disputes.
4. Support community-based alternatives to incarceration.
5. Reform Michigan's inheritance tax law by substituting a "pickup tax".
6. Enact legislation permitting decriminalization of municipal ordinance violations, permitting them to be treated as civil infractions.
7. Increase the number of Court of Appeals judges.

Defeated a proposal to authorize a statutory durable power of attorney.

Adopted a proposal to petition the Supreme Court to bifurcate the State Bar dues into one portion to fund the lawyer discipline system, the amount of which to be set by the Michigan Supreme Court annually, and the other portion to fund all other State Bar activities, the amount of which to be set periodically by the Michigan Supreme Court upon petition by the Representative Assembly.

Approved a proposal to petition the Michigan Supreme Court to increase the State Bar portion of dues, assuming the proposal to bifurcate is approved, to \$175 effective October 1, 1993.

Tabled a proposal to petition the Michigan Supreme Court to enter an Administrative Order limiting ideological advocacy by the State Bar of Michigan to issues involving (1) questions concerning the regulation and discipline of attorneys; (2) matters relating to the improvement of the function of the courts, judicial ethics and efficiency; (3) increasing the availability of legal services to society; (4) regulation of attorney's client trust account; and (5) the education, ethics, competence, integrity and regulation as a body of the legal profession.

June 19, 1993 (Special Meeting)

Adopted a proposal to petition the Michigan Supreme Court to enter an Administrative Order limiting ideological advocacy by the State Bar of Michigan to issues involving (1) questions concerning the regulation and discipline of attorneys; (2) matters relating to the improvement of the function of the courts, judicial ethics and efficiency; (3) increasing the availability of legal services to society; (4) regulation of attorney's client trust account; and (5) the education, ethics, competence, integrity and regulation as a body of the legal profession.

September 30, 1993

Approved the recommendations of the Task Force on Appellate Courts.

Adopted a proposal to adopt Voluntary Standards for Lawyers Concerning Domestic Violence.

April 23, 1994

Adopted a proposal to amend MCR 2.405 which would expand the definition of "verdict" to include a disposition by motion and eliminate the difference in application of the mediation and offer of judgment rules post-mediation.

Adopted a proposal to adopt a Model Law Firm Employment Policy Prohibiting Sexual Harassment.

Opposed proposals to amend Canon 7(b)(2)(C) of the Michigan Code of Judicial Conduct to change the amount and limit the sources of judicial campaign contributions.

Approved the proposed Court Rule establishing and governing law practice receiverships when a lawyer disappears, dies, is disabled, or has been suspended or disbarred, and there is no one readily available to handle client matters.

Referred a proposal for the adoption of a certification program or state accreditation program for specialties in the law for the State of Michigan to the Assembly Hearing Committee to be reconsidered by the Representative Assembly at its September 22, 1994 meeting.

Withdrew a proposal to authorize a state sponsored certification program of specialists in family law for the State of Michigan.

September 22, 1994

Adopted a proposal to mandate the use of recycled paper in all court filings.

Referred a proposal to endorse a Standard Retainer Agreement Form to all State Bar Committees for comment.

Adopted a proposal for the President of the State Bar to appoint a committee to address issues of lawyer advertising and lawyer specialty certification, including any existing or alternative enforcement mechanisms, as well as the relationship, if any, between concerns about lawyer competency and mandatory continuing legal education.

January 14, 1995

Defeated a motion to enforce the concepts of the 21st Century Courts committee Report as State Bar Policy regarding comprehensive reform of Michigan's justice system.

Authorized that the State Bar of Michigan in consultation with the judges associations and the Michigan Supreme Court, through its designees, to appear before the Legislature and represent the interests of the Bar in the improvement of the judicial system.

April 22, 1995

Approved the proposed amendment to the Supreme Court Rules Concerning the State Bar of Michigan to establish a plan of legal certification.

The Committee on Delivery of Legal Services, withdrew its proposal on Michigan Lawyer Referral Standards and the ABA proposed Model Supreme Court Rules Governing Lawyer Referral

and Information Services to enable the Committee to further refine the proposal before resubmitting it for Assembly consideration.

September 21, 1995

Defeated a motion to endorse a Standard Retainer Agreement form.

Referred a proposal to amend Rule 6.3 of the Michigan Rules of Professional Conduct on Lawyer Referral Services to the Ethics Committee.

Referred a proposal to establish standards for the administrative appointment of indigent defense counsel from lists of qualified attorneys based upon objective criteria to the Committee on Hearings.

April 27, 1996

Adopted a proposal to amend MRPC 6.3(b) to regulate lawyer referral services.

Referred a proposal to amend MCR 9.109(B)(5) providing for confidentiality of disciplinary investigative information to the Assembly Hearings Committee.

Defeated a proposal to amend MCR 9.125 to limit immunity of participants in the discipline process.

Referred a proposal to create an Assembly Committee on the Profession to the Assembly Review Committee.

Adopted the proposed ten Basic Goals for the State Bar of Michigan as presented by the Long Range Planning Committee the following:

1. The efficiency of the justice system
2. Laws, rules and jurisprudence
3. The independence of the bench and bar
4. The professionalism and competence of the bench and bar
5. Access to justice for all
6. The public service of the bench and bar
7. Public understanding of and respect for the justice system and profession
8. The openness of the profession
9. Member interests and a high-quality professional practice and life
10. The position of the State Bar of Michigan as the representative of the profession

September 19, 1996

Approved the recommendation of the Assembly Review Committee to refer to the State Bar Long-Range Planning Committee and to State Bar committees and sections having subject matter jurisdiction the following:

Appointment of a Special Hearing Committee based on referrals from the Assembly;
Appoint of a Committee on the Profession to consist of ten Representatives to study and present issues that the assembly might want to consider in the future;
Appointment of a special committee to review disciplinary rules;
Appointment of outreach liaisons to the sections of the State Bar;

Development of local meetings for circuits and combinations of circuits of the Representative Assembly

Expansion of responsibility of the Drafting Committee to include preparation of a summary for each proposal presented to the Assembly and preparation of a brief for each proposal recommended to the Supreme Court by the Assembly. Also, expansion of the membership of the Drafting Committee to seven, each from a different circuit.

Approved the recommendation of the Standing Committee on Judicial Selection to ask the Legislature to appoint, by joint resolution, a bipartisan citizens' commission that represents a cross-section of individuals to ensure race, ethnic and gender diversity, to examine Michigan's system of judicial selection, and to report its recommendations and conclusions within twelve months of appointment.

Referred back to the Standing Committee on Professional and Judicial Ethics a proposal to amend MRPC 4.2.

Approved the recommendation of the Senior Justice Section to ask the Michigan Supreme Court to create a statewide task force to study the current operations of the state's guardianship and conservatorship systems and make necessary recommendations for improvements.

A recommendation of the Standing Committee on Professionalism to amend MRPC 7.1, 7.2 and 7.3 was withdrawn by the proponents prior to the session.

Approved the recommendation of the Standing Committee on Grievance to ask the Michigan Supreme Court to amend MCR 9.115(F)(4) regarding reciprocal disclosure of witness statements in lawyer discipline proceedings.

April 26, 1997

Denied adoption of the proposal to amend MRPC 4.2 and related comment regarding communication with a person represented by counsel.

Denied adoption of the proposed Standards for Assigned Counsel.

