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June 27, 2013

Larry S. Royster
Chief of Staff / Clerk of Court
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa Street, P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2011-31

Dear Mr. Royster:

At its May 10, 2013 Council meeting, the Appellate Practice Section of the State Bar of Michigan considered the proposal of ADM File No. 2011-31 to permit the filing of a reply brief in support of an application for leave to appeal in the circuit court and the Court of Appeals.

At the time that the Section originally proposed the change to MCR 7.105 to allow for the filing of a reply brief in support of an application for leave to appeal in the circuit court, the Section proposed that any reply brief be filed within 7 days after service of the answer. The Section suggested 7 days as the time period for filing a reply only because MCR 7.105 requires the circuit court's decision on an application to be made within 35 days of the filing date. Since the answer is due within 21 days after service of the application, a reply brief filed 7 days later would then give the circuit court 7 days to make its decision.

Upon further consideration, the Section is concerned that 7 days is not an adequate amount of time to prepare a reply brief in support of an application for leave to appeal in the circuit court. Assuming service of the answer by mail, the appellant would have less than 7 days, and perhaps only 3 days or less in some cases, in which to prepare and file a reply brief.

As a result, the Section respectfully requests that the Court consider modifying the proposed amendment to MCR 7.105 to extend the time to file a reply brief in support of an application for leave to appeal in the circuit court from 7 to 14 days, and that it correspondingly extend the time that the circuit court has to decide the application. An extension of time for the circuit court's decision would affect current MCR 7.105(D)(2) and (E).

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The State Bar of Michigan Appellate Practice Section Council thanks
the Court for the opportunity to comment on ADM File No. 2011-31.

Very truly yours,



Phillip J. DeRosier
Chair, Appellate Practice Section



APPELLATE PRACTICE SECTION
Respectfully submits the following position on:

*

ADM File No. 2011-31

*

The Appellate Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Appellate Practice Section only and is not the position of the State Bar of Michigan.

The State Bar's position in this matter is to support ADM File No. 2011-31 and authorize the Appellate Practice Section to advocate its position.

The total membership of the Appellate Practice Section is 667.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Appellate Practice Section

Contact person:

Phillip J. DeRosier

E-Mail:

pderosier@dickinsonwright.com

Proposed Court Rule or Administrative Order Number:

2011-31 - Proposed Amendment of Rules 7.105, 7.111 and 7.205 of the Michigan Court Rules

The proposed changes would permit the filing of a reply brief in support of an application for leave to appeal in the circuit court and the Court of Appeals. The proposed changes were submitted by the Appellate Practice Section of the State Bar of Michigan.

Date position was adopted:

May 10, 2013

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:

23

Number who voted in favor and opposed to the position:

15 Voted for position

0 Voted against position

0 Abstained from vote

8 Did not vote

Position:

Support and Amend

Explanation of the position, including any recommended amendments:

In ADM File No. 2011-31, the Supreme Court proposes to amend MCR 7.105, 7.111, and 7.205 to permit the filing of a reply brief in support of an application for leave to appeal in the circuit court and Court of Appeals. The Section supports the amendment, but proposes that the Court consider modifying the proposed amendment to MCR 7.105 to extend the time to file a reply brief in support of an application for leave to appeal in the circuit court from 7 to 14 days, and that it correspondingly extend the time that the circuit court has to decide the application. The Section is concerned that 7 days is not an adequate amount of time to prepare a reply brief in support of an application for leave to appeal in the circuit court.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2011-31_2013-03-20_formatted%20order.pdf