

PROPOSED AMENDMENTS TO RULES 2.116 AND 2.119 OF THE MICHIGAN COURT RULES

Issue

Should the Representative Assembly support amendments to Rules 2.116 and 2.119 of the Michigan Court Rules to adjust the timing of dispositive motions to allow for reply briefs, and to clarify that reply briefs are not allowed for any other motions unless leave is given by the Court?

Rule 2.116 Summary Disposition

(A) – Unchanged

(B) Motion

(1) - Unchanged

(2) A motion under this rule may be filed at any time consistent with subrule (D) and subrule (G)(1), but the hearing on a motion brought by a party asserting a claim shall not take place until at least ~~28~~35 days after the opposing party was served with the pleading stating the claim.

(C) – (F) – Unchanged

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, *MCR 2.119* applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i) a written motion under this rule with supporting brief and any affidavits must be filed and served at least ~~21~~28 days before the time set for the hearing, and

(ii) any response to the motion (including brief and any affidavits) must be filed and served at least ~~7~~14 days before the hearing.

(iii) the moving party or parties may file a reply brief in support of the motion. Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties' response brief and must be limited to 5 pages. The reply brief must be filed and served at least 7 days before the hearing.

(iv) no additional or supplemental briefs may be filed without leave of the court.

(b) If the court sets a different time for filing and serving a motion, ~~or~~ a response, or a reply brief, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion, ~~or~~ response (including brief and any affidavits), or reply brief filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

Rule 2.119 Motion Practice

(A) Form of Motions

(1) – Unchanged

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based.

(a) Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits.

(b) Except as permitted by the court or as otherwise provided in these rules, no reply briefs, additional briefs, or supplemental briefs may be filed.

(c) Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type.

(d) A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

Synopsis

The proposal comes from the Civil Procedure & Courts Committee, which discussed the proposed amendment at its April 2015 meeting. The amendments are recommended to:

(1) set uniform standards for reply briefs in dispositive motions; the amendments add 7 days to the hearing and briefing deadlines for motions, which maintains the current rule giving the non-moving party a minimum of 14 days to respond to the dispositive motions, but providing the moving party with the opportunity to file and serve a 5 page reply brief no later than 7 days before the hearing; and

(2) clarify that reply briefs are not allowed on other motions absent leave of the court.

Uniformity is recommended because at present, reply briefs are not provided for under the Court Rules. However, some courts allow reply briefs and set briefing schedules, some courts will accept reply briefs without briefing schedules, and some courts refuse to accept reply briefs. Litigants may benefit from uniform standards on dispositive motions. The moving party should be given the opportunity to reply to arguments contained in responses, and the non-moving party should not be subject to receipt of reply briefs filed shortly before the hearing.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on October 8, 2015**

Should the Representative Assembly adopt the above resolution to support amendments to Rules 2.116 and 2.119 of the Michigan Court Rules to adjust the timing of dispositive motions to allow for reply briefs, and to clarify that reply briefs are not allowed for any other motions unless leave is given by the Court?

(a) Yes

or

(b) No