

APPELLATE PRACTICE SECTION  
Respectfully submits the following position on:

\*

The Report of the Task Force on the  
Role of the State Bar of Michigan

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

The position expressed is that of the Appellate Practice Section only and is not the position of the State Bar of Michigan.

The State Bar of Michigan has submitted a position on this matter.

The total membership of the Appellate Practice Section is 667.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 24. The number who voted in favor to this position was 20. The number who voted opposed to this position was 0.

**Report on Public Policy Position**

**Name of Section:**

Appellate Practice Section

**Contact person:**

Jill Wheaton

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**Regarding:**

The Report of the Task Force on the Role of the State Bar of Michigan

**Date position was adopted:**

August 1, 2014

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote.

**Number of members in the decision-making body:**

24

**Number who voted in favor and opposed to the position:**

20 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote

**Position:**

Oppose and Amend

**Explanation of the position, including any recommended amendments:**

The Appellate Practice Section opposes the recommendations of the Task Force regarding advocacy by Sections, it does not believe changes are necessary but if changes are to be made, recommend those proposed by the Section Steering Committee.

## APPELLATE PRACTICE SECTION

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### COMMISSIONER LIAISON

Hon. Michael J. Riordan, Detroit

August 1, 2014

Office of Administrative Counsel  
PO Box 30052  
Lansing, MI 48909  
AOMComment@courts.mi.gov

RE: Task Force on the Role of the State Bar of Michigan

Ladies and Gentlemen:

The Appellate Practice Section (the "Section") of the State Bar of Michigan welcomes the opportunity to respond to the June 3, 2014 report of the Task Force on the Role of the State Bar of Michigan. The Section has previously indicated its support for the retention of the State Bar of Michigan as a unified bar. This letter addresses only that portion of the Task Force report titled "Section Advocacy Recommendations."

First, the Appellate Practice Section does not believe that an increase in the oversight of section advocacy is, in fact, necessary, as the current requirements of AO 2004-01 make clear that sections do not speak for the State Bar and section membership is voluntary. If, however, the Court determines that a change is required, the Appellate Practice Section submits that a number of the recommendations contained in the Task Force report are unduly vague, unduly burdensome, and/or problematic. Specifically:

Recommendation 1 states: "Sections should be allowed to engage in ideological, but not partisan, activities using voluntary dues money." This recommendation creates an obvious difficulty in distinguishing between "ideological" and "partisan" activities, and therefore, distinguishing between what is and is not permitted. Indeed, one definition of "ideology" is "the set of ideas and beliefs of a group or political party." This recommendation may create a situation in which a section would be prohibited from commenting on legislation relevant to its area of expertise simply because to support or oppose legislation may be viewed as engaging in "partisan" activities. The Section opposes this Recommendation.

Recommendation 2 states: "Sections should be free to engage in legislative or executive branch advocacy, but must do so by creating a separate entity not identified in any way with the State Bar." The Appellate Practice Section is concerned that such an "entity" may be considered a "lobbyist" and, therefore, subject to the applicable registration and reporting requirements. The Section opposes this Recommendation.

Recommendation 3 states: "Legislative advocacy done by the Section's separate entity should not be subject to the current elaborate reporting requirements of AO 2004-1, but the separate entity must still report its positions to the State Bar, to ensure compliance with the requirements of the Supreme Court rules and orders and the State Bar bylaws." The Appellate Practice Section would not oppose eliminating certain of the "elaborate reporting requirements of AO 2004-1," and would not oppose reporting its positions to the State Bar. However, it is uncertain how or why the State Bar would "ensure compliance with the requirements of the Supreme Court rules and orders and the State Bar bylaws" if the entity is to be in no way identified with the State Bar.

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Recommendations 4 and 5 are: “The State Bar should not subsidize any non-*Keller*-permissible activities of Sections” and “[t]he State Bar may collect voluntary dues for Sections’ legislative or executive branch activities as long as the Sections pay the cost of collection activities.” Here too, the recommendation is too vague, as it is unclear what would constitute “subsidizing” section activities. Such services as the composition and distribution of newsletters and hosting of section listservs are already provided by the State Bar to sections at cost; will this be considered improper subsidization? Second, it would be a significant challenge, if not impossible, for the sections to determine the portion of section dues devoted to “legislative or executive branch activities” in a given year, as well as the cost of “collecting” such dues. The Section opposes this Recommendation.

Finally, Recommendation 6 provides: “Section advocacy information hosted on Section webpages on the State Bar website should be accessible only to Section members.” The Appellate Practice Section was unable to determine how this recommendation is relevant or necessary – official positions taken by a section are not confidential, nor need they be.

In the event the Court believes that changes are necessary, rather than adopt the Task Force Recommendations, the Appellate Practice Section suggests that the “less intrusive measures” discussed in the July 15, 2014 Sections Task Force Review and Recommendations to the State Bar of Michigan Board of Commissioners Review, and set forth in Attachment B to same, such as the inclusion of a written disclaimer on each page of any written material and on advocacy-related section web pages, be adopted. These modifications of current practice should be sufficient to address any concerns over confusion between the State Bar and individual sections, while not raising the potential problems discussed above.

Please feel free to contact me if the Appellate Practice Section can provide any additional information. Thank you again for your consideration.

Sincerely,



Jill Wheaton  
Chair, SBM Appellate Practice Section