



THE MISSOURI BAR

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DATE: February 26, 2009
TO: Representative Terry Witte
FROM: The Missouri Bar
RE: House Bill 386

Recently, The Missouri Bar Executive Committee met to review legislation. The Executive Committee consists of the officers of the bar and three additional members annually elected by the Board of Governors. The members of this year's committee are Thomas M. Burke, President; H.A. "Skip" Walther, President-Elect; John S. Johnston, Vice-President; Charlie J. Harris, Jr., Immediate Past-President; Carol Chazen Friedman; Patrick B. Starke; and Deanna K. Scott. The committee has authority to act on behalf of the Board of Governors during the legislative session. In reviewing legislation, the Executive Committee considers comments received from various Missouri Bar legislative review subcommittees. All positions taken by the Executive Committee are communicated to the full Board as soon as possible after they are taken.

House Bill 386 would allow a judge to award reasonable attorney fees to any or all defense attorneys in a partition suit. The Executive Committee found this bill to be within the legislative scope of The Missouri Bar. The committee supports the concept that defense counsel should be entitled to receive a fee in a partition suit. However, a concern was raised that this legislation conflicts with current Supreme Court Rule 96.30, which provides:

"The court shall allow a reasonable fee to **the attorney instituting the action in partition** and may allow a reasonable fee for any guardian ad litem appointed. The court shall also allow reasonable costs, expenses and compensation to the sheriff or commissioner. The fees, costs and expenses shall be taxed as costs." (emphasis added)

Because of the conflict between House Bill 386 and the provisions of this Rule, the Executive Committee voted to oppose the bill as drafted.