

No resolution presented herein reflects the policy of the Minnesota State Bar association until approved by the Assembly. Informational reports, comments, and supporting data are not approved by their acceptance for filing and do not become part of the policy of the Minnesota State Bar Association unless specifically approved by the Assembly.

Approved by the MSBA Assembly on April 26, 2019

**MSBA Court Rules and Administration Committee
January 14, 2019**

REPORT AND RECOMMENDATION TO THE MINNESOTA STATE BAR ASSOCIATION REGARDING
ALLOWING LICENSED ATTORNEYS ACCESS TO COURTHOUSES WITHOUT THE NEED TO SUBMIT TO
SECURITY SCREENING

Resolved: The Minnesota State Bar Association urges the Supreme Court of Minnesota, Minnesota Counties and the Minnesota Legislature to adopt rules, policies and laws that establish procedures to permit attorneys in good standing access to any and all Minnesota courthouses without the need to submit to security screenings.

Report

In May 2018, the First District Bar Association adopted the following resolution:

The First District Bar Association recommends that the Minnesota State Bar Association adopt a policy urging the state court system, the counties and the legislature to adopt rules or enact legislation to establish procedures to allow licensed attorneys, deemed to be of sound moral character and fitness to practice law in Minnesota, access to courthouses without the need to submit to security screening.

The President of the First District Bar Association, by letter to the MSBA President, requested the resolution be referred to the appropriate MSBA committee(s) for consideration and review.

At its meeting on June 29, 2018, the Assembly voted to refer the resolution to the MSBA's Court Rules and Administration Committee (Committee) for their review and recommendation.

The Committee met on September 28, 2018, and again on January 14, 2019, and invited Kevin Sieben, past-President of the First District Bar Association, to attend the meeting and provide background on the resolution. The committee also invited Jeff Shorba, Minnesota State Court Administrator, and Bill Hutton, Executive Director, Minnesota Sheriff's Association, to attend the January 14, 2019 meeting.

The Committee recognized that all lawyers are evaluated for their character and fitness as part of becoming members of the bar and that, as the professional organization representing those lawyers, the MSBA has a significant interest in promoting open access to lawyers' workplaces. Both the State Court Administrator and the Sheriff's Association spoke generally in opposition to the resolution.

The Sheriff's Association indicated there have been incidents over the last many years and that the amnesty bins at courthouses with security end up with many items left there, despite "most people

knowing” that they will not be permitted to bring certain items into the courthouse. When pressed by members of the Committee, however, Mr. Hutton was not able to recall a single incident where a Minnesota attorney attempted to bring a weapon into a courthouse. Mr. Hutton acknowledged that in some counties people are allowed to access the courthouse without going through screening, such as judges, court staff, prosecutors and public defenders. This policy varies depending on the county. For that type of access, the person is subjected to a “criminal background check” that, at least in Washington County where Mr. Hutton once worked, is supposed to be repeated every five years. Mr. Hutton reported that, since 2010, one of the attorneys permitted access in this way brought a pocket knife in by mistake on one occasion. Mr. Hutton agreed there is no reason any attorney who wanted bypass access could not be subjected to the same type of background check, but that his members were “not in favor of it.”

The State Court Administrator told the Committee that the Chief Justice would not be in favor of anyone being able to bypass security and made a point to mention that when they travel to county courthouses around the state, they always pass through whatever security is in place for the public. They have turned down offers from local court administrators to bypass security. The State Court Administrator stated that he and the Chief Justice would prefer that no one be permitted to bypass security, including those who currently have bypass access. The State Court Administrator reminded the Committee that “we are just tenants in these county-owned buildings” and that “we need to listen to the experts (the sheriffs)” with regard to their individual security needs. In short, State Court Administration opposes the resolution.

The State Court Administrator also expressed concern that there would be a public perception problem if lawyers were permitted to bypass the security line while members of the public had to wait. The criminal defense lawyers responded that the current “perception” is that prosecutors can be trusted to enter without screening, but defense lawyers could not. Other Committee members also felt that people entering any building through security are accustomed to seeing the people who work at those buildings bypass the security line, and that public perception is not a great concern.

The Committee members discussed the general idea that for an open society to function, we will never live in the risk-free world envisioned by State Court Administration or the Sheriff’s Association. There is certainly a need for some level of security and weapon screening in courthouses, but that for lawyers, it is their workplace. And even in areas such as airports, with hundreds of TSA agents, canines and state-of-the-art electronics, airport ground crews, pilots, flight attendants, baggage handlers, etc. are all able to get to their jobs with reduced screening, once they have been vetted. The Committee believes there is no reason attorneys at courthouses should not be treated in at least the same way.

At the conclusion of all the presentations, Committee members voted to pass the resolution with the recommendation that it be adopted as the position of the MSBA.