Approved the amendments to MCR 2.305, 2.310 and 2.506 on Non-party Record Subpoenas; and MCR 2.302(F) on Stipulations Regarding Discovery Procedure.

Approved changes to proposed amendments to MRPC 6.3.

September 18, 1997

Approved the recommendation of the Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 3.101 regarding Garnishment after Judgment.

Approved the recommendation of the Standing Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 2.317 regarding Discovery Masters.

Approved the recommendation of the Standing Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 2.402(B) regarding attendance at pretrial.

Adopted the Model Family Medical Leave Policy recommended by the Labor and Employment Section.

Approved the recommendation of the Standing Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 2.625(G) regarding taxation of costs.

Approved the recommendation of the Attorney Grievance Commission to ask the Michigan Supreme Court to amend Rule 1.8 regarding prohibiting sex with clients.

Approved the recommendation of the Standing Committee on Professional Ethics and the Committee on Delivery of Legal Services to ask the Michigan Supreme Court to amend Rule 6.3 regarding legal services organizations and lawyer referral services.

Defeated a proposal by the Assigned Counsel Standards Committee to establish guidelines for training assigned criminal counsel.

April 25, 1998

Approved the proposal to amend Rules 3 and 15 of the Rules Concerning the State Bar of Michigan regarding the licensing of lawyers.

Approved the proposal, with modification, to amend MCR 7.305(B)(1) regarding state and tribal courts.

Defeated the proposal to amend MCR 2.107(C) concerning facsimile service.

Approved the proposal to amend MCR 2.203(A)(2) regarding compulsory joinder of claims.

Approved the proposal, as amended, to amend MCJC 7 (Canon 7: A judge or a Candidate for Judicial Office Should Refrain from Political Activity Inappropriate to Judicial Office).

September 17, 1998

Defeated the proposal to amend MCR 2.203 to make certain counterclaims compulsory, submitted by the Committee on Civil Procedure.

Approved, as amended, a proposal to amend Rule 15, Section 3 (1) of the Supreme Court Rules Concerning the State Bar of Michigan, which would add the Plain English Lawyer's Oath as an optional version for admission ceremonies for new lawyers.

April 24, 1999

Approved with modification, the proposed amendment to MCR 2.107 concerning facsimile service.

Approved the proposed amendment to MCR 2.310 concerning response time to document requests.

Tabled the proposal to amend MRE 803A and MCR 5.972 regarding child protection proceedings.

September 16, 1999

Referred the pilot project reports to the Assembly Review Committee.

Approved proposed MCR 1.110, allowing legal assistant's fees to be awarded by the Court.

Approved a proposed resolution on unauthorized practice of law.

Tabled the proposed amendment of Canon 7 and adoption of New Canon 8 of the Michigan Code of Judicial Conduct concerning Judicial Campaigns.

Approved the recommendation to ask the Michigan Supreme Court to consider extending the comment period for proposed Court Rule amendments published in the Bar Journal to a 90-day period instead of the current 60-days.

Defeated a proposed amendment to Supreme Court Rule 6, Section 2 to allow one seat in the Assembly for each section of the State Bar.

Referred the proposed amendment to Supreme Court Rule 7, Section 1 to provide for the automatic succession of the office of Vice-President to President-Elect to the Assembly Drafting Committee.

November 11, 1999

Recommended that the Court's proposal to amend MCJC 7(A)(2)(a) be rejected. This proposal would allow a judge or judicial candidate to attend political fund-raising events that honor the judiciary generally, not the individual judge by name, provided that the judge does not personally solicit funds for, or attendance at, such events.

Unanimously recommended that the Court's proposal to add MCJC 7(A)(4) be rejected. This proposal would make it unethical for an organization consisting exclusively of judges to make a false, fraudulent, misleading, or deceptive statement about judicial candidates. It would also require these associations to identify the members of their organization in any public communication.

Recommended that the Court's proposal to add MCJC 7(B)(2)(a) be rejected. This proposal would specifically allow a judge to send a thank-you note or other acknowledgment to a contributor.

Recommended that the Court's proposal to amend MCJC 7(B)(2)(c) be rejected. The Assembly unanimously recommended that the maximum solicitation of a lawyer by a judicial candidate remain at \$100. This proposal would raise the maximum solicitation of a lawyer by a judicial candidate from \$100 to \$300. It would also allow a general solicitation in excess of \$300, with an appropriate disclaimer.

Recommended that the Court's proposal to amend MCJC 7(B)(2)(c) be amended to begin the solicitation period on February 1 instead of January 1 and then be adopted. As originally presented, this proposal would change the starting date for fund solicitation from 180 days before a primary election or nominating convention to January 1 of the year of the election.

Unanimously recommended that the Court's proposal to amend MCJC 7(B)(2)(c) be rejected. This proposal would allow the solicitation of funds for 45 days after the date of the general election.

Unanimously recommended that the Court's proposal MCJC (7)(2) be adopted. This proposal would eliminate a paragraph that applied only to the 1974 campaign year.

Unanimously recommended that the Court's proposal to add Canon 8 be rejected. This proposal would also apply to judges' associations or any other organization consisting exclusively of judges.

Tabled a motion that had been made and seconded, without vote of the Assembly, in support of full public financing of judicial campaigns in Michigan.

January 22, 2000

Unanimously adopted the proposed amendments to Supreme Court Rule 7, Section 1 to provide for the automatic succession of the office of the Vice-President to President-Elect.

Approved the proposed modification to MCR 9.112(B)(3) regarding requests for investigation.

Approved recommendation that a subjective test be used to determine "actual malice" under Michigan Rule of Professional Conduct 8.2(a).

April 29, 2000

Approved to recommend that the Michigan Supreme Court adopt the proposed amendments to the mediation and ADR court rules, with four additional amendments offered by the Assembly.

Supported the proposed amendments to Rule 7.7 of its Permanent Rules of Procedures as to the role of the existing "Special Issues Committee."

Rejected the proposed resolution to acknowledge the widespread perception of a decline of civility among lawyers and to ask the State Bar to pursue appropriate measures to address this issue.

Supported the proposed resolution to encourage the State Bar to study the implementation of civility guidelines for all lawyers in Michigan.

Supported the proposed resolution for the State Bar to develop and promote mentoring programs for lawyers.

Supported the proposed resolution for the State Bar to develop and promote programs on ethics education for lawyers.

Unanimously rejected the proposed amendment of Canon 7 of the Michigan Code of Judicial Conduct concerning Judicial Campaigns.

Supported the proposed amendment of the Character and Fitness fee increase.

September 21, 2000

Adopted as amended to unanimously recommend to the Michigan Supreme Court that this amendment to MCR 6.435 be adopted.

Unanimously opposed the adoption of proposed amendments of subchapters 7.300 and 9.100 of the Michigan Court Rules regarding permanent disbarment Court Rules.

Refer the issue of the use of part-time Judicial or Quasi-Judicial Officers to committees and sections for further study.

February 10, 2001

Tabled the report and recommendations on Multidisciplinary Practices.

April 28, 2001

No official action was taken.

September 13, 2001

Approved the recommendation to amend Rule 2.3(A), Method of Presentation, in the Permanent Rules of Procedure of the Representative Assembly.

