

APPELLATE PRACTICE SECTION
Respectfully submits the following position on:

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ADM File No. 2013-36 – Proposed Amendments of Subchapter
7.300 of the Michigan Court Rules

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The Appellate Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Appellate Practice Section only and is not the position 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 Appellate Practice Section is 898.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 18. The number who voted opposed to this position was 0.



Report on Public Policy Position

Name of section:

Appellate Practice Section

Contact person:

Nancy Vayda Dembinski

E-Mail:

ndembinski@lmdlaw.com

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:

December 19, 2014

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:

23

Number who voted in favor and opposed to the position:

18 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

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

Explanation of the position, including any recommended amendments:

See attached letter.

APPELLATE PRACTICE SECTION

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Landry Mazzeo & Dembinski PC
37000 Grand River Ave Ste 200
Farmington Hills, MI 48335-2881

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Reache, *Grand Rapids*

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December 22, 2014

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa, P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2013-36 – Appellate Practice Section Comment on Proposed
Amendments of Subchapter 7.300 of the Michigan Court Rules

Dear Mr. Royster:

Thank you for the opportunity to comment on the proposed amendments of Subchapter 7.300 of the Michigan Court Rules. The Council for the SBM Appellate Practice Section lauds the Court’s efforts to clarify the rules and conform to the organization of Subchapter 7.200 for appeals in the Court of Appeals. On behalf of the Appellate Practice Section, we offer the following comments for the Court’s consideration.

MCR 7.305(A)(2). The Section suggests that this subsection be renumbered to MCR 7.305(A)(1)(g), consistent with the current MCR 7.302(A)(1)(g).

MCR 7.305(F). The Section has concerns about the following language: “**The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading.**” This is new language that currently is found only in MCR 7.309(A)(2), which applies to briefs and appendixes. Including this language in the rule concerning applications for leave to appeal suggests that a nonconforming application could be found not to meet the jurisdictional filing deadline, which is not subject to a motion to extend time. The language is also problematic as applied to briefs (including merits briefs and opposing and reply briefs at the application stage) because it encourages a proliferation of motions to extend time. The Section recommends that this language be modified to clarify that nonconforming applications and briefs will be considered timely if they are corrected within the time specified in the Clerk’s defect notice and not stricken, similar to the practice in the Court of Appeals. A corresponding change should be made to the identical language in MCR 7.306(F) (original proceedings).

MCR 7.307(B). The Section thanks the Court for adopting its proposal for clarifying when cross-appeals are required, and recommends that the new language be incorporated into MCR 7.207 (cross-appeals in the Court of Appeals).

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MCR 7.312(D)(2). This subrule revises language concerning appendix headers, providing that “[e]ach page of the Appendix must include a header that briefly describes the character of the appendix, such as the names of witnesses for testimonial evidence or the nature of the documents for record evidence.” The Section believes that it is awkward to refer to individual pages of an appendix as an “appendix,” and suggests revising this language as follows: “Each page of the Appendix must include a header that briefly describes the character of the appendix document, such as the names of witnesses for testimonial evidence or the nature of the documents for record evidence.”

MCR 7.312(G). The Section recommends that the Court adopt a briefing schedule for cross-appeals similar to that in the Federal Rules of Appellate Procedure. See FR App P 28.1(F) (providing that the appellee’s response brief and principal brief on cross-appeal both be filed after the appellant’s principal brief, as opposed to the appellant’s principal brief and appellee’s principal brief on cross-appeal being filed simultaneously).

Thank you again for offering us the opportunity to provide input on this proposal.

Very truly yours,



Nancy Vayda Dembinski
Chair, Appellate Practice Section