

## Report on Public Policy Position

**Name of committee:**

Civil Procedure and Courts Committee

**Contact person:**

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

[2006-32 - Proposed Amendment of Rule 2.504 of the Michigan Court Rules](#)

This proposed amendment would allow a court, on motion of any party or sua sponte, to enter a default or dismiss a party's action or claim for failure to comply with the rules or a court order. The current rule allows such actions by the court only if the plaintiff makes such a motion. The proposed amendment would also allow the court to dismiss on its own initiative an action in which the plaintiff, on the law and the facts presented, is not entitled to relief, and would make the rule applicable to claims and hearings in addition to actions. The rule currently allows only the defendant to make such a motion.

**Date position was adopted:**

February 16, 2008

**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:**

20

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

15 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

**Position:**

Oppose and Amend

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

The Committee separated consideration of the two subrules.

Regarding subrule (1), it supported making the provision applicable to both parties, permitting entry of a default as well as a dismissal. But it opposed giving the court the authority to do so sua sponte. The court is not a party to

the case, and has adequate authority to enforce the rules and its orders. The recommendation is to delete “, or sua sponte,” from the published version.

Regarding subrule (2), the attendees voted to oppose any changes for much the same reasons as they opposed adding sua sponte dismissals/defaults in subrule (1). There are reasons why a defendant might not want to move to dismiss at that point. Defendant might want to present evidence to strengthen the case for sanctions for bring a meritless case or to guard against an appellate court disagreeing with the trial judge’s decision. The Committee found the language “action, claim, or hearing tried without a jury” to be confusing. And it opposed striking the word “shown” near the end of the first sentence. The judge is to make the ruling on the evidence presented - what plaintiff has shown - not on other information that the judge might choose to take into consideration.

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

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2006-32-01-29-08.pdf>