

**Report of the Legislative Committee to the Assembly
April 30, 2009**

**Recommendation to Adopt a Policy Concerning Legislation Directed at or Directly
Affecting a Matter Pending on Appeal to Minnesota Appellate Courts**

RESOLVED: That the MSBA adopt as policy a long-standing practice that: The MSBA will not advance legislation that directly changes the law of a case or makes moot an issue in a case that is pending on appeal to Minnesota's appellate courts, unless the proponent demonstrates that exceptional circumstances exist justifying immediate action before appeals to Minnesota's courts are exhausted.

LEGISLATIVE COMMITTEE REPORT

The MSBA has a long-standing practice of not advancing legislation that directly changes the law of a case or makes moot an issue in a case that is pending on appeal to Minnesota's appellate courts (Court of Appeals or Supreme Court). This practice applies equally to legislative proposals for which MSBA endorsement is sought and legislative proposals which are advanced by a section, committee or other group under a Certificate of Legislative Position pursuant to the requirements of Article 14 of the MSBA Bylaws.

Generally any legislative proposal for which MSBA endorsement is sought is screened through the MSBA Legislative Committee and the committee makes recommendation to the Assembly as to endorsement. All endorsed legislation goes through the Legislative Committee's vetting process. A Certificate of Legislative Position is addressed to the MSBA president and submitted to the MSBA's Legislative Representative at the MSBA offices. When not submitted during a legislative session, the Legislative Committee reviews these certificates and makes recommendation. If submitted during a legislative session (and timelines are too short to allow full committee review), the certificates are circulated to the members of the Legislative Strategy Action Team (LSAT) which consists of the officers of the MSBA, the MSBA legislative counsel, director level staff and the chair of the Legislative Committee who meet weekly during each legislative session.

Review of all legislative proposals occurs in order to ensure that each proposal is consistent with the mission of the MSBA, is germane to the section, committee or group proposing the change, has been adequately reviewed by sections, committees or other interested groups, and is not in conflict with an existing policy or legislative position of the MSBA. Attention is paid to balance the limited resources of the association that are spent pursuing legislative changes, with the time-critical need to make particular changes in the law as proposed.

In the particular circumstances where a section, committee or other group is seeking approval to advance legislation that directly affects a case on appeal to Minnesota courts, the MSBA does not generally pursue that legislation or allow its sections or committees to do so until the ruling of Minnesota's appellate courts is final (no further appeal is

available in MN courts or the time to appeal to a higher court has expired). This practice of the MSBA is based several factors of concern, including but not limited to:

1. it is desirable to avoid wrongly predicting or second-guessing a court's decision and prematurely pursuing what could turn out to be an incorrect or inadequate change in the law;
2. it is desirable to seek change when the ruling is final to avoid the need to seek multiple changes or piecemeal legislation;
3. it can be considered disrespectful to the reviewing court, the courts below and/or parties in the case;
4. these factors weigh particularly heavily when the concerned section, committee or other group has filed an amicus in the case so that their view of the law is being presented on appeal, although the filing of amicus is not a prerequisite for application of this policy.

This policy should be applied to all legislative proposals that seek to change the law of a case decided on appeal while the appeal is still pending unless the section, committee or other group advocating the change demonstrates their circumstances are exceptional or time is of the essence so that immediate action is justified and in the best interests of the MSBA.

PROCEDURAL NOTE:

At their March 2009 meeting, the MSBA Council received a report by the MSBA Legislative Committee chair on the bar's application of this practice. The Council requested that this practice be proposed as a policy of the MSBA and requested the Legislative Committee prepare a report and proposed policy. The Legislative Committee approved this report and recommendation for policy at its meeting on March 24, 2009, and recommends that this be adopted by the Assembly as policy of the MSBA. The Legislative Committee has also referred this to the MSBA General Policy Committee for their input before the Assembly meeting in April 2009.