



Report on Public Policy Position

Name of Committee:

Civil Procedure and Courts Committee

Contact Person:

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Proposed Court Rule Amendment:

ADM File No. 2006-33 – Proposed Amendment of Rule 2.116 of the Michigan Court Rules

The proposed amendments of MCR 2.116 would clarify that motions for summary disposition based on governmental immunity or lack of subject matter jurisdiction may be filed even if the time set for filing dispositive motions in a scheduling order has expired. Defects in subject-matter jurisdiction cannot be waived and may be raised at any time. *People v Erwin*, 212 Mich App 55, 64; 536 NW2d 818 (1995); *People v Richards*, 205 Mich App 438, 444; 517 NW2d 823 (1994). Likewise, governmental immunity may be raised at any time. See *Mack v Detroit*, 467 Mich 186, 197 n 13 (2002).

The amendments would also clarify that it is within the court's discretion to allow a motion for summary disposition to be considered for motions based on the grounds set out in (C)(8), (C)(9), or (C)(10) if it is filed after the period for dispositive motions established in a scheduling order has expired. This clarification would reflect the holding in *People v Grove*, 455 Mich 439 (1997), that it was within the trial court's discretion to decline to accept a plea agreement offered after the date for accepting such an agreement set forth in the scheduling order had passed.

Date position was adopted:

2/3/07

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 total, 16 present

Number who voted in favor and opposed to the position:

16 Voted for position

0 Voted against position

0 Abstained from vote

0 Did not vote

Position:

Support and offer amendments

Explanation of the position, including any recommended amendments:

The Committee recommends that MCR 2.116(D)(4) read as follows: "(4) The grounds listed in subrule (C)(8), (9), and (10) may be raised at any time, unless a period in which to file dispositive motions is established under a scheduling order entered pursuant to MCR 2.401. It is within the trial court's discretion to allow a motion filed under this subsection to be considered if the motion is filed after such period. "Rationale: The phrase "at any time" in the proposal is unclear, as it is the intent of the subrule to allow a motion cut-off date to apply unless the court exercises its discretion to extend the time. The new wording clarifies this intent.

The text (may be provided by hyperlink) 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/2006-33.pdf>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

List any arguments against the position:

None noted, as it is a clarifying amendment.