



p 517-346-6300

February 1, 2012

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

306 Townsend Street

Michael Franek Building

Lansing, MI

48933-2012

**RE: ADM File No. 2010-25
Proposed Amendment of Rule 7.210 of the Michigan Court Rules**

Dear Clerk Davis:

At its January 20, 2012 meeting, the Board of Commissioners of the State Bar of Michigan considered the proposed amendment to MCR 7.210. After extended discussion of the positions submitted to the Court as of that date, as well as the position of the Criminal Law Section of the State Bar and the views provided to the Board by the Criminal Jurisprudence and Practice Committee and the Civil Procedure and Courts Committee (attached), the Board voted to support the proposed amendment. A majority of the Commissioners were persuaded that the proposed change would be a benefit to parties and an improvement to the administration of justice, and that the limitation of the rule change to documentary evidence and its time limitation sufficiently answer concerns about practicality.

We thank the Court for the opportunity to submit this position.

Sincerely,

Janet K. Welch
Executive Director

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

Report on Public Policy Position

Name of section:

Criminal Law Section

Contact person:

Hon. David A. Hoort

E-Mail:

dhoort@ioniacounty.org

Proposed Court Rule or Administrative Order Number:

[2010-25 - Proposed Amendment of Rule 7.210 of the Michigan Court Rules](#)

This amendment was proposed by James Neuhard, former director of the State Appellate Defender Office. The proposed amendment would require trial courts to become the depository for exhibits offered in evidence (whether those exhibits are admitted or not), instead of requiring parties to submit exhibits offered in evidence when a case is submitted to the Court of Appeals on a claim of appeal.

Date position was adopted:

December 20, 2011

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:

21

Number who voted in favor and opposed to the position:

14 Voted for position

3 Voted against position

0 Abstained from vote

4 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

Proposed 7.210 would require trial courts to become the depository for documentary, photographic, video or audio exhibits offered in evidence (whether those exhibits are admitted or not) until expiration of the time for filing a claim of appeal instead of requiring parties to submit exhibits offered in evidence within 21 days after filing of the claim of appeal.

The council believed that the proposed amendment would sufficiently address existing problems experienced by appellants in reviewing and preserving the record. Because the requirement on the trial court does not include 'physical' evidence and is limited in time, the council believed the proposed amendment was appropriate.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-25_2011-10-20_formatted_FINAL_2.pdf

List any arguments against the position:

The proposed amendment does not address equally existing concerns in appeals by leave or late appeals and unnecessarily imposes a 'good cause' requirement. The countering position would extend the requirement on the trial court to the time allowed to file a claim of appeal, leave to appeal or late appeal; and require all parties to file a motion to access all exhibits, but deleting the 'good cause' language as actually being unnecessary.

Report on Public Policy Position

Name of committee:

Civil Procedure & Courts Committee

Contact person:

Daniel D. Quick

E-Mail:

DQuick@dickinson-wright.com

Proposed Court Rule or Administrative Order Number:

[2010-25 - Proposed Amendment of Rule 7.210 of the Michigan Court Rules](#)

This amendment was proposed by James Neuhard, former director of the State Appellate Defender Office. The proposed amendment would require trial courts to become the depository for exhibits offered in evidence (whether those exhibits are admitted or not), instead of requiring parties to submit exhibits offered in evidence when a case is submitted to the Court of Appeals on a claim of appeal.

Date position was adopted:

November 5, 2011

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Position adopted after an electronic discussion and vote.

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

15 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Committee opposes this proposed amendment on the following grounds: (a) there is not a known issue generally with the maintenance and forward of exhibits such that a rule of general application needs to be modified; (b) the proposal would impose costs and burden upon the courts, which are already over-burdened; (c) the proposal creates a potential conflict with MCR 2.518 and existing file management standards. The Committee also notes that (i) a similar rule exists for appeals to circuit court, MCR 7.109(c); and (ii) if the perceived problem relates to appointed counsel for indigent parties, a more targeted solution might be a better solution, such as requiring the

delivery of all trial exhibits to appellate counsel before fees are approved (such as proposed in File No. 2010-15, Proposed Amendment of Rule 6.005 of the Michigan Court Rules).

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-25_2011-10-20_formatted_FINAL_2.pdf

Report on Public Policy Position

Name of committee:

Criminal Jurisprudence & Practice Committee

Contact persons:

Hon. David Hoort

Gretchen Schlaff

E-mail:

Hon. David Hoort - dhoort@ioniacounty.org

Gretchen Schlaff - Gretchen.Schlaff@macombcountymi.gov

Proposed Court Rule or Administrative Order Number:

[2010-25 - Proposed Amendment of Rule 7.210 of the Michigan Court Rules](#)

This amendment was proposed by James Neuhard, former director of the State Appellate Defender Office. The proposed amendment would require trial courts to become the depository for exhibits offered in evidence (whether those exhibits are admitted or not), instead of requiring parties to submit exhibits offered in evidence when a case is submitted to the Court of Appeals on a claim of appeal.

Date position was adopted:

January 9, 2012

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting and further e-vote.

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

12 Voted for position

4 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Committee opposes this proposed amendment on the following grounds: (a) there is not a known issue generally with the maintenance and forward of exhibits such that a rule of general application needs to be modified; (b) the proposal would impose costs and burden upon the courts, which are already over-burdened; (c) the proposal creates a potential conflict with MCR 2.518 and existing file management standards.

The Committee also notes that (i) a similar rule exists for appeals to circuit court, MCR 7.109(c); and (ii) if the perceived problem relates to appointed counsel for indigent parties, a more targeted solution might be a better solution, such as requiring the delivery of all trial exhibits to appellate counsel before fees are approved (such as proposed in File No. 2010-15, Proposed Amendment of Rule 6.005 of the Michigan Court Rules).

The countering position believes the proposed amendment is appropriate and addresses legitimate concerns. The countering position would even extend the requirement on the trial court to the time allowed to file leave to appeal in recognition that pre-plea legal issues sometimes merit appellate review.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-25_2011-10-20_formatted_FINAL_2.pdf