Approved the following by resolution adopted September 13, 2001:

IT IS RESOLVED that the Representative Assembly urges the Michigan Legislature, the Supreme Court, the State Bar, its Board of Commissioners and Staff to prioritize programs that educate voters as to the workings of our justice system and the background, experience and qualifications of candidates in judicial elections;

That the State Bar endorses a system for the election of judges in all Michigan state courts which reduces, to the greatest degree possible, the politicization of judicial selection.

January 26, 2002

Approved a resolution proposing an amendment to Rule 4.8 of the Permanent Rules of Procedure to annually update the Chronological Summary of the Representative Assembly Action and accompanying Index, and to provide both to each member at the Assembly's first meeting of the year.

Approved a resolution proposing amendments to the Michigan Rules of Professional Conduct regarding the provision of ancillary and joint services by lawyers.

Approved a resolution that (1) opposed the U.S. Department of Justice's proposed action to monitor communications between attorneys and their clients without prior judicial approval, which abrogates the attorney-client privilege; and (2) required that a copy of the resolution (as passed by the Assembly) be sent to the U.S. Attorney General and the Rules Unit of the Office of General Counsel, Bureau of Prisons.

Approved a resolution (1) endorsing the January 4, 2002, Recommendations on Military Commissions issued by the American Bar Association Task Force on Terrorism and the Law and (2) requiring that copies of the resolution and Task Force Recommendations be sent to the President of the United States, the Secretary of Defense and the American Bar Association.

April 27, 2002

Approved an amendment to Rule 2.3 of the Permanent Rules of Procedure of the Representative Assembly to clarify time for submission of items from the floor as follows:

2.3 Method of Presentation. No item shall be placed on the calendar under sub-sections (3), (4), (5), (6), or (7) ~~or (8)~~ of Section 2.2 unless . . .

Adopted the eleven criminal defense assigned counsel guidelines for improving public defense services, as proposed by the Michigan Public Defense Task Force.

Adopted a resolution that (1) the Governor should call upon the State Bar of Michigan to assist in screening candidates for judicial appointments when vacancies occur and that no judicial appointment should be made by the Governor unless the State Bar of Michigan has received adequate time and opportunity to screen each candidate; and (2) the State Bar of Michigan should dedicate sufficient resources to continue its process of screening candidates for judicial appointments in a manner that is as fair and timely as possible.

September 26, 2002

Approved the following proposed resolutions as recommended by the Assembly Review Committee:

1. That each State Bar Section Council be asked to accept an Assembly member as liaison, to be appointed by the Assembly Chairperson.
2. That members of the Assembly who receive Committee appointments pursuant to Article VI, Section 2 of the Bylaws of the State Bar of Michigan and Rule 11 of the Supreme Court Rules Concerning the State Bar of Michigan shall act as Assembly Liaisons to the Committees and shall report back to the Assembly as needed.
3. That Assembly meetings shall have space on the calendar for timely and pertinent informational reports from Sections and Committees of the State Bar of Michigan, and Sections and Committees shall be encouraged to present such reports to the Assembly.
4. That members of the Representative Assembly should receive, on a regular and timely basis, information on all "policy" decisions made between Assembly meetings by the State Bar of Michigan Board of Commissioners.

Tabled a recommendation to adopt amendments to the Michigan Rule of Professional Conduct 6.1, pending review by the State Bar Standing Committee on Professional and Judicial Ethics. This proposal addresses pro bono service by lawyers.

Deferred the Michigan Supreme Court Administrative Order No. 99-31 to the Assembly's Special Issues Committee. This proposal amends MCR 9.200, *et seq.*, regarding the judicial discipline system.

February 22, 2003

Tabled proposed amendments to the Michigan Court Rules regarding challenges to medical malpractice notices of intent to sue, affidavits and expert witness qualifications; time for filing dispositive motions. The proposal was tabled for future consideration by the Assembly and referred back to the Civil Procedure and Courts Committee.

Approved the following proposed resolutions as recommended by the Assembly Review Committee:

1. To endorse the implementation of the Strategic Plan.
2. To increase fees for the administration of licensing process.
3. To increase the age from 70 to 75 at which active members are exempt from paying dues.
4. To establish a \$15.00 annual assessment for the Client Protection Fund.
5. To increase membership dues as amended by \$40.00 from (\$160 to \$200) effective in the 2003-04 fiscal year, and automatically increasing or decreasing dues based on the Consumer Price Index, beginning with the 2004-05 fiscal year unless otherwise

ordered by the Supreme Court.

April 26, 2003

Adopted the proposed amendments to Michigan Court Rules 2.112, 2.116 and 2.401, as amended, regarding Challenges to Medical Malpractice Notices of Intent to Sue, Affidavits and Expert Witness Qualifications; Time for Filing for Dispositive Motions.

RESOLVED, that the State Bar of Michigan commends the House of Delegates of the American Bar Association for creating and adopting the Blueprint for Cost-effective Pretrial Detention Sentencing and Corrections Systems, and recommends consideration of the Blueprint provisions to the State of Michigan, federal and local governments, and all others seeking to take steps to eliminate unnecessary expenditures, enhance cost-effectiveness and promote justice.

Rejected the proposed resolution in support of increasing federal judicial compensation as recommended by the National Commission on the Public Service (“Volcker Commission”).

September 12, 2003

Adopted the following proposed amendment regarding mandatory minimum voting:

RESOLVED that the Board of Commissioners of the State Bar of Michigan is directed to amend Article IV Section 4 of the Bylaws of the State Bar of Michigan concerning the Representative Assembly by deleting the following sentences: “All ballots shall be voted for one-half or more of the number of Representatives to be elected from the circuits in that election. No ballot shall be counted which does not comply with this provision”.

Adopted the Assembly Review Committee’s following recommendations:

- Issue an annual “Unsung Hero” Award
- Amend Rule 7.5 and 8.8 of the Permanent Rules of Procedure to read:
7.5 Nominating & Awards. The Nominating and Awards Committee shall consist of five (5) members, each of whom shall be from a different judicial circuit. The Committee shall perform the functions provided for in Rule 8.
8.8 Awards. The Nominating and Awards Committee shall meet and recommend qualified members of the State Bar as recipients of the Michael Franck and Unsung Hero Awards, for vote by the Assembly.

Adopted the recommendations of the State Bar of Michigan Appellate Delay Reduction Task Force

Adopted Special Procedure Rules (Part A) governing further debate on the proposed Michigan Rules of Professional Conduct and the Proposed Standards for Imposing Attorney Sanctions.

November 13, 2003 (Special Meeting)

Adopted rules governing further debate on the proposed Michigan Rules of Professional Conduct and the Proposed Standards for Imposing Attorney Sanctions.

Debated the recommendations of the Ethics Committee regarding proposed new Michigan Rules of Professional Conduct and Lawyer Discipline standards.

March 27, 2004

Opposed the adoption of the proposed amendments to MCR 2.112(K), Notice of Non-Party Fault.

Approved the resolution in support of changes to court rules regarding issuance of ex parte guardianships over minors, subject to grammatical review by the Assembly Drafting Committee prior to submission to the Michigan Supreme Court.

October 1, 2004

Approved Appendix A under Section B, approved amendment to add attorneys with emeritus status to MCR 8.120 as a whole.

Approved resolution for the Nominating and Awards Committee to determine annual recipients of the Michael Franck and Unsung Hero Awards, and recruit qualified individuals to fill Assembly vacancies.

