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May 1, 2013

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Clerk of the Court

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Michigan Supreme Court

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Lansing, MI 48909

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Lansing, MI

48933-2012

RE: ADM File No. 2012-36 – Proposed Amendment of Rule 2.112 of the Michigan Court Rules

Dear Clerk Davis:

At its April 15, 2013 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Committee considered recommendations from the Business Law Section and the Civil Procedure & Courts Committee. The Civil Procedure & Courts Committee position paper is enclosed.

The Committee voted unanimously to support the proposed amendment in principle and authorize the committees and sections to advocate their positions to the Court.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Bruce A. Courtade, President

Report on Public Policy Position**Name of committee:**

Civil Procedure & Courts Committee

Contact person:

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Proposed Court Rule or Administrative Order Number:

ADM File No. 2012-36 - Proposed Amendment of Rule 2.112 of the Michigan Court Rules

The proposed rule amendments of MCR 2.112 would provide a means to identify business court cases and the placement of those matters on the business court docket.

Date position was adopted:

March 2, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

13 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Position:

No position, but see comments.

Explanation of the position, including any recommended amendments:

The Committee takes no position on the substance of the proposal, but did note a number of drafting issues:

1. Proposed revision of (O)(1) to provide for a simple verification on the face of the pleading, which will be simple, uniform across all counties and would avoid the need for the creation and filing of a separate notice. The verification would be akin to that required by MCR 2.113(C)(2).

(1) If a case involves a business or commercial dispute as defined in MCL 600.8031 and the court maintains a business court docket, a party shall file verify on the face of the initial pleading that the case meets the statutory requirements to be assigned to the business court. If a cross-claim, counterclaim, third-party

complaint, amendment, or any other modification of the action includes a business or commercial dispute, a party shall verify on the face of the pleading that the case meets the statutory requirements to be assigned to the business court.

2. Propose revision of subsection (3) to clarify that the matter can be raised either by a party's motion or on the court's own initiative. As currently drafted, the rule suggests a court may raise the issue sua sponte, but does not expressly capture party motions.

(3) On the motion of a party or the court's own initiative, if the court determines that the action meets the statutory requirements of MCL 600.8031, the court shall assign the case to the business court.

3. Propose revision of subsection (4) to clarify that the chief judge reviews all determinations (in or out) regarding the business court docket, not simply reviews of determinations that a case should be removed. This mirrors the provision of MCL 600.8035(7).

(4) A party may file a motion requesting the chief judge to review an assignment of a case under this rule.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2012-36_2013-02-06_formatted%20proposed.pdf