

MICHIGAN COURT RULES 7.301(B) – Term of the SUPREME COURT

Issue

Should the State Bar of Michigan support the Civil Procedure & Courts Committee's proposal to change the starting date of the Supreme Court Term from the current August 1 to January 1?

RESOLVED, that the State Bar of Michigan support amendment of the Michigan Court Rules to change the Supreme Court Term to run from January 1 through December 31 by amending MCR 7.301(B) as follows:

MCR 7.301(B)

(B) Term. The Court will hold an annual term beginning on ~~August 1~~ January 1 and ending on ~~July 31~~ December 31. At every term, the Court will announce a date after which it will not call cases for argument except pursuant to order on a showing of special cause. Except as provided in MCR 7.312(E), the end of a term has no effect on pending cases.

Synopsis

Over the last year, the State Bar Civil Procedure and Courts Committee discussed Michigan Court Rule 7.301(B), which governs the term of the Supreme Court. The Committee thinks that serious consideration should be given to conforming the Court's term to the election cycle for Justices, and voted at its meeting on June 29, 2011 to recommend the amendment of MCR 7.301(B) set forth above.

Background

MCR 7.301(B) was adopted in 1989, creating an annual term for the Supreme Court. The term was originally set to run from October 1 through September 30, but the rule was amended in 1995 to have the term run from August 1 through July 31. Under both versions the practice was that the Court would begin oral arguments for the term in October and get out all of its opinions in cases argued during the term before the end of the term. Much of the motivation was to provide a disincentive to allowing cases to languish for up to several years, as had often happened.

The rule now reads:

(B) Term. The Court will hold an annual term beginning on August 1 and ending on July 31. At every term, the Court will announce a date after which it will not call cases for argument except pursuant to order on a showing of special cause. Except as provided in MCR 7.312(E), the end of a term has no effect on pending cases.

MCR 7.312(E), referenced in MCR 3.701(B), says:

(E) Reargument of Undecided Cases. When a calendar case, other than one argued pursuant to special order under MCR 7.301(B), remains undecided at the end of the term in which it was argued, either party may file a supplemental brief. In addition, if either party requests with 14 days after the beginning of the new term, the clerk shall schedule the case for reargument.

Setting October 1 as the time for starting argument of cases for the new term unnecessarily creates the likelihood of disruption when, as often happens, there is a change in personnel on the Court on January 1 of odd numbered years as a result of the election the previous November. Most cases that have been argued in October and November will not be decided before the new Justice or Justices take office, so fewer than seven Justices will consider those cases, unless they are reargued. Or there will be pressure to rush those opinions out, creating the likelihood of contentious rehearings in controversial cases. See *Michigan Education Association v Secretary of State*, S Ct No 137451 (12/29/10, on rehearing 6/30/11). In October and November of 2008 and 2010, there were oral arguments in a total of 33 Calendar Cases – and 17 arguments on applications. And further disruption is caused, as in 2008 and 2010, when cases scheduled to be argued in December are adjourned with fairly short notice. These problems are likely to be repeated in 2012 and 2014, as in each of those years an incumbent Justice will be ineligible to run for reelection.

When the Term of Court rule was originally under consideration the two arguments for the October 1 start of the term's oral arguments were (1) that is what the United States Supreme Court does, and (2) the Justices like to avoid scheduling anything for the months of February and August. Neither reason is persuasive.

The U.S. Supreme Court doesn't have the election generated January 1 turnover problem. But even the U.S. Supreme Court seems to recognize the value of having judicial personnel changes coincide with the end of the term. That Court issues all of its opinions for the term by late June or early July. The last 10 resignations of U.S. Supreme Court Justices have been timed to coordinate with the completion of the year's opinion work (and give the President and the Senate a chance to provide a replacement before the October 1 beginning of the next term): Stevens (June 29), Souter (June 29), O'Connor (July 1), Blackmun (August 3), White (June 28), Marshall (June 27), Brennan (July 20), Powell (June 26), Burger (June 26), Stewart (July 3).

And the Michigan Supreme Court can adjust its case call to leave the Justices free of oral arguments in February, August, or any other particular months that it wishes. Now the Court's term starts August 1, but the Court does not schedule oral arguments until October.

The Committee recognizes that the August 1 to July 31 term has the virtue of structuring the Court's opinion work to coincide with the law clerk hiring cycle. But relying on that rationale would be a classic example of the tail wagging the dog. Setting the court's work to coincide with the Justices' terms is far more sensible and defensible.

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 September 15, 2011**

Should the State Bar of Michigan support the Civil Procedure & Courts Committee's proposal to change the starting date of the Supreme Court Term from the current August 1 to January 1?

(a) Yes

or

(b) No