Approved amendment to Rule 2.2(7) calling for SBM hosted forum including all candidates for the Supreme Court Justice.

January 22, 2005

Upon a motion made and seconded, the meeting was adjourned with all scheduled Proposals deferred to the April 16 meeting. Despite quorum, and out of respect for Assembly members unable to attend the meeting due to blizzard conditions, the Assembly determined that adjournment would ensure a substantive debate and ultimately recommendations to the Supreme Court from a truly representative body.

After adjournment, a panel discussion regarding the Michigan Rules of Professional Conduct and Michigan Standards for Imposing Lawyer Standards was provided for attending Assembly members. Panelist included John Van Bolt, Don Campbell, John Allen, John Berry, and Anne-Marie Voice.

April 16, 2005

The Assembly approved amendments to MCR 2.403 as the Civil Procedure and Courts Committee recommended that the current case evaluation court rule be amended to limit its scope regarding automobile no fault benefit cases, to limit its scope to only expenses actually incurred and disputed before the case evaluation hearing due to the ongoing nature of these types of claims. The current rule provides that acceptance of a case evaluation award is deemed to dispose of all claims in an action.

The Assembly approved amendments to MCR 3.602 as the Civil Procedure and Courts Committee recommended that the current arbitration court rule be amended to provide three procedural revisions: to substitute “motion” or “complaint” for “applicant” (an undefined term within the court rules or the Arbitration Act), clarify post-arbitration actions and set timing deadlines consistent with the Federal Arbitration Act.

The Assembly approved the proposed Pro Hac Vice and Confidentiality Rules. Upon a motion made and seconded, the Assembly unanimously supported adding a new Rule Concerning

the State Bar of Michigan governing *pro hac vice* practice and granting jurisdiction over out-of-state attorneys to the Attorney Grievance Commission and Attorney Discipline Board. The Assembly also voted in favor of the Rule incorporating provisions requiring out of state attorneys to affiliate with an active member of the State Bar who would appear of record in the proceeding, defining temporary practice as “no more than three separate representations within a 365 day period” and requiring a fee to be paid by out-of-state attorneys to cover State Bar administrative costs to monitor compliance. Upon a motion made and seconded the Assembly also voted in favor of adding a new Rule Concerning the State Bar of Michigan governing the confidentiality of State Bar programs, with the specific Rule to be submitted to the Assembly for approval.

The Assembly unanimously approved to include a transition provision in the Michigan Rules of Professional Conduct within MRPC 1.0.2 (Applicability of Rules).

The Assembly opposed including language in MRPC 1.4(c) (Communication) regarding the ownership and copying of lawyers’ files and records. A strong minority voted in favor of including language in the Rules.

The Assembly opposed describing or incorporating a law enforcement exception within MRPC 4.2 (Communication with Party Represented by Counsel) or its comments. A minority voted in favor of a law enforcement exception.

The Assembly approved including language in MRPC 1.5(f) (Fees) to specifically provide for enforceable nonrefundable retainers that are clearly identified and to which the client has consented in writing.

The Assembly unanimously supported MRPC 1.15(c) (Safekeeping Property) such that nonrefundable fees comply with the factors set forth in the Assembly’s recommendation regarding MRPC 1.5(f).

The Assembly unanimously approved that MSILS 1.3 should state the Standards are not intended to create independent grounds for determining culpability.

The Assembly supported the Attorney Discipline Board’s definition of knowledge throughout the Standards, noting that “actual knowledge” should be used instead of “knowledge”.

The Assembly supported specifically defining “injury” and “potential injury” within the MSILS Definitions, as proposed by the ADB. A strong majority supported the version of MSILS 2.3 as proposed by the Supreme Court and ADB. The Assembly unanimously supported considering injury in the first phase of the disciplinary system, when determining whether misconduct has occurred, rather than only in the second (sanction) phase, consistent with the ADB position.

The Assembly supported Alternative A (the ADB version) regarding the use of reprimand within MSILS 4.6, 6.1 and 8.0, in favor of including reprimand as a disciplinary option for the forms of misconduct recognized by the Rules.

The Assembly unanimously supported striking consent judgments from being governed by the Standards, as proposed by Robert Agacinski (personally) to the Supreme Court.

The Assembly opposed the Standards providing for admonitions within MSILS 2.6, consistent with the ADB and AGC positions.

The Assembly supported incorporating a two-prong test within the Standards requiring (1) injury or potential injury or (2) interference or potential interference with a legal proceeding, as a prerequisite to the issuance of sanctions pursuant to MSILS 6.2 and 6.3, consistent with the ADB position.

The Assembly supported limiting disbarment under MSILS 4.1 to a knowing “conversion” of “client property” rather than a failure to hold anyone’s property in trust, consistent with the ADB position. A majority of the Assembly supported limiting suspension to improper handling of client property that is knowingly or negligently improper, consistent with the ADB position. A slim minority supported the broader Campbell/Supreme Court version which would provide for suspension for the failure to hold property in trust or commingling personal property with property that should have been held in trust.

The Assembly unanimously supported the ADB position regarding MSILS 4.3 (Failure to Avoid Conflicts of Interest); that a suspension sanction should require injury or potential injury to a client while reprimand should require the conflict to adversely affect another client and cause injury or potential injury to a client.

The Assembly unanimously opposed providing sanctions for illegal or clearly excessive fees within MSILS 4.5 (Lack of Competence), consistent with the ADB position and Alternative A” published by the Supreme Court.

The Assembly unanimously supported that, with regard to MSILS 5.1 (Failure to Maintain Personal Integrity), only a violation of a law that reflects adversely on a lawyer’s fitness to practice should be subject to discipline, consistent with the ADB position.

The Assembly supported MSILS 3.2 (Isolated Acts of Negligence), such that isolated acts of negligence, without more, should not be the subject of discipline.

The Assembly unanimously supported recommending that the Court publish a revised version of the Rules (AO-2003-62) for further analysis and comment to ensure a more thorough and comprehensive rewrite of Michigan’s Rules of Professional Conduct.

September 22, 2005

The E-Filing Task Force reported on a proposed amendment to the Michigan Court Rules, specifically 2.107(C), regarding E-service between lawyers. The Assembly adopted the position that MCR 2.107(C) should be amended to allow attorneys to stipulate to serve documents upon each other via electronic mail.

The Criminal Jurisprudence Committee reported on proposed amendment to MCR 2.107(G) regarding docketing receipts by mail. The Assembly unanimously approved the additional language to MCR 2.107(G) requiring the date that pleadings are filed, which includes filing by mail, to be noted on the docketing statement if different than the date docketed.

The Criminal Jurisprudence Committee reported on proposed amendment to MCR 6.610(I), regarding notification of appellate rights in district court after misdemeanor convictions. The Assembly unanimously approved the amendment to MCR 6.610(I) removing the language “immediately after the judge imposes” and replacing that with “at the time of plea or.”

The Criminal Jurisprudence Committee reported on a revised resolution for the proposed legislation to require electronic recording of Custodial Interrogations. The Assembly unanimously favored supporting in principle the use of video and audio recording of custodial interrogations as the best method of securing a precise and accurate record of custodial interrogations and calling for the appointment of a State Bar custodial interrogation recording task force consisting of State Bar members in the criminal defense, prosecution, judicial, and law enforcement communities to develop and promote legislative Court Rule and funding changes that advance the use statewide of audio and video electronic recording of custodial interrogations.

