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June 4, 2008

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

**RE: ADM File No. 2006-09
Proposed Amendment of Rule 7.202 of the Michigan Court Rules**

Dear Clerk Davis:

To date, the State Bar of Michigan has received the following recommendation on the above proposal that I am providing you at this time without a recommendation from the State Bar itself.

The Civil Procedure and Courts Committee has reservations about the proposed change. The Committee does not favor creating appeals of right from interlocutory orders. They delay the litigation process, and applications for leave to appeal can be used in cases where an immediate appeal is appropriate. But the proposed rule would simply codify with the rule what the Supreme Court announced in its order in *Watts v Nevils*, 477 Mich 856 (2006), resolving the conflict between two decisions of the Court of Appeals. Compare *Newton v Michigan State Police*, 263 Mich App 251 (2004) with *Walsh v Taylor*, 263 Mich App 618 (2004).

The Committee was also concerned that the proposal is unclear whether it would make all aspects of such an order appealable by right, or only those dealing with governmental immunity. The general rule has been that only the governmental immunity aspects are appealable by right. MCR 7.203(A)(1). But the proposal is worded in such a way that it could be read as making all aspects of the order appealable by right. It would grant appeal of right status to “an order denying summary disposition . . . in which a defendant raises a claim of governmental immunity.” If a defendant raises two issues in a motion, one relating to immunity and the other not, an order denying the motion would seem to fall within the language of the proposal. The Committee thinks the preferred rule is that only the governmental immunity aspects should be appealable by right. To make that clear, the published proposal for MCR 7.202(6)(a)(v) could be modified as follows:

An order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on in which a defendant raises a claim of governmental immunity.

[Note that the change also fixes a grammatical problem with the proposal, since the defendant raises immunity in the motion, not the order.]

I offer the Committee's recommendation for your consideration and apologize that it was not submitted prior to the deadline provided by the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Welch". The signature is written in a cursive, flowing style with a large initial "J" and "W".

Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Ronald D. Keefe, President