

CIVIL PROCEDURE & COURTS COMMITTEE

Respectfully submits the following position on:

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ADM File No. 2013-36

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The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Civil Procedure & Courts Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan.

The State Bar position on this matter is to support the proposed amendments with recommended amendments from the Civil Procedure & Courts Committee, the Criminal Jurisprudence & Practice Committee, and the Appellate Practice Section.

The total membership of the Civil Procedure & Courts Committee is 23.

The position was adopted after discussion at a scheduled meeting followed by an e-vote. The number of members in the decision-making body is 23. A detailed voting record is attached.

Report on Public Policy Position

Name of Committee:

Civil Procedure & Courts Committee

Contact person:

Karen H. Safran

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Proposed Court Rule or Administrative Order Number:

[2013-36 – Proposed Amendments of Subchapter 7.300 of the Michigan Court Rules](#)

These proposed amendments would update the rules regarding practice in the Michigan Supreme Court, and would renumber and reorganize the rules to be consistent with those in the Court of Appeals for the ease of the appellate practitioner and greater judicial efficiency.

Date position was adopted:

January 7, 2015

Process used to take the ideological position:

Position adopted after discussion at a scheduled meeting and a further discussion and vote via email.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

Proposal #1

16 Voted for position

1 Voted for position with one amendment (see below)

1 Voted against position

0 Abstained from vote

5 Did not vote (absent)

Proposal #2

18 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote (absent)

Proposal #3

16 Voted for position
2 Voted against position
0 Abstained from vote
5 Did not vote (absent)

Proposal #4

15 Voted for position
3 Voted against position
0 Abstained from vote
5 Did not vote (absent)

Proposal #5

18 Voted for position
0 Voted against position
0 Abstained from vote
5 Did not vote (absent)

Proposal #6

18 Voted for position
0 Voted against position
0 Abstained from vote
5 Did not vote (absent)

Explanation of the position, including any recommended amendments:

Proposal #1: MCR 7.305(C)(2)(b) and MCR 7.305(C)(5).

The Committee notes that both proposed rules refer to a motion for rehearing in the Court of Appeals. There does not appear to be such procedure in the 7.200's, therefore, the Committee suggests deleting the reference to a motion for rehearing in its entirety and replacing it with a motion for reconsideration. Alternatively, the Committee proposes that MCR 7.305(C)(5)(b) be revised to read "the Court of Appeals order denying a timely filed motion for rehearing or reconsideration of a decision remanding the case," which will bring the rule into conformity with MCR 7.305(C)(2)(b).

One committee member voted to support the above amendment with an amendment to delete the reference to rehearing completely.

Proposal #2: MCR 7.305(C)(3).

The committee recommends that this section be rewritten as follows: "In an appeal from an order of discipline or dismissal entered by the Attorney Discipline Board, the application must be filed within the time provided in MCR 9.122(A)(1)."

This change is suggested because MCR 9.122(A)(1) presently sets forth the time period for filing the application for leave to the Supreme Court. The proposed rule does not fully track MCR 9.122(A)(1) and could result in unintended conflicts between the rules.

If the proposed amendments to the Rules governing procedure in the Supreme Court are adopted, the Committee recommends that MCR 9.122(A)(2) be amended as well, as it currently references a Court Rule that will not be applicable if the rules are renumbered as proposed.

Proposal #3: MCR 7.316(A)(6)

The Committee is concerned that giving the Court the authority to draw inferences of fact could conflict with well-established precedent that prohibits fact-finding by inference when ruling upon certain matters, such as motions for summary disposition. Although the current version of MCR 7.316(A)(6) and MCR 7.216(A)(6) presently provide that the Court of Appeals and Supreme Court may draw inferences of fact, the Committee recommends that these sections be modified to clarify that the court may only draw inferences of fact when appropriate under controlling law.

Proposal #4: MCR 7.318.

The Committee has concerns regarding the second sentence, “the Court may deny the stipulation if it concludes that the matter should be decided notwithstanding the stipulation.” If parties resolve a pending dispute, then there is no longer a case or controversy that is ripe for adjudication. Requiring parties that no longer wish to maintain an action to continue with the case and be subject to a potentially adverse rulings, interferes with the parties’ Constitutional right to contract, subjects the parties to additional costs associated with litigation, and could discourage settlement. Although similar language is present in the current version of MCR 7.310, insofar as the rules are presently under review, the Committee suggests that the consideration be given to removing this sentence from the rule.

Proposal #5:

The Committee supports the positions taken by the Appellate Practice Section of the Michigan State Bar in the December 22, 2014 letter of Nancy Vayda Dembinski.

Proposal #6:

The Committee supports the position taken by the Criminal Jurisprudence and Practice Committee regarding the proposed MCR 7.305(F).

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/Court%20Rules/2013-36_2014-10-22_formatted%20order_FINAL.pdf