FAMILY LAW SECTION
Respectfully submits the following position on:

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ADM File No. 2014-09

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The Family Law 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 Family Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Family Law Section is 2,945.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 21. The number who voted in favor of this position was 20. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of Section:
Family Law Section

Contact person:
Christopher J. Harrington, Co-Chair of the Court Rules & Ethics Committee

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Proposed Court Rule or Administrative Order Number:
2014-09 - Proposed Amendment of MCR 7.215
The proposed amendments of MCR 7.215(A)-(C) were submitted by the Court of Appeals. Proposed MCR 7.215(A) would clarify the term "unpublished" as used in the rule. The proposed amendment of MCR 7.215(B) would provide more specific guidance for Court of Appeals judges regarding when an opinion should be published. Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215(C) would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal.

Date position was adopted:
March 7, 2015

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:
20 Voted for position
0 Voted against position
0 Abstained from vote
1 Did not vote (absent)

Position:
Oppose

Explanation of the position, including any recommended amendments:
The Court Rules Committee of the Family Law Council of the State Bar of Michigan reviewed ADM File No. 2014-09 regarding the proposed changes to MCR 7.215(A) - (C) during its March 3, 2015 Committee Telephone Conference.

The Committee then presented the issue to the Family Law Council and the following position was unanimously supported by the Council members in attendance at the March 7, 2015 Council meeting by a vote of 20-0:

- The council supports the rationale and position of Justice Markman's "concur in part, dissent in part" in the comments section.

- Regarding the modifications of MCR 7.215(A), the Council has no problem with the language clarifying what deems an opinion to be "published" or "unpublished." There was discussion by Council on whether this was a necessary modification but the proposed amendments in this subsection were not opposed.

- Regarding the modifications of MCR 7.215(B), the Council agrees with Justice Markman's position supporting the additional factors that should be considered for publishing a case.

- Regarding the modifications of MCR 7.215(C), the Council agrees with Justice Markman that the proposed court rule changes "represent a solution in search of a problem and misperceive the nature of the judicial exercise."

- The proposed amendments to MCR 7.215(C) would be particularly problematic with family law cases which can have very unique fact patterns and circumstances that are not always covered in the pool of published cases, but can be found in existing unpublished cases. Dissuading litigants from using prior rulings of the Court of Appeals in future arguments in front of the Court of Appeals seemed to be paradoxical or contradictory to the authority of the Court. Council also thought that the proposed changes would diminish the ability of litigants to represent their clients' interests by prohibiting the use of existing persuasive legal argument to advocate on their behalf. In turn, this is bad public policy.

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/Adopted/2014-09_2015-02-18_formatted%20order_with%20SJM%20stmt%20with%20RC.pdf