



Report on Public Policy Position

Name of Section:

Appellate Practice Section

Contact Person:

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Other:

Proposed Increase in Fees for Court of Appeals

Date position was adopted:

June 6, 2006

Process used to take the ideological position:

Presentation of proposal and discussion at a Council Meeting, with a specific position statement circulated and revised through the Council's listserv, with a final vote on June 6, 2006 by listserv

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

13 support

4 opposed to increase

2 opposed to statement in general

4 abstained

FOR SECTIONS ONLY:

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

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

Position:

Statement of the Appellate Practice Section

Regarding Proposed Fee Increases for the Court of Appeals

In 2003, the Appellate Practice Section unequivocally supported the Court's proposal to increase user fees as an adjustment to a fee scale last updated in 1998 and, before that, in 1991. The proposed increase was significant. Filing fees increased from \$250 to \$375; motion fees from \$75 to \$100, and a new fee of \$200 was

proposed for emergency motions. The Section supported the Court's proposal because it was part of a much larger plan to reduce the Court's backlog.

The Legislature was informed of the delay reduction plan and the need for sustained public funding in addition to increased user fees. It authorized the increased fees but has fallen short of meeting its own obligation to sustain the Court of Appeals' efforts. In his report, "The Court of Appeals: At The Crossroads," prepared in January of 2006, Chief Judge Whitbeck pointed out that: "[s]ince FY 1999, the Court's expenditures increased 8.18% on a cumulative basis. By comparison, inflation increased 17.80% and overall state spending increased by 26.64% on the same basis."

The Section perceives the Court of Appeal's current fee proposal as a response to the Legislature's failure to support delay reduction with adequate funding. In June of 2003, the State Bar publicly stated that "[t]he judicial branch budget should be sufficient to meet constitutional requirements and to provide adequate resources for timely, fair and efficient disposition of cases." The Section agrees with this statement, as well as the State Bar's further position that the judiciary "should be funded primarily by state general fund dollars" and only supplemented by filing fees. The Appellate Practice Section strongly supports a publicly funded judiciary as a necessary prerequisite to the timely dispensation of justice in this state and opposes any attempt to close a budget deficit by increasing fees. The Legislature must fully fund the Court of Appeals or risk reversing the substantial progress that has been made over the past four years in reducing delay.

The Appellate Practice Section would support periodic updates to the fee schedule to account for inflationary trends as opposed to lack of funding. We view the proposed \$400 filing fee, the \$107 motion fee, and the \$214 emergency filing fee as consistent with this approach.

The Section strongly opposes the proposed fee for stipulations to extend briefing deadlines. Stipulations in the Court of Appeals, like stipulations in the trial courts, allow practitioners to manage competing deadlines and do not affect the Court's work flow. Stipulated extensions of briefing time have a minimal effect on the time required to process a case, most of which is spent while the case is in the court's "warehouse," waiting for assignment to a panel of judges. A nominal fee for entry of stipulated extension may be justified, but the court should not look to stipulated extensions as a significant revenue stream.

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

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

See statement

Arguments against the position (if any):

User fees should not be increased until the Legislature meets its obligation to adequately fund delay reduction

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

June 2003 Statement:

Public Policy Principles Concerning Judicial Branch Funding

The judicial branch budget should be sufficient to meet constitutional requirements and to provide adequate resources for timely, fair and efficient disposition of cases.

Judicial branch funding in Michigan should be funded primarily by state general fund dollars, supplemented by local general fund dollars, filing fees and court costs.

The judicial branch budget should include funding for indigent civil legal assistance.

Filing fee amounts should not be so high as to discourage the filing of valid complaints. The determination of the appropriate level of fees should include consideration of the necessary level of service, new system needs, comparison of fees in other jurisdictions and inflation.

The requirement that judges waiver or suspend payment of fee, in whole or in part, upon a showing by affidavit of indigency or inability to pay, should be strictly observed.

Date posted: Michigan Bar Journal,
June 2003

Fiscal implications of the recommended policy to the State Bar of Michigan:

No financial implication for State Bar; only financial effect is an increase in fees for litigants in the Court of Appeals