The Unauthorized Practice of Law reported on the consideration of Multi-Jurisdictional Practice Report and Proposed Pro Hac Vice Rule (Rule 18). The Assembly adopted the proposed rule, which would designate the State Bar of Michigan as a central “clearinghouse” for Pro Hac Vice applications and would require an out of state attorney seeking Pro Hac Vice admission to pay a fee equivalent to the amount of dues and CPF assessment that active SBM members pay. Upon a motion made and seconded, the Assembly recommended Rule 18 to the Supreme Court for adoption.

The Unauthorized Practice of Law reported on the consideration of Practice Management Resource Center Report & Proposed Confidentiality Rule (Rule 20). The Rule grants certain SBM programs formal confidentiality protection. Upon a motion made and seconded, the Assembly recommended Rule 20 to the Supreme Court for adoption.

April 29, 2006

The Justice Initiatives proposed revisions to MCR 2.402 (C). The first proposal is that the State Bar be authorized to have discussions with these interested stakeholders to find out what their approaches and concerns are, and if there is a consensus position about how to improve the rule, that the State Bar should be authorized to communicate that to the court. The Assembly unanimously approved the first revision to the proposed changes to MCR 2.402 (C).

The second proposal was a technical change that the children age 14 and older continue to receive notice of the proceedings affecting them, which is the current law, and just by the wording, inadvertently it looks like it could be the parent or the child, and that was not the intention. The Assembly unanimously approved the second revision to the proposed changes to MCR 2.402 (C).

The Justice Initiatives proposed revisions to MRPC 6.1. In November 2003 the Assembly supported a voluntary standard which called for 30 hours of pro bono service or three cases per year or a contribution of \$300 for pro bono services on an annual basis. The proposal is to add two words, “or more” after “\$300”. The Assembly unanimously approved the additional language to the proposal.

Assembly Review Committee reported on a proposed revision to the Representative Assembly Permanent Rules of Procedure 4.8 to address timing as far as follow-up procedures concerning our proposals to the Supreme Court and adopting a procedure where our future officers and chairs will have some means to know what the Assembly has done in the past and what's out there still pending. After discussion and an amended motion the Assembly opposed the proposal.

Special Issues Committee of the Representative Assembly presented a proposal to adopt the strategic plan. Upon a motion made and seconded the Assembly adopted the amendments to the strategic plan.

The Client Protection Fund reported on the Trust Account Overdraft Rule, which will be on the September agenda.

The Michigan Law Revision Commission presented two proposals on the Michigan Law Revision Commission. After the motion was made and seconded, discussion followed and the Assembly unanimously approved the State Bar of Michigan to take the policy position that the State of Michigan should pay the assessments it owes to the National Conference of Commissioners on Uniform State Laws and pay the costs necessary to permit Michigan's uniform law commissioners to attend the NCCUSL's annual meeting.

The second proposal is that the State Bar of Michigan's Board of Commissioners appoint and pay the expenses of a liaison to attend the NCCUSL annual meeting and report back to the chairperson of the Public Policy and Image Committee and chairperson of the Representative Assembly regarding events of the meetings for further dissemination to State Bar and committee chairperson. After discussion a motion was made and seconded that the Assembly unanimously approved the proposal.

Family Law Section moved to adopt proposals regarding the Domestic Relations Court Rule, MCR. 3222(B), 3.201 and 3.222(C-K) on behalf of the Family Law Section. MCR 3.222(B) is designed to facilitate the entry of the judgment of divorce or separate maintenance where a settlement has been reached prior to the commencement of litigation. Upon a motion that was made and seconded, the Assembly unanimously approved that MCR 3.222(B) should be added to the existing Michigan Court Rules to provide for non-litigious terminology in filings involving pre-settled divorce and separate maintenance cases with the exception that the word "shall" under 3.222(B) (8) be changed to "may."

The Family Law Section moved that proposal MCR 3.201 be amended to include procedures that apply specifically to attorney-approved divorce and separate maintenance agreements that are signed before the divorce or separate maintenance case is filed. The motion was seconded and the Assembly unanimously approved MCR 3.201.

The Family Law Section moved that proposal MCR 3.222 (C-K) should be added to provide for an applicable, streamlined approach to entry of judgments in filings involving pre-settled divorces and separate maintenance cases. The motion was seconded and, after discussion, "shall" was changed to "may" and the Assembly unanimously approved MCR 3.222 (C-K).

Real Property Law Section reported on the proposed Resolution Regarding Gap between Filing and Recording of Deeds. The Real Property Law Section is requesting that the State Bar of Michigan support enforcement of the statutory requirement that county registers of deed maintain entry books pursuant to MCL 565.24. After discussion a motion was made to table. The Assembly unanimously agreed to table this matter.

September 14, 2006

The Representative Assembly unanimously approved that the Permanent Rules of Procedure regarding Awards 8.8 be amended whereby the Assembly will now vote on the recipients of the Michael Franck and Unsung Hero Awards at the April meeting of the Assembly, instead of the September meeting.

The Special Issues Committee moved the Assembly suspend certain and amend certain parts of the Robert's Rules of Procedure for the debate on the Jury Reform Proposals. A motion was made and seconded. Accordingly panelists will have floor privileges and will discuss the proposals that have been grouped in four different clusters. These clusters are: the Jury Reform Rules related to juror materials, proposals that affect juror participation, that affect the role of the judge, the role of the attorney, that affect the submission of evidence.

The Special Issues Committee introduced the first cluster of proposals, dealing with proposals affecting juror materials, namely, trial notebooks, and preliminary and final instructions. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.

2.513(E) Reference Documents. The court ~~must encourage~~ may, in the court's discretion, allow counsel in civil and criminal cases to provide the jurors with a reference document or notebook, the contents of which ~~should~~ may include, but which is not limited to, witness lists, relevant statutory provisions, and, in cases where the interpretation of a document is at issue, copies of the relevant document. The court and the parties may supplement the reference document during trial with copies of the ~~preliminary~~ jury instructions and admitted exhibits, ~~and other appropriate information~~ to assist jurors in their deliberations.

PASSED AS EDITED 59-36

2.513(A) Preliminary Instructions. After the jury is sworn and before evidence is taken, the court shall provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall provide each juror with a copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions.

PASSED

2.513(N)(2) Final Instructions to the Jury. Solicit Questions about Final Instructions. As part of the final jury instructions, the court ~~shall~~ may advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during the deliberations. Upon concluding the final instructions, the court ~~shall~~ may invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate. If questions arise, the court and the parties shall convene, in the courtroom or by other agreed-upon means. The question shall be read into the record, and the attorneys shall offer comments on an appropriate response. The court may, in its discretion, provide the jury with a specific response to the jury's question, but the court shall respond to all questions asked, even if the response consists of a directive for the jury to continue its deliberations. The sealed envelope shall be made part of the record and preserved for appeal.

