

STATE BAR OF MICHIGAN
CIVIL PROCEDURE AND COURTS COMMITTEE

MINUTES
February 18, 2012

The Committee met at Dickinson Wright PLLC, Troy, MI at 10:00 a.m. Attendance was recorded by chair Quick:

Present in person or by telephone:

Frank Greco
Hon. David Lawson
Joey Niskar
Sean Crotty
Lori Frank
Daniel Quick
Karen Safran
George Strander
Randy Wallace
Victoria Valentine
Martha Moore
Pamela Dausman
Gary Peterson
Thomas Bannigan
Dennis Barnes (Liaison)
Elizabeth Lyon (SBM)

Absent:

Kaveh Kashef
Peter Webster
Richard Bisio
Thaddeus Morgan
Curt Benson
Maureen Kinsella
Janet Brandon (Advisor)
Ronald Longhofer (Advisor)
Sean McNally (Advisor)

- 1. The November 5, 2011 minutes were approved.**

2. Old Items

- a. Service on business entities and referral to other bar committees is ongoing; Daniel Quick will follow up with sections and committees to submit comments in response to a solicitation sent by Civil Procedure and Courts Committee.
- b. The proposal regarding Supreme Court term is not being pursued further at this time.
- c. **Follow-up on Committee positions**
 - i. **SB 0707**
 - ii. **2010-25 – Proposed Amendment of Rule 7.210 of the Michigan Court Rules**
 - iii. **SB 0688 & SB 0689**

Elizabeth Lyon reported on several Committee positions reviewed by the Board of Commissioners. Frank Greco provided a summary of the Michigan Supreme Court action on recommendations from the Civil Procedure and Courts Committee.

The Committee discussed the formation of a subcommittee to assess the case evaluation study for Alternative Dispute Resolution and determine whether any rules changes should be recommended.

3. New Items

- a. **The Committee voted, unanimously, to sign the Pledge for Diversity and Inclusion in the legal profession.**
- b. **ADM 2005-11 – Proposed Alternative Amendments of Code of Judicial Conduct**

The Committee unanimously voted to support Alternative B with the proposed changes stated by the Judicial Ethics Committee.

The Committee noted that Alternative B, as written, provides for clarity and ease of reading. The Committee also noted there is a potential typo in the published order. In Canon 5A, the word “solicits” should read “solicit.”

- c. **ADM 2006-04 – Proposed Amendment of Rule 3.204 of the Michigan Court Rules**

The Committee takes no position (unanimous vote w/Lawson abstaining).

Greco was not comfortable that the expertise of the Committee was such that it would lend itself to speaking to the substance of the rules. Elizabeth Lyon will contact the Family Law Section to relate several discussion points for their consideration, including a potential conflict with MCR 2.101; a potential for automatic consolidation under MCR 2.118; and a concern that court rules governing civil matters remain the essentially the same, with exceptions being made rarely, with a recognition that perhaps matters regarding children did necessitate such an exception.

Martha Moore will report at the next meeting on issues raised by the Committee.

d. ADM 2006-47 Proposed Amendment of Rules 1.109, 2.107, 2.113, 2.114, 2.518, 3.001, 3.101, 3.218, 3.800, 3.901, 3.903, 3.930, 4.001, 5.101, 5.113, 5.731, 6.007, 8.108, and 8.119 of the Michigan Court Rules

The Committee unanimously voted to proceed with drafting a position and will request an evote at a later date.

The draft statement will be prepared given the following points raised in discussion: MCR3.101, which addresses garnishment after judgment, does not seem to fit with the other named rules, as it is not “paper reduction” or filing focused and addresses more of a substantive change. It should be split off and addressed as two separate proposals. Additionally, an inherent conflict is created when you limit the rule for disclosure – the court should be prohibited from having the information. The amendments also create conflicting definitions of records and documents. Elizabeth Lyon will consult with Lorry Brown and report her findings to the Committee. Lori Frank, Frank Greco, and Karen Safran will continue working on defining electronics and garnishments and submit a position for evote when completed.

e. ADM 2010-26 Proposed Amendment of Rule 7.210 and Rule 7.212 of the Michigan Court Rules

The Committee unanimously voted to support with amendments.

Amendments request are: MCR 7.212, it was recommended that “a settled statement of facts” be replaced with “certifying order is filed.” The Committee noted a potential conflict with the word “filed,” as it is undefined in court rules and does not direct an order being issued. Thus, the Committee prefers “entered” over “filed.”

f. ADM 2010-31 Proposed Amendment of Rule 5 of the Rules for the Board of Law Examiners

The Committee voted to oppose the proposed amendment (unanimous vote w/Bannigan abstaining).

The Committee concurred with Chief Justice Young that the proposed amendment created a conflict between the court rule and the statute.

g. ADM 2010-32 Proposed Amendment of Rule 3.210 of the Michigan Court Rules

The Committee voted unanimously to oppose the proposed amendment.

The Committee felt the revisions were not consistent with default rules applicable to civil actions and should remain consistent between the two courts. The proposal departs in a stark way from the conventional way of fact and consequence in a civil action and thus creates inconsistency in the court rule. Although 3.201(C) does contemplate different treatment of cases, the proposed amendment would likely provoke additional litigation,

especially on the appellate level, over interpreting the new default rule since conventional jurisprudence has been applied up to this point. If a change is needed, it should perhaps be a more modest one that is different from civil procedure rules in Rule 3.201(C). The Committee defers to the expertise of the Family Law as to whether the proposed amendment would promote efficient administration.

h. ADM 2010-33 Proposed Adoption of New Rule 3.220 of the Michigan Court Rules

The Committee takes no position by unanimous vote.