

**STATE BAR OF MICHIGAN
2014-2015 COMMITTEE ANNUAL REPORT**

Article VI §6, Bylaws of the State Bar of Michigan

No later than May 1 of each year, the chair of each committee and subentity of the Bar, with the assistance of the staff liaison, shall report to the Executive Director on a form provided by the State Bar on the activities and accomplishments of the committee or subentity.

Committee Name:

Civil Procedure & Courts Committee

Jurisdiction:

Review proposed court rules and statutes related to civil practice in the courts and make recommendations concerning improvements in the administration, organization, and operation of Michigan state courts.

Chair(s) and Committee Members:

Officer	Name	Address	Telephone	Email
Chair	Karen H. Safran	Carson Fischer PLC; 4111 Andover Rd Fl 2; West Bldg; Bloomfield Hills, MI 48302-1924	248.644.4840	ksafran@carsonfischer.com
Staff Liaison	Peter Cunningham	State Bar of Michigan; 306 Townsend St.; Lansing, MI 48933-2012	517.346.6325	pcunningham@mail.michbar.org

Member/Advisor/Other	Member/Advisor/Other
Thomas H. Bannigan, Advisor	Joey Scott Niskar, Member
Daniel J. Bernard, Member	Gary R. Peterson, Member
Richard D. Bisio, Member	Marcileen C. Pruitt, Member
Hon. Rae Lee Chabot, Member	Daniel D. Quick, Member
Sean F. Crotty, Member	Thomas Daniel Siver, Member
Pamela C. Dausman, Member	George M. Strander, Member
Michael J. Distel, Member	Alan R. Sullivan, Member
Robert J. Ehrenberg, Member	Matthew Arthur Tarrant, Member
Lori J. Frank, Member	Victoria A. Valentine, Member
Elisa M. Gomez, Member	Randy J. Wallace, Member
Sean P. McNally, Member	Peter H. Webster, Member
Kenneth B. Morgan, Member	

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Committee Meeting Schedule:

Please attach any additional information needed regarding Committee meetings as an addendum.

Meeting Type	Date	Location
Committee Meeting	Saturday, November 1, 2014	Carson Fischer Offices
Committee Meeting	Monday, January 5, 2015	Teleconference
Committee Meeting	Saturday, April 11, 2015	Dickinson Wright Offices

Resources provided by the State Bar of Michigan in support of committee work:

The committee receives staff support from Peter Cunningham and Carrie Sharlow. The State Bar coordinates meeting times, invites to the members, prepares and circulates (via hard copy, email, and portal access) the agenda and related materials included in a meeting book, provides meeting refreshments, and prepares minutes for review. Arrangements are made by the Bar staff for conference call participation for those that cannot attend in person. Bar staff provides information regarding actions by the Board of Commissioners and the Representative Assembly and the status of pending legislation and proposals before the Supreme Court.

Committee Activities:

Over the course of three meetings, the committee took the following positions:

- a. [HB 5701](#) Civil procedure, other; Trade, other; Trade, antitrust. Civil procedure; other; claims of patent infringement made in bad faith; prohibit, and provide remedies for. Creates new act.

Committee Position: Oppose

- b. [2013-35 - Proposed Amendment of MCR 7.211](#)

The proposed amendment of MCR 7.211(C)(1)(c) would clarify that an appellant, in a case tried without a jury, is not required to file a motion for remand or a motion for a new trial to challenge the great weight of the evidence to preserve the issue for appeal.

Committee Position: Support

- c. [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.

Committee Position:

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 MCR7.305(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.

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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).

d. [ADM File No. 2014-45 – Proposed Adoption of Rule 5.731a of the Michigan Court Rules](#)

The proposed rule would require clinical certificates to be marked and filed as confidential and would allow only persons who have been found by the court to have a legitimate interest in the confidential documents to be granted access.

Committee Position: Support

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e. [ADM File No. 2015-03 – Amendment of Rule 1.15 of the Michigan Rules of Professional Conduct](#)

The amendment of MRPC 1.15 adds “credit union” to the definition of “eligible institution” for deposit of IOLTA funds. This change reflects a recent federal statutory amendment that extends federal insurance protection to IOLTA deposits held in credit unions. PL 113-252.

Committee Position: Support

f. [ADM File No. 2014-09 - Proposed Amendment of Rule 7.215 of the Michigan Court Rules](#)

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.

Committee Position:

(1) Voted 10 in favor, 2 against to oppose to all amendments for the reasons set forth in Justice Markman's dissent and in Timothy Baughman's letter to the court dated March 20, 2015.

(2) Voted 9 in favor, 3 against to recommend that the current version of MCR 7.215(C) be amended to delete the last sentence in its entirety, so the section simply reads "An unpublished opinion is not precedentially binding under the rule of stare decisis." The recommendation is made because the last sentence, which obligates the party citing the unpublished opinion to provide a copy to the opposing party and the Court, is viewed as no longer necessary, because unpublished opinions are readily and easily available both on electronic legal research sites, as well as on the Court of Appeals' web site.

(3) Voted 10 in favor, 2 against to recommend that the current version of MCR 7.215(B) be amended. These recommendations are viewed as clarifying, but not restricting, the publication standards. The Committee favors publishing more opinions and allowing parties to continue to cite unpublished opinions. The committee recommends that 7.215(B) be amended as follows:

- (1) Establishes a new rule of law;
- (2) Construes a provision of a constitution, statute, regulation, ordinance, or court rule;
- (3) Alters, ~~or~~ modifies, or reverses an existing rule of law or extends it to a new factual context;
- (4) Reaffirms a principle of law not applied in a recently reported decision;
- (5) Involves a legal issue of significant or continuing public interest;
- (6) Criticizes existing law; or
- (7) Creates or resolves a ~~an apparent~~ or apparent conflict of authority, whether or not the earlier opinion was reported; or

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- g. H-2 of [HB 4038](#) (Forlini) Housing; landlord and tenants; notification of evictions; allow by electronic mail. Amends sec. 5718 of [1961 PA 236](#) (MCL [600.5718](#)).

Committee Position: Oppose HB 4038 for the same reasons it opposed HB 5415 in 2013-2014 legislative session:

Because email is not a reliable manner to transmit such important information as an eviction notice. People changing email addresses, spam filters and having unreliable internet access are several of the factors that make email an unreliable communication method. Additionally, the committee noted that it is very unlikely that tenants would be able to negotiate a provision for electronic eviction out of a lease.

The Committee does not feel that the amendments to the bill presented in H-2 cured the issues previously identified.

- h. [SB 0100](#) (Brandenburg) Taxation; administration; prepayment of tax, penalty, and interest requirement as a prerequisite to filing a case regarding the assessment of tax in the Michigan court of claims; eliminate. Amends sec. 22 of [1941 PA 122](#) (MCL [205.22](#)).

Committee Position: Support the procedural portions of the bill for the reasons set forth by the Taxation Section; the Committee took no position and did not comment on the appropriations portion of the bill.

- i. [SB 0149](#) (Brandenburg) Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.1 - 600.9947) by adding sec. 2912i.

Committee Position: Oppose

Future Goals and Activities:

The Committee expects to continue to review proposed court rule amendments and legislation and to both initiate and further develop its own proposals.

At the October 8, 2015 Representative Assembly meeting, the Committee expects to offer a proposal to amend Rules 2.116 and 2.119 of the Michigan Court Rules for consideration.