PASSED AS EDITED

2.513(N)(3) Copies of Final Instructions. The court ~~shall~~ may provide each juror with a written copy of the final jury instructions to take into the jury room for deliberation. The court, in its discretion, also may provide the jury with a copy of electronically recorded instructions. PASSED AS EDITED

Due to time considerations, the Assembly reviewed a different proposal before moving to the second cluster of Jury Reform proposals. Timothy O’Sullivan, Executive Director of the New York State Lawyers Fund for Client Protection introduced the proposed Rule for Trust Overdraft Notification, MRPC 1.15(A). After discussion a motion was made and seconded. The Assembly approved the proposal and authorized the State Bar of Michigan to make any subsequent editorial, clerical, or technical language changes to the proposed rule and comments that may assist in effecting the intent of the proposal after discussion with Michigan financial institutions and others prior to submitting the rule to the Michigan Supreme Court.

Chairperson Buiteweg, introduced the second set of the Jury Reform Proposal clusters, dealing with juror participation. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.

MCR 2.513(F) Deposition Summaries. Where it appears likely that the contents of a deposition will be read to the jury, the court should encourage the parties to prepare concise, written summaries of depositions for reading at trial in lieu of the full deposition. Where a summary is prepared, the opposing party shall have the opportunity to object to its contents. Copies of the summaries should be provided to the jurors before they are read.
FAILED UNANIMOUSLY

MCR 2.513(G) Scheduling Expert Testimony. The court may, in its discretion, craft a procedure for the presentation of al expert testimony to assist the jurors in performing their duties. Such procedures may include, but are not limited to: (1) Scheduling the presentation of the parties’ expert witnesses sequentially; or (2) allowing the opposing experts to be present during the other’s testimony and to aid counsel in formulating questions to be asked of the testifying expert on cross-examination; or (3) providing for a panel discussion by all experts on a subject after or in lieu of testifying. The panel discussion, moderated by a neutral expert or the trial judge, would allow the experts to question each other.
FAILED UNANIMOUSLY

Chairperson Buiteweg introduced the third set of clusters, which this proposal dealt with a proposal permitting the court to comment upon the evidence. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.

MCR 2.513(M) Comment on the Evidence. After the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence and comment to the jury about the weight of the evidence, if it also instructs the jury that it is to determine for itself the weight of the evidence and the credit to be given to the witnesses and that jurors are not bound by the court’s summation or comment. The court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury. FAILED UNANIMOUSLY

Chairperson Buiteweg introduced the fourth set of clusters dealing with proposals affecting the role of the attorney. Assembly members were able to ask the panelist questions and make comments before they began the group of clusters.

2.513(J) Jury View. On motion of either party, on its own initiative, or at the request of the jury, the court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. ~~During the view, no person, other than an officer designated by the court, may speak to the jury concerning the subject connected with the trial. Any such communication must be recorded in some fashion.~~

PASSED WITH A VERY STRONG YES VOTE, ALTHOUGH NOT UNANIMOUS

2.513(I) Juror Questions. The court may permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that such questions are addressed to the witnesses by the court itself, that inappropriate questions are not asked, and that the parties have an opportunity outside the hearing of the jury to object to the questions. The court shall inform the jurors of the procedures to be followed for submitting questions to witnesses.

PASSED 60 YES VOTES TO 40 NO VOTES

2.513(H) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes, and they should not permit note taking to interfere with their attentiveness. If the court allows jurors to take notes, jurors must be allowed to refer to their notes during deliberations, but the court must instruct the jurors to keep their notes confidential except as to other jurors during deliberations. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.

PASSED UNANIMOUSLY

2.513(K) Juror Discussion. After informing the jurors that they are not to decide the case until they have heard all the evidence, instructions of law, and arguments of counsel, the court may instruct the jurors that they are permitted to discuss the evidence among themselves in the jury room during trial recesses. The jurors should be instructed that such discussions may only take place when all jurors are present and that such discussions must be clearly understood as tentative pending final presentation of all evidence, instructions and argument. FAILED UNANIMOUSLY

MCR 2.513(D) Interim Commentary. Each party may, in the court's discretion, present interim commentary at appropriate junctures of the trial.

FAILED BY A SUBSTANTIAL MARGIN ALTHOUGH NOT UNANIMOUS

MCR 2.513(C) Opening Statements. Unless the parties and the court agree otherwise, the plaintiff or the prosecutor, before presenting evidence, must make a full and fair statement of the case and the facts the plaintiff or the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a similar statement. The court may impose reasonable time limits on the opening statements. PASSED

The following proposals on the agenda: Emeritus Attorney Referral Fees, the Patient Compensation Act, MCR 2.519 pertaining to Special Masters and Electronic Discovery were tabled to the next meeting in April 2007.

The Justice Initiatives reported on the consideration of Proposed Amendments to SCAO Garnishment Court Forms MC-13 and MC-14. Upon a motion made and seconded the Assembly unanimously approved the amendments to MC-13 and MC-14 to be revised to include a provision that expressly directs a bank or financial institution to protect SSI from garnishment. Upon a motion made and seconded the Assembly unanimously approved the amendments to cover the other forms of income, which would be SCAO garnishment form M-13 and garnish form M-14 to be revised to include a provision that expressly directs a bank or financial institution protect exempted income from garnishment.

April 21, 2007

The Senior Lawyers Section proposed whether Emeritus Members of the State Bar of Michigan should be entitled to receive referral fees so long as the Emeritus Members do not engage in the practice of law. After motion made and seconded, and discussion, the Assembly failed to pass the proposal.

The Michigan Trial Lawyers Association presented a proposal to provide guidelines for specialized dockets. After motion made and seconded, and discussion and amendments, the proposal as amended was passed by the Assembly.

The Civil Courts and Procedures Committee introduced for consideration the adoption of MCR 2.519 pertaining to special masters. After motion made and seconded, and discussion, the Assembly passed the proposal.

The Civil Courts and Procedure Committee introduced for consideration the adoption of Michigan Court Rules 2.301, 2.302, 2.313, 2.401 and 2.506 dealing with electronic discovery rules. After motion made and seconded, and discussion and amendments, the Assembly passed the proposal as amended.

September 27, 2007

The Civil Procedure Committee reported on the consideration of the proposed amendments to the Michigan Court Rule 2.107 that would permit, upon stipulation of the parties, service by email. Below is a brief summary of the proposal that was approved.

In 2005, the Electronic Filing Task Force of the State Bar of Michigan ("SBM") submitted to the Representative Assembly a proposal that would amend MCR 2.107 by adding subsection (C)(4), which introduces the electronic service of papers by email. At its September 22, 2005 meeting, the Representative Assembly voted to recommend the amendment. On January 10, 2006, the SBM submitted proposed MCR 2.107(C)(4) to the Michigan Supreme Court. The Supreme Court made minor stylistic modifications to the proposed language and, on April 10, 2007, the Supreme Court published the proposed MCR 2.107(C)(4) for comments under ADM File No. 2007-12. The Supreme Court website received four comments. The deadline for submitting comments expired on August 1 and

the Public Administrative Hearing scheduled to review this amendment was scheduled for September 26, 2007, one day before this Assembly's meeting.

The Representative Assembly adopted the amendment to MCR 2.107(G) as proposed by the Civil Procedure and Courts Committee.

The Attorney Client Privilege Task Force provided five proposals and the five proposals were all approved by a motion and then seconded. Below is a brief summary of the proposals that were approved.

