

MCFLAA

March 11, 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:

We are a coalition of attorneys who work principally as domestic relations appellate practitioners. We write to comment on the proposed amendments to MCR 7.215 related to unpublished opinions of the Court of Appeals (Administrative File No. 2014-09).

We agree with Justice Markman's dissent to the Court's Order of February 18 publishing the proposed amendments for comment. In family law, cases vary considerably on their facts. Many pending case are factually distinguishable from any published authority. As such, it is not clear that existing published authority is sufficiently similar to the pending case that it controls the result.

Legal rules in a vacuum are useless unless applied to a set of facts that are somewhat similar to existing authority. With so many factual variations in family law cases, whether a rule of law should apply to a pending case on distinguishable facts a difficult question.

However, there are hundreds of unpublished family law opinions annually covering a much larger range of facts. Finding an unpublished decision that matches both the legal issues and the facts of a pending case is much more common. Examining how prior Court of Appeals panels applied the law to a particular (or similar) set of facts is not only useful, it is often essential to achieving a just result.

For this reason, many appellate briefs in family law cases cite at least one unpublished decision. In a perfect world, that would not be necessary. It is not a perfect world and there is a relative dearth of published authority in family law. There are not enough published family law decisions addressing significant factual variations to provide clear authority on the wide range of facts and issues we see in our appeals. .

Where an unpublished decision exists that is legally on point and factually very similar to a pending case, counsel should be free to cite that case without being subject to the Court's disfavor. Once brought to the Court's attention, the panel may in its discretion decide to ignore a cited unpublished opinion. However, roadblocks should not be placed in the way of citing such opinions nor should they be officially designated as "disfavored."

Moreover, since many appellate judges disapprove of raising an unpublished opinion for the first time at oral argument (a practice also disfavored by the court rules), as family law appellate practitioners, we better serve our clients by citing and discussing

michflaa@gmail.com

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favorable unpublished opinions at the briefing stage. Any proposal that actively discourages citation to unpublished decisions at the briefing stage may encourage advocates to wait until oral argument to bring a case to the panel's attention. This is not a undesirable result.

We urge the Court to reject this proposal and decline to place roadblocks in the way of counsel citing what may be the most persuasive appellate decisions on many family law issues...

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

Michigan Coalition of Family Law Appellate Attorneys