

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

Litigation Section

**Contact person:**

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This proposed amendment would clarify that summonses must be issued when a counterclaim or cross-claim is filed, and would establish an expiration date identical to the expiration date of summonses issued when a third party is added to an existing case.

**Date position was adopted:**

February 21, 2011

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

Position adopted by electronic vote after discussion at a scheduled meeting

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

22

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

16 Voted for position

0 Voted against position

6 Did not vote

**Position:**

Oppose

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

The Litigation Section opposes the proposed amendment to MCR 2.203 (ADM File No. 2008-32). The proposed amendment authorizes the issuance of a summons to a new party that is added by a defendant's counterclaim or cross-claim. The Section is concerned that this amendment will cause confusion because, pursuant to MCR 2.203 as currently written, a counterclaim or cross claim may be directed only to parties that are already in the case. They may not be used to add a new party. Only a third-party complaint may be used by a defendant to add a new party and then only in the limited circumstances where the new party is liable for some or all of the plaintiff's claim. Thus, the proposed amendment to MCR 2.203 should not be adopted unless it also permits a defendant to add a new party by a counterclaim or cross-claim and specifies the circumstances under which a new party may be added through those pleadings.

**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/2008-32-11-23-10.pdf>