PROPOSED RESOLUTION (1) – PRESERVATION OF ATTORNEY CLIENT PRIVILEGE AND WORK PRODUCT

The State Bar of Michigan supports the preservation of the attorney-client privilege and work product doctrine as essential to maintaining the confidential relationship between client and attorney required to encourage clients to discuss their legal matters fully and candidly with their counsel so as to (1) promote compliance with law through effective counseling, (2) ensure effective advocacy for the client, (3) ensure access to justice, and (4) promote the proper and efficient functioning of the American adversary system of justice; and that the State Bar of Michigan opposes policies, practices and procedures of governmental bodies that have the effect of eroding the attorney-client privilege and work product doctrine and favors policies, practices and procedures that recognize the value of those protections. That the State Bar of Michigan opposes a routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage.

PROPOSED RESOLUTION (2) – ATTORNEY CLIENT PRIVILEGE/GOVERNMENTAL INVESTIGATION AND PROSECUTION

That the State Bar of Michigan opposes government policies, practices and procedures that have the effect of eroding the constitutional and other legal rights of current or former employees, officers, directors or agents (“Employees”) by requiring, encouraging or permitting prosecutors or other enforcement authorities to take into consideration any of the following factors in making a determination of whether an organization has been cooperative in the context of a government investigation:

- (1) that the organization provided counsel to, or advanced, reimbursed or indemnified the legal fees and expenses of, an Employee;
- (2) that the organization entered into or continues to operate under a joint defense, information sharing and common interest agreement with an Employee or other represented party with whom the organization believes it has a common interest in defending against the investigation;
- (3) that the organization shared its records or other historical information relating to the matter under investigation with an Employee; or
- (4) that the organization chose to retain or otherwise declined to sanction an Employee who exercised his or her Fifth Amendment right against self incrimination in response to a government request for an interview, testimony, or other information.

PROPOSED RESOLUTION (3) – DISCOVERY IN CLIENT REPRESENTATION AND MCR 2.302(B)

That the State Bar of Michigan supports amendment of the Michigan Court Rules (MCR) to restrict the compelled production of information relating to a lawyer's representation of a client, or compelling testimony by a lawyer relating to a representation of a client, except upon a showing of exigent circumstances, or upon a showing of substantial need including exhaustion of efforts to obtain such information from other sources; and mandating the requesting party's payment of the reasonable cost of production and testimony, including the value of any loss of working time; and that the State Bar of Michigan proposes the amendment of MCR 2.302(B) by adding subsection (B)(5) as follows:

(5) Lawyers and Lawyers' Files:

Compelling production of information relating to a lawyer's representation of a client, or compelling testimony by a lawyer relating to a representation of a client, shall not be ordered, except upon a showing of exigent circumstances, or upon a showing of substantial need including exhaustion of efforts to obtain such information from other sources.
The requesting party shall be responsible for payment to the lawyer for the reasonable cost of production and testimony, including the value of any loss of working time.

PROPOSED RESOLUTION (4) – INADVERTENT WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE

That the State Bar of Michigan support the concepts contained in the American Bar Association (ABA) Resolution 120D on inadvertent waiver as adopted and that the issue be referred to the State Bar of Michigan Civil Procedure and Courts Committee for the drafting of appropriate rules in line with those concepts¹, and report back to the Representative Assembly.

PROPOSED RESOLUTION (5) – SELECTIVE WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE

That the State Bar of Michigan opposes the concept of "selective waiver" of the attorney-client privilege and work product doctrine; and that the State Bar of Michigan opposes policies, practices and procedures of governmental bodies that purport to authorize and encourage "selective waiver" of the attorney-client privilege and work product doctrine; and that the State Bar of Michigan opposes a routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the offering of a purported agreement that the disclosed protected information will not be disclosed to others; and that the State Bar of Michigan opposes the adoption of proposed Federal Rule of Evidence (FRE) 502(c) incorporating the concept of "selective waiver."

¹ This analysis should also include consideration of the role of the expense of document review before production, especially in cases involving broad document requests, electronically stored information (EST), and other factors that materially increase the burdens on the producing party.

April 12, 2008

A current member of the State Bar Board of Commissioners proposed that dues should be waived for members serving in the military. After motion made and seconded, and discussion, the Assembly approved the proposal.

The proposal on the consideration of political and judicial endorsement by Assembly officers was withdrawn. This proposal went before the Board of Commissioners and it was tabled. The Assembly will review the proposal once the Board of Commissioners takes action.

The Justice Initiatives Committee introduced for consideration the adoption of ABA Model Court Rule on provision on legal services following determination of major disaster. The rule has two components, the first one is to address the legal needs of people who are displaced who may need pro bono assistance. The second part would deal with lawyers themselves. After motion made and seconded, and discussion, the Assembly approved the proposal.

A Representative Assembly member introduced for consideration an amendment to MCR 6.201(B) regarding preservation of electronic recordings. After motions were made and seconded, and lengthy discussion, the Assembly tabled the proposal and referred to the Special Issues Committee.

The proposal on the consideration of MCR 6.201 discovery to apply in misdemeanors and civil infractions, as well as felony cases was withdrawn.

A Representative Assembly member introduced for consideration an amendment to MCR 6.425(C) mandating that copies of pre-sentencing reports be provided to the defendant and defense counsel. After motions were made and seconded, and lengthy discussion, the Assembly tabled the proposal and referred to the Special Issues Committee.

A Representative Assembly member introduced for consideration an amendment to MCR 8.115, allowing the use of wireless cell phones and other communication devices by lawyers at state-level courthouses. After motion made and seconded, and discussion, the Assembly approved the proposal with amendments.

A Representative Assembly member introduced for consideration of unauthorized practice of law education activities resolution to ensure that the State Bar can look at using its own resources to continue with the educational activities. After motion made and seconded, the Assembly approved the proposal and resolution.

September 18, 2008

A Representative Assembly member introduced for consideration an amendment to MCR 6.201(B) regarding preservation of electronic recordings. After motions were made and seconded, and lengthy discussion along with friendly amendments, the Assembly approved the proposal. The language of the proposed amendment as previously approved by the Representative Assembly now reads as follows:

RULE MCR 6.201 DISCOVERY

(B) Discovery of Information Known to the Prosecuting Attorney.

* * *

(6) any electronic recording evidence made by any governmental agency or agent pertaining to the case known to the prosecuting attorney. Such records shall be preserved by the prosecuting attorney until after all appeals have been exhausted or all rights of appeal have expired, whichever date is later. Failure to preserve such evidence will entitle the accused to a jury instruction that such evidence not produced may be presumed by jurors to have been adverse to the prosecution.

A Representative Assembly member introduced for consideration the proposal of political and judicial endorsement by Assembly officers. This proposal went before the Board of Commissioners in July and adopted a parallel policy, and pursuant to that policy, members of the Board are discouraged from personal endorsements during their term of office. The Executive Director of the State Bar of Michigan is prohibited from such endorsements. After a motion made and seconded, and discussion, the Assembly defeated the proposal.

A Representative Assembly member referred the proposal to amend the Michigan Code of Judicial Conduct Canon 2 to the Special Issues Committee with specific instructions to seek comments from particular Sections that are involved, being Criminal Law; Family Law; General Practice; Judicial Conference; Legal Administrator; Litigation; Negligence; Prisons and Corrections; Public Corporation Law; Civil Procedure in the Courts Committee and the Criminal Jurisprudence and Practice Committee. After a motion and seconded, the motion was referred to the Special Issues Committee.

