

STATE BAR OF MICHIGAN  
CIVIL PROCEDURE AND COURTS COMMITTEE

DRAFT Minutes  
December 15, 2007

The Committee met at the offices of Bush Seyferth Kethledge & Paige PLLC, Troy, Michigan at 10:00 a.m. Attendance was taken and recorded by Chair Greco.

Present in person or by telephone:

Curt Benson  
Richard Bisio  
Janet Brandon  
Frank Greco  
Ray Kethledge  
Sara Lachman  
Hon. David Lawson  
Ronald Longhofer  
Thaddeus Morgan  
Joey Niskar  
Daniel Quick  
Karen Safran  
Peter Webster

Also present was Elizabeth Lyon, State Bar Director of Governmental Relations and the Bar's staff liaison to the Committee

Absent:

Hon. Nanci Grant  
Kaveh Kashef  
Sean McNally  
John Mulcrone  
Jules Olsman  
Gary Peterson  
Victoria Valentine

1. Minutes of October 20, 2007 meeting were approved without change.
2. 2002-37 Electronic Filing. Updates were provided about the electronic filing proposals on which the Committee had taken several general positions at the October 20 meeting. The State Bar Board of Commissioners has not yet taken up this subject. Frank Greco reported that Elizabeth Lyon had put him in touch with the Chair of the new State Bar Technology Committee. Dan Quick is a member of the advisory Committee in Oakland and will monitor developments. A symposium is scheduled in Oakland for March 13, 2008. That will be discussed again at the February meeting.

3. 2005-31 Amendments to MCR 3.602, the arbitration rule, adopted October 2, 2007, effective January 1, 2008. This item was on the agenda because of a question about certain time limits – sometimes 21 days and sometimes 91. The consensus was that there was no problem with those time limits and no action was taken.
4. 2005-36 Proposed amendment of MCR 2.119, 7.204, and 7.205 – time for motions for reconsideration and for appeal. (Published for Comment 10/16/07, Court deadline 2/1/08; BOC requests comments by 11/30/07). The Committee adopted several positions.
  - A. It voted 11 to 1 with 1 abstention to support the proposed change in MCR 2.119(F)(1), lengthening the time for motions for reconsideration from 14 days to 21 days.
  - B. The Committee voted unanimously to oppose deleting of the language now found in MCR 7.204(A)(1)(b) and 7.205(F)(3)(b), which in effect permits a judge to grant one or more extensions of time to file motions. [NOTE: There probably needs to be a similar change in MCR 7.205(A)(2), a new subrule in the published proposal that lacks the judicial discretion provision. Language to adjust that subrule is included below.] While a further extension would not often be appropriate, several reasons were advanced why one might be necessary in some cases, such as the need for a transcript or unexpected illness of an attorney. Giving the judge the discretion to grant a second extension can actually reduce delay. If the judge knows that only one extension is allowed, the judge will be forced to grant a long enough extension that it is virtually certain that the reason for the extension will have ended by then. But the judge can set a shorter time if there remains the escape hatch of a second extension when there are further unexpected circumstances that justify that result. This is not likely to delay proceedings in many cases, since judges tend not to favor such motions and are unlikely to grant extensions except where it is really appropriate. To emphasize this, the Committee also voted unanimously to add that such extensions should be only for “good cause”.

So, the provisions should read as follows (changes shown from language published by the Supreme Court):

MCR 7.204(A)

- (1) An appeal of right in a civil action must be taken within

\* \* \*

- (b) 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period or an earlier extension;

MCR 7.205

(A) Time Requirements. An application for leave to appeal must be filed within

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- (2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period, or within further time the trial court has allowed for good cause during that 21-day period or an earlier extension.

MCR 7.205(F)

- (3) Except as provided in subrule (F)(4), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

\* \* \*

- (b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period or an earlier extension, then the 12 months are counted from the entry of the order deciding the motion.

C. Finally, the suggestion was advanced that a related change in MCR 2.614(A)(1) might be appropriate. Certain motions have the effect of producing an automatic stay of enforcement of a judgment. But motions for reconsideration are not included. No action was taken, but the matter will be on the agenda for the February meeting.

5. 2007-09 Proposed amendment of MCR 2.306 – objections during depositions; sanctions. (Published for Comment 10/16/07, Court deadline 2/1/08; BOC requests comments by 11/30/07).

A revised draft will be circulated and the Committee members given the opportunity to vote on the revisions.

6. 2007-21 Proposed amendment of MCR 2.510 – Jury pools in district court where city is in more than one county. (Published for Comment 10/31/07, Court deadline 2/1/08; No BOC reference yet).

The Committee voted unanimously to support the proposed amendment.

7. 2005-25 Proposed amendment of MCR 2.203 – compulsory counterclaims. (Published for Comment 11/20/07, Court deadline 3/1/08; No BOC reference yet).

The Committee voted unanimously to oppose the proposed amendment.

8. HB 5295 and 5293 – Reference of zoning cases to referees. (BOC requests comments by 12/21/07).

The Committee voted unanimously to oppose the bills.

9. HJR FF – Raise judicial retirement age to 75. (BOC requests comments by 12/21/07). The Committee took no position on this proposal.

10. The Supreme Court is expected to set its next administrative public hearing soon. Depending on the agenda and action by the Board of Commissioners, a volunteer may be sought to appear on behalf of the Committee.

11. The next meeting of the Committee will be at 10:00 a.m. on February 16, 2008 at the State Bar Building in Lansing.

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