

FAMILY LAW SECTION
Respectfully submits the following position on:

*

ADM File No. 2014-27

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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.

The State Bar's position in this matter is to support the proposed amendments.

The total membership of the Family Law Section is 2,962.

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 to this position was 13. The number who voted opposed to this position was 3. The number who abstained was 3.

Report on Public Policy Position

Name of section:

Family Law Section

Contact person:

Christopher J. Harrington

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Proposed Court Rule or Administrative Order Number:

[ADM File No. 2014-27 – Proposed Amendment of Rule 2.305 of the Michigan Court Rules](#)

This proposal, submitted by the SBM Representative Assembly, would clarify that subpoenas issued for the production of documents may occur only after the defendant has had reasonable time after the complaint is filed and served to obtain an attorney, as described in MCR 2.306(A)(1).

Date position was adopted:

March 5, 2016

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:

13 Voted for position

3 Voted against position

3 Abstained from vote

2 Did not vote (absent)

Position:

Support

Explanation of the position, including any recommended amendments:

° The Family Law Council supports the proposed amendments to MCR 2.305(A)(1), as written.

° The Council would like to know if any additional clarification would be necessary to outline consequences for violation of this Court Rule, or whether the general rules on Discovery are sufficiently applied to the proposed amendments to this Court Rule.

° The Council considered that sometimes emergency situations arise at the onset of Divorce and other Family Law cases. These emergencies can sometimes necessitate immediate access to financial, income, or property information

that may only be available through subpoena requests. While the proposed amendments could potentially hinder the early Discovery of information in certain instances, there are other avenues available to address these concerns, including Ex Parte “Status Quo” and Property Restraining Orders. The Court Rules also seem to permit a Plaintiff to still request leave of the Court for a shorter time than what is outlined in MCR 2.306(A)(1).

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/2014-27_2015-12-23_formatted%20order.pdf



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To: Clerk of the Michigan Supreme Court

The Court Rules Committee of the Family Law Council of the State Bar of Michigan reviewed ADM File No. 2014-27 regarding the proposed changes to MCR 2.305 during its March 1, 2016 Committee Telephone Conference.

The Committee then presented the issue to the Family Law Council at the March 5, 2016 meeting. The following position and comments were provided at that Council meeting:

- o The Family Law Council supports the proposed amendments to MCR 2.305(A)(1), as written.
- o The Council would like to know if any additional clarification would be necessary to outline consequences for violation of this Court Rule, or whether the general rules on Discovery are sufficiently applied to the proposed amendments to this Court Rule.
- o The Council considered that sometimes emergency situations arise at the onset of Divorce and other Family Law cases. These emergencies can sometimes necessitate immediate access to financial, income, or property information that may only be available through subpoena requests. While the proposed amendments could potentially hinder the early Discovery of information in certain instances, there are other avenues available to address these concerns, including *Ex Parte* "Status Quo" and Property Restraining Orders. The Court Rules also seem to permit a Plaintiff to still request leave of the Court for a shorter time than what is outlined in MCR 2.306(A)(1).

Respectfully Submitted,

/s/ Christopher J. Harrington
Chair of the Court Rules Committee of the
Family Law Section