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March 1, 2012

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2010-26 – Proposed Amendment of Rule 7.210 and Rule 7.212 of the Michigan Court Rules

Dear Clerk Davis:

At its February 28 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendments published for comment. In its review, the Committee considered recommendations from its Criminal Jurisprudence & Practice Committee and Civil Procedure & Courts Committee. The Committee voted unanimously to support the proposed amendments with amendments recommended by the Criminal Jurisprudence & Practice Committee and Civil Procedure & Courts Committee:

The Criminal Jurisprudence & Practice Committee recommended changing “shall” to “may” in MCR 7.210(B)(2)(b) to give the trial court discretion. The change is marked below in shaded bold:

MCR 7.210(B)(2)(b)

The appellant shall notice the motion to settle the record for hearing proposed statement of facts for prompt settlement before the trial court or tribunal to be held within 21 days of the filing of the motion. If appellant filed a proposed statement of facts with the motion, appellee must file an An amendment or objection to the proposed statement of facts must be in writing, filed in the trial court or tribunal before the time set for the settlement hearing, and served serve it on the appellant and any other appellee, or the trial court shall may adopt and file appellant’s proposed statement of facts as the certified settled statement of facts.

The Civil Procedure & Courts Committee recommended deleting language in MCR 7.212(1)(a)(iii) to help satisfy concerns expressed about ambiguity of timing. The suggested deletions are shown in shaded bold:

MCR 7.212(1)(a)(iii)

56 days after the claim of appeal is filed, the order granting leave is certified, ~~or~~ the transcript is filed with the trial court or tribunal, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in all other cases. In a criminal case in which substitute counsel is appointed for the defendant, the time runs from the date substitute counsel is appointed, ~~or~~ the transcript is filed, or a settled statement of facts and certifying order

is filed, whichever is later. The parties may extend the time within which the brief must be filed for 28 days by signed stipulation filed with the Court of Appeals. The Court of Appeals may extend the time on motion.

Further, the Civil Procedure and Courts Committee noted a potential issue with the word “filed” as used in the changes because it is undefined in court rules and does not direct an order being issued.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet K. Welch".

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Julie I. Fershtman, President