



p 517-346-6300

p 800-968-1442

f 517-482-6248

www.michbar.org

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

May 29, 2015

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2014-09 – Proposed Amendment of Rule 7.215 of the Michigan Court Rules

Dear Clerk Royster:

At its last meeting, the Board of Commissioners of the State Bar of Michigan considered the above proposed rule amendment published for comment. In its review, the Board considered recommendations from the Civil Procedure & Courts Committee, the Criminal Jurisprudence & Practice Committee, the Committee on Justice Initiatives, the Appellate Practice Section, the Family Law Section, and the Probate & Estate Planning Section. The Board voted to take the following position on the proposed amendments:

1. No comment on the proposed amendments to MCR 7.215(A) and MCR 7.215(B).
2. Oppose the proposed amendments to MCR 7.215(C) for reasons stated in Justice Markman's dissent.

The Board also authorized the submission of positions of sections and committees that do not conflict with the Board's position. Accordingly, the committees' comments are enclosed. Sections of the State Bar that do not have conflicting positions are sending their comments separately.

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
Thomas C. Rombach, President

Report on Public Policy Position

Name of Committee:

Civil Procedure & Courts Committee

Contact person:

Karen H. Safran

E-Mail:

ksafran@carsonfischer.com

Proposed Court Rule or Administrative Order Number:

[2014-09 - Proposed Amendment of MCR 7.215](#)

Position:

The committee:

(1) Voted 10 to 2 to oppose to all amendments for the reasons set forth in Justice Markman's dissent and in Timothy Baughman's letter to the court dated March 20, 2015.

(2) Voted 9 to 3 to recommend that the current version of MCR 7.215(C) be amended to delete the last sentence in its entirety, so the section simply reads "An unpublished opinion is not precedentially binding under the rule of stare decisis." The recommendation is made because the last sentence, which obligates the party citing the unpublished opinion to provide a copy to the opposing party and the Court, is viewed as no longer necessary, because unpublished opinions are readily and easily available both on electronic legal research sites, as well as on the Court of Appeals' web site.

(3) Voted 10 to 2 to recommend that the current version of MCR 7.215(B) be amended. These recommendations are viewed as clarifying, but not restricting, the publication standards. The Committee favors publishing more opinions and allowing parties to continue to cite unpublished opinions. The committee recommends that 7.215(B) be amended as follows:

- (1) Establishes a new rule of law;
- (2) Construes a provision of a constitution, statute, regulation, ordinance, or court rule;
- (3) Alters, ~~or~~ modifies, or reverses an existing rule of law or extends it to a new factual context;
- (4) Reaffirms a principle of law not applied in a recently reported decision;
- (5) Involves a legal issue of significant or continuing public interest;
- (6) Criticizes existing law; or
- (7) Creates or resolves a ~~an apparent~~ conflict or apparent conflict of authority, whether or not the earlier opinion was reported; or

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

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2014-09_2015-02-18_formatted%20order_with%20SJM%20stmt%20with%20RC.pdf



Report on Public Policy Position

Name of committee:

Committee on Justice Initiatives

Contact persons:

Erika Lorraine Davis

Linda K. Rexer

E-Mail:

erika@butlerdavis.com

linda@msbf.org

Proposed Court Rule or Administrative Order Number:

[2014-09 - Proposed Amendment of MCR 7.215](#)

Position:

Support with Amendments

Explanation of the position, including any recommended amendments:

The Committee supports the changes in Sections (A) and (B). The Committee also supports the second sentence added to Section (C)(1), but recommends the removal of the following sentence from (C)(1): “A party who cites an unpublished opinion shall explain why existing published authority is insufficient to resolve the issue and must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.”

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

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2014-09_2015-02-18_formatted%20order_with%20SJM%20stmt%20with%20RC.pdf

Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice

Contact persons:

Nichole Jongsma Derks

J. Kevin McKay

E-Mail/Phone:

nderks@fosterswift.com

kevin.mckay@kentcountymi.gov

Proposed Court Rule or Administrative Order Number:

[2014-09 - Proposed Amendment of MCR 7.215](#)

Position:

Oppose amendments to MCR 7.215(B) and 7.215(C)

Explanation of the position, including any recommended amendments:

The committee voted 9 to 3 to oppose the proposed amendments to MCR 7.215(B) because the publication requirements become too restrictive.

The committee voted 11 to 1 to oppose the proposed amendments to MCR 7.215(C) for the reasons stated by Justice Markman in his dissent.

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

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2014-09_2015-02-18_formatted%20order_with%20SJM%20stmt%20with%20RC.pdf