

# MCFLAA

May 28, 2015

Ms. Anne M. Boomer  
Administrative Counsel  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

RE: ADM File No. 2014-09, Proposed Amendments to MCR 7.215

Dear Ms. Boomer:

As a supplement to our previously submitted letter dated March 11, 2015, we would like to add the following:

The proposed language to MCR 7.215(C)(1) is intended to limit the use of unpublished opinions, which are not precedential and should not be cited in appellate briefs if there are applicable published cases.

The proposed language includes a requirement that when citing an unpublished opinion a party must show that “published authority is insufficient.” This requirement is open to interpretation and possible confusion. It could be viewed as requiring a party to set out why each possibly related published case is not applicable before citing an unpublished case. This is a potentially onerous requirement and may leave a party subject to sanctions.

The following suggestion avoids interpretational confusion while making clear that unpublished opinions may only be cited under specific circumstances and providing clear parameters for citing unpublished opinions:

An unpublished opinion is not precedentially binding under the rule of stare decisis. Therefore, a citation to an unpublished opinion must explain how the unpublished opinion at issue directly relates to the case currently on appeal.

We urge the Court to consider this alternate language. Thank you and please let us know (through any member of the Coalition) if you need more information.

Respectfully submitted,

Anne Argiroff    Scott Bassett    Judith A. Curtis    Kevin Gentry    Trish Oleksa Haas    Liisa R. Speaker  
Farmington Hills    Portage    Grosse Pointe    Howell    Grosse Pointe    Lansing

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