

CIVIL PROCEDURE & COURTS COMMITTEE  
Respectfully submits the following position on:

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ADM File No. 2014-09

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The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Civil Procedure & Courts Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members 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 Civil Procedure & Courts Committee is 23.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. A detailed voting record is attached.

## Report on Public Policy Position

**Name of Committee:**

Civil Procedure & Courts Committee

**Contact person:**

Karen H. Safran

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**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 Proposed MCR 7.215(A) would clarify the term “unpublished” as used in the rule.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 Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215(C) would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal.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 11, 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 Oppose all amendments for reasons set forth in Justice Markman’s dissent and Timothy Baughman’s letter:**

10 Voted for position

2 Voted against position

0 Abstained from vote

11 Did not vote (absent)

**Number who voted in favor and opposed to Recommend that the current version of MCR 7.215(C) be amended to delete the last sentence in its entirety:**

9 Voted for position

3 Voted against position

0 Abstained from vote

11 Did not vote (absent)

**Number who voted in favor and opposed to Recommend that the current version of MCR 7.215(B) be amended:**

- 10 Voted for position
- 2 Voted against position
- 0 Abstained from vote
- 11 Did not vote (absent)

**Position:**

The committee:

- (1) Voted 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 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 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~~ conflict or apparent conflict of authority, whether or not the earlier opinion was reported; or

**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](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)