A Representative Assembly member motioned to withdraw for consideration an amendment to MCR 6.425(C) mandating that copies of pre-sentencing reports be provided to the defendant and defense counsel.

A Representative Assembly member introduced for consideration of MCR 6.425(B) presentence report, adding information to; adjournment allowed when not timely submitted before sentencing. After a motion and seconded, and some discussion, the Assembly approved the proposal.

A Representative Assembly member introduced a second proposal at the same time for consideration of MCR 6.610(F), presentence report for district court. After a motion and seconded, the Assembly approved the proposal.

April 18, 2009

A Representative Assembly member introduced for consideration of proposed amendment of MCR 8.115, cell phone usage in court facilities. The Civil Procedure and Courts Committee asked for the Assembly's permission to advocate its own position on a proposal that the Assembly voted the previous year, on April 12, 2008. The Committee's position expands on the Assembly's position by inserting the below underlined language and striking other language from the Assembly's proposed amendment of MCR 8.115, regarding use of electronic devices in the courthouse:

(C) Electronic Devices. Lawyers may carry cell phones or other portable electronic devices, including but not limited to those with photographic, video or audio recording capabilities, into any court facility. ~~Cell phone or other portable electronic~~ Such devices may be used ~~shall be allowed~~ anywhere outside the courtroom. When in any courtroom, all phones or other portable electronic devices shall either be turned off or silenced. If silenced, counsel shall make certain that any transmissions do not interfere with court proceedings. Individuals shall not verbally initiate or answer any calls while court is in session without the consent of the court. No photographs may be taken inside any courtroom without permission of the court. No photographs may be taken of any jurors or witnesses. ~~Individuals shall not initiate or answer any calls while court is in session without the consent of the court.~~ Nothing in this subrule limits the court's authority to impose other reasonable limitations on use of electronic devices where necessary to maintain conditions conducive to the orderly conduct of proceedings. Failure to comply with this ~~subrule section~~ may result in a fine, incarceration, or both for contempt of court.

After a motion was made, seconded, and discussion, the Assembly granted permission to the Civil Procedure and Courts Committee to advocate its position.

Representative Assembly member introduced for consideration an amendment to MCR 2.516 regarding instructions to the jury. The following is the alternative draft language proposed amendment of MCR 2.516 (B) regarding instructions to the jury:

MCR 2.516 Instructions to the Jury

(B) Instructing the Jury.

(1) After the jury is sworn and before evidence is taken, the court shall give such preliminary instructions regarding the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. MCR 2.516(D)(2) does not apply to such preliminary instructions. The court shall specifically instruct the jurors that they shall not:

(a) discuss the case with others, including other jurors except as otherwise authorized by the court;

(b) read or listen to any news reports about the case;

(c) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation;

(d) use a computer, cellular phone, other electronic device with communication capabilities, or any other means to obtain or disclose information about the case.. As used in this subsection, information about the case includes, but is not limited to, the following:

(i) seeking information about a party, , witness, or attorney involved in the case;

(ii) reviewing news accounts of the case;

(iii) conducting research on any topics raised or testimony offered by any witness;

(iv) researching any other information the juror might think would be helpful.

(e) Any juror who observes or has reason to believe that another juror has violated this rule shall immediately inform the court of the violation.

After motions were made, seconded, and discussion, the Assembly approved the proposal. Representative Assembly member introduced for consideration support for adoption in Michigan the Revised Uniform Arbitration Act (RUAA) as drafted by the National Conference of Commissioners on Uniform State Laws (ULC) and supported with amendment by the Alternative Dispute Resolution Section of the State Bar of Michigan. After motions were made, seconded, and discussion, the Assembly referred the proposal to the Special Issues Committee of the Assembly.

September 17, 2009

Representative Assembly member and chair of the Special Issues Committee, addressed the Assembly on Canon 2(F), the hiring of court employees, which was referred to the Special Issues Committee in September 2008. What happened was that it was moved, seconded, and it was under discussion as the Special Issues Committee did not want to move forward with the proposal as written, and then the Assembly voted to refer it back to the Special Issues Committee to seek input from State Bar sections and committees, which the Special Issues Committee has done. Motion was made, should the Representative Assembly support and endorse a resolution to amend the Michigan Code of Judicial Conduct to add Section F to Canon 2 as proposed. Upon the motion made and seconded, the Assembly unanimously opposed the motion.

Representative Assembly member and chair of the Special Issues Committee, addressed the Assembly with an update on consideration of the revised Uniform Arbitration Act. This was referred to the Special Issues Committee in April 2009 for further review, the Special Issues Committee voted to recommend deferral of the proposal until the spring 2010 meeting. The reason for that is that this proposal had been put forth by the Alternative Dispute Resolution Section in response to the work of the NCCUSL to come up with standard model language regarding the arbitration provisions. The ADR Section is in the process of providing more information and then to have informed debate on this matter at the next Assembly meeting.

Board of Commissioners member, addressed the Assembly on consideration of proposed amendment to MCR 6.302, pleas of guilty and nolo contendere. Motion was made MCR 6.302(C)(1), pleas of guilty and nolo contendere, be amended to mandate that all discussion regarding a defendant's plea take place in open court and be placed on record, as proposed in ADM No. 2009-11. Upon the motion made and seconded, the Assembly unanimously opposed the motion.

Representative Assembly member and Family Law Section member, address the Assembly on the consideration of a proposed amendment on attorney solicitation, which was withdrawn. They have concerns with this proposal and will bring it back to the Assembly at a later date.

March 27, 2010

Co-Chair of the Justice Initiatives Committee introduced for consideration an amendment to MRPC 6.1 on voluntary pro bono services. The proposed resolution supports amendment and restatement of MRPC 6.1 and the elimination of the Voluntary Pro Bono Standard to accomplish the following:

1. Combine the two State Bar statements of pro bono policy into one comprehensive statement;

2. Expand the definition of pro bono while making it clear that the majority of pro bono effort must be directed to civil legal services for the poor;
3. Clarify that contributions to the Access to Justice Fund and pro bono services provided through the Access to Justice Fund eligible programs will fulfill pro bono obligations;
4. Encourage those lawyers who are financially able to do so to make a pro bono contribution of more than \$300 each year; and
5. Maintain the voluntary nature of the rule.

After a motion was made, seconded, the Assembly approved the proposal.

Representative Assembly and member of the Family Law Section introduced for consideration an amendment to either the MRPC or the MCR regarding solicitation of potential Family Law clients by attorneys. After a motion was made, seconded, and discussion, the Assembly approved the amendment. The following with a friendly amendment is what was approved:

“In any matter involving a family law case in a Michigan trial court, a lawyer may not initiate contact or solicit a party for purposes of establishing a client-lawyer relationship, where the party and lawyer had no pre-existing family or client-lawyer relationship, until the first to occur of the following: service of process upon the party or fourteen (14) days has elapsed from the date of filing of the particular case.”

Krista Licata Haroutunian member of the Representative Assembly and Chair of the Special Issues Committee reported on the Revised Uniform Arbitration Act that was tabled at the September 17, 2009 meeting. The Special Issues Committee received comments from the Consumer Law Section, Family Law Section and the Alternative Dispute Section. The committee unanimously voted to collect more information from sections and bar associations to bring to the September 30, 2010 meeting.