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June 1, 2015

Mr. Larry Royster, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2014-09

Dear Mr. Royster:

On behalf of the attorneys listed below, the undersigned opposes the amendment of MCR 7.215(C). As explained in Justice Markman's statement concurring in part and dissenting in part, the citation of unpublished opinions "poses little or no practical burdens on the courts of this state, and its 'disfavoring' serves only to further delegitimize a practice that does not warrant that treatment." Branding unpublished opinions "disfavored" and commanding justification for their citation creates an impression of inequity. It suggests that those cases need not comport with the body of Michigan law because they add nothing to it. Litigants must face the legal consequences of their past actions. The Court of Appeals, undertaking the public business of adjudicating those consequences, must do the same.

Moreover, the citation of unpublished opinions is helpful to the bench and bar. Published or unpublished, Court of Appeals' decisions carry the force of law. For that reason, Michigan trial courts often refer to and rely on unpublished decisions in an effort to render decisions that survive appeal. The Court of Appeals has a similar interest in avoiding inconsistency in its own opinions. Surely, panels are interested in knowing whether similar cases have been decided differently so they may avoid unnecessary reversal by this Court. And the judges assigned to those panels presumably are interested in knowing whether they, as individual judges, have taken a particular position on a particular issue in a previous case.

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In the day-to-day practice of law, it is not uncommon that an unpublished opinion provides all of the law there is. Appeals are relatively rare, and published Court of Appeals opinions are rarer still. The vast majority of litigation is settled at the trial-court level. As a consequence, many cases involve the application of law to factual scenarios that have never been considered by a published opinion. In those cases, disfavoring unpublished opinions is counterproductive. Attorneys rely on many persuasive authorities in their briefing. It would be anomalous for this Court to demote the importance of Michigan jurisprudence below foreign and federal caselaw, general treatises, and legislative histories, all of which may be cited and are nowhere “disfavored” in the court rules.

Sincerely,

MILLER JOHNSON

By 

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