

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

Appellate Practice Section

**Contact person:**

Megan K. Cavanagh

**E-mail:**

[mcavanagh@garanlucow.com](mailto:mcavanagh@garanlucow.com)

**Proposed Court Rule or Administrative Order Number:**

[2010-21 - Proposed Amendment of Rule 8.110 of the Michigan Court Rules](#)

This proposal would exclude cases that are stayed during an interlocutory appeal from being included in the group of cases that a chief judge must report to the State Court Administrator that are delayed beyond the time guidelines.

**Date position was adopted:**

September 29, 2010

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote

**Number of members in the decision-making body:**

23

**Number who voted in favor and opposed to the position:**

14 Voted for position

0 Voted against position

0 Abstained from vote

9 Did not vote

**Position:**

Support and Amend

**Explanation of the position, including any recommended amendments:**

The Appellate Practice Section supports the proposed amendment of MCR 8.110 and recommends that the proposed amendment should apply to civil cases as well as criminal cases.

The SCAO monitors the progress of case loads in the circuit courts by requiring each court to establish a caseflow management plan and requiring them to report cases which are considered delayed in reaching a resolution. Delay is determined according to the SCAO's guidelines, which vary according to the nature of the case. For instance, in civil proceedings, the SCAO has established that 75% of all cases should be adjudicated within 364 days from the date of case filing; 95% within 546 days; and 100% within 728 days, unless exceptional circumstances exist. These

figures are different for delinquency proceedings, child protective proceedings, circuit court appellate proceedings, etc. The courts are required to fill out charts to report on the progress of their caseloads.

Generally, a case is finally “adjudicated” when it is considered “disposed” per the reporting chart instructions. The Guidelines treat a case going to inactive status as a disposition, and the court is to count a case as inactive “when any order staying a case (except interlocutory appeal) is filed.” When a case goes to inactive status, that is considered a disposition and stops the clock in terms of calculating the life of the case. (If it re-opened it is counted as a new case.) The court is to count a case as inactive “when any order staying a case (except interlocutory appeal) is filed.” Because a stay during interlocutory appeal is not a “disposition,” that time period counts toward the overall lifespan of the case and negatively impacts a court’s caseload management reporting. This is true even when the parties would stipulate to the stay to avoid unnecessary cost of litigating a dispute that may be rendered moot by the pending appeal. This interpretation of the reporting requirements has been confirmed with Regional Administrators at the SCAO.

In cases where the trial court has no discretion to grant the stay, such as pursuant to MCR 2.614(D) regarding immunity appeals, it does not seem fair to have the stay negatively impact the Court's reports when the Court has no control over entry of the stay. Where the stay is not automatic, the court’s decision to stay a case during a pending appeal is highly discretionary, and could be influenced by extraneous concerns such as how the Chief Judge or the SCAO will view its case-management competency. Accordingly, the Appellate Practice Section supports the proposed amendment and recommends a change in the caseload reporting requirements for civil cases as well.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in <http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-21.pdf>**