

APPELLATE PRACTICE SECTION
Respectfully submits the following position on:

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ADM File No. 2014-09

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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 take no position on the proposed amendments to MCR 7.215(A) and MCR 7.215(B); to oppose the proposed amendments to MCR 7.215(C) for the reasons stated in Justice Markman's dissent; and to authorize Sections and Committees to transmit non-conflicting positions to the Court.

The total membership of the Appellate Practice Section is 802.

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 14. 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:**[2014-09 - Proposed Amendment of MCR 7.215](#)

The proposed amendments of MCR 7.215(A)-(C) were submitted by the Court of Appeals. Proposed MCR 7.215(A) would clarify the term “unpublished” as used in the rule. The proposed amendment of MCR 7.215(B) would provide more specific guidance for Court of Appeals judges regarding when an opinion should be published. Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215(C) would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal.

Date position was adopted:

April 17, 2015

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:

14 Voted for position

0 Voted against position

0 Abstained from vote

9 Did not vote (absent)

Position:

Oppose the proposed changes of MCR 7.215(C)

Explanation of the position, including any recommended amendments:

The Appellate Practice Section Council voted 14 to 0 to oppose ADM 2014-09 regarding the proposed amendment to MCR 7.215(C), for the reasons stated in Justice Markman’s partial dissent, and because the over-breadth and vagueness of the language leaves uncertainty as to how much explanation is required, and the revisions are likely to

diminish the quality of briefs and result in longer briefs. No position to oppose or support was taken at this time regarding the proposed amendments to subsections (A) and (B) of MCR 7.215.

The Section expects to propose alternative language for consideration by the Michigan Supreme Court regarding MCR 7.215(C) after an April 28th meeting with the Court of Appeals Rules Committee. The Section council will not meet again until May 15 to consider alternative language.

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/Adopted/2014-09_2015-02-18_formatted%20order_with%20SJM%20stmt%20with%20RC.pdf