

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, October 13, 2011, 2 – 4 PM
at the State Bar of Michigan Building, Room 3**

Teleconference 1-877-352-9775, Passcode 9152168764#

AGENDA

1. Call to Order & Welcome
 - a. New members
 - b. Court rules, Statutes/Keller permissible, Meetings, Absences, SBM SharePoint
2. Old Business
 - a. [2008-36 Proposed Amendment of Rule 7.202 of the Michigan Court Rules and Proposed Adoption of Administrative Order No. 2011-XX](#)

Alternative A, the proposed amendment of MCR 7.202 would establish that an order suppressing material and substantial evidence is considered a final order, and therefore subject to an appeal by right. By contrast, Alternative B, a proposed administrative order, would establish a right to a mandatory stay while a prosecutor pursues interlocutory appeal of a trial court's decision to suppress a prosecutor's evidence. These proposals were prompted by the Court's decision in *People v Richmond*, 486 Mich 29 (2010), in which the Court held that a prosecutor's decision to move to dismiss the prosecutor's case makes the case moot on appeal.

Issued: June 14, 2011
Comment period expires: October 1, 2011
Public hearing: To be scheduled

After an online discussion, on September 19, 2011, the Committee took the following position:

The committee feels that neither alternative is needed. Under Michigan law there is already a procedure in place for the prosecutor to file an application for leave to appeal and request a stay. If the trial court and the Court of Appeals wrongfully deny a stay, the Supreme Court can easily reverse and grant a stay pending the appeal.

Alternative A changes Michigan law by its re-definition of a 'final judgment' or 'final order' and affords the prosecutor rights not similarly available to the defense. Alternative B bypasses established appellate rules and also affords to the prosecutor a right not similarly available to the defense. Both alternatives also eliminate the discretion by the trial court and Court of Appeals, as needed, to grant or deny a stay of proceedings.

After an email discussion, back and forth with Sam Smith, Judge Hoort offers the following suggested language:

“If any action, after jeopardy has attached in a criminal case, by the opposing party or court results in the loss of a previously stated non-frivolous cause of action or defense, the affected party shall be entitled to a stay upon the filing of an application for leave to appeal.”
Committee Liaisons: Samuel S. Smith and Judge David A. Hoort

3. New Business

- a. [HB 4844](#) (Pettalia) Civil procedure; personal protection orders; statewide personal protection order registry; create, and provide for law enforcement information network (LEIN) access. Amends secs. 2950 & 2950a of [1961 PA 236](#) (MCL [600.2950](#) & [600.2950a](#)) & adds sec. 2950n.
Status: 06/30/11 Referred to House Judiciary
Committee Liaisons: James W. Heath and Thomas P. Clement
- b. [HB 4906](#) (Kurtz) State; symbol; English; establish as the official state language. Creates new act.
Status: 09/07/11 Referred to House Committee on Government Operations
[SB 0638](#) (Kahn) State; symbol; English; establish as the official state language and provide for its use. Creates new act.
Status: 09/13/11 Referred to Senate Committee on Government Operations
Committee Liaisons: Nichole Jongsma Derks and Daniel Corrigan Grano
- c. [SB 0688](#) (Schuitmaker) Crimes; perjury; unsworn declaration made under penalty of perjury; include as a statement punishable as perjury. Amends sec. 423 of [1931 PA 328](#) (MCL [750.423](#)).
Status: 09/20/11 Referred to Senate Judiciary
[SB 0689](#) (Schuitmaker) Civil procedure; evidence; uniform unsworn foreign declarations act; create. Amends sec. 2102 of [1961 PA 236](#) (MCL [600.2102](#)) & adds ch. 21A.
Status: 09/20/11 Referred to Senate Judiciary
Committee Liaisons: J. Kevin McKay and Fred E. Bell

4. Reports from Other Committees

- a. Criminal Law Section
- b. Indigent Defense Funding
- c. Custodial Interrogation Recording Legislation

5. Committee Projects

6. Adjournment.