

Public Policy Position
ADM File No. 2019-16 – Proposed Amendment of MCR 7.212

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,655 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar's position is to support ADM File No. 2019-16 and authorize the Section to advocate its position.

The Family Law Section has a public policy decision-making body with 21 members. On January 15, 2022, the Section adopted its position after a discussion and vote at a scheduled meeting. 21 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Support with Recommended Amendments

Explanation

The Family Law Section of the State Bar of Michigan has reviewed the proposed changes to MCR 7.212 and, upon recommendation of its Amicus Committee, have prepared this Position Summary with our Requested Modifications and our rationale for said modifications. If the requested modifications are made, the Family Law Section supports adoption of the proposed amendments with modifications to MCR 7.212.

Requested Modifications

1. Permit spacing of 1.5;
2. A higher word count limit (20,000) for domestic cases (specifically custody/parenting time) involving a minor; and
3. Extend the word limit on reply briefs to 3500 word count.

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Amended January 19, 2022

Proposed Amendment of Rule 7.212
of the Michigan Court Rules

Family Law Section Position & Requested Modifications

Introduction

The Family Law Section of the State Bar of Michigan has reviewed the proposed changes to MCR 7.212 and, upon recommendation of its Amicus Committee, have prepared this Position Summary, with requested modifications. If the requested modifications are adopted, the Family Law Section supports the amendment of MCR 7.212.

Requested Modifications

- 1. Permit spacing of 1.5;**
- 2. Permit a higher word count limit (20,000) for briefs in domestic cases (specifically custody/parenting time); and**
- 3. Permit a higher word count of 3500 words for reply briefs in domestic cases.**

Reasons for Requested Modifications

Upon extensive discussion, the Family Law Section respectfully requests the above modifications to the proposed amendments to MCR 7.212.

The pilot program, upon which much of the proposed changes are based, permitted line spacing of 133% and 150% (i.e., spacing set at 1.5 and 1.8). The proposed rule amendment, however, simply states “double space,” which would significantly affect the ability to meet the proposed requirements. The pilot program provided for uniformity and clarity and the pilot program guidelines have been well received, well understood, and well utilized.

There are studies which indicate that double-spaced text is actually more difficult to read in digital format. With the continual movement towards a paperless practice in the courts and in private practice, it is increasingly important to consider how documents will be presented not only on paper, but on the various digital technologies available to those reviewing the documents. In addition to advancing accessibility through technology, individual accessibility is crucial. Those who may have vision impairments would benefit from having text spacing more compact, as amplification of documents not only increases font size, but the spacing in between.

The request for exceptions in domestic cases is not new, as there are already exceptions carved out for domestic/custody cases in the Michigan Court Rules, including but not limited to the following:

- MCR 7.212(a)(i) provides a shorter time for filing appellant's brief in custody cases.
- MCR 7.212(b)(i) provides a shorter time for filing appellee's brief in custody cases.
- MCR 2.302(A)(4)(c) provides an exemption from the general civil 14-day timing requirements for initial disclosures in 2.302 for domestic relations actions (the domestic relations provisions have its own disclosure requirements at MCR 3.206(C)(2))
- MCR 2.309(A)(2) limits interrogatories to 20, but domestic cases are granted additional interrogatories per MCR 3.201(C).
- MCR 3.207(B) requires special language in orders involving child support, custody, or visitation. And domestic relations judgments require certain provisions per MCR 3.211(C).
- MCR 7.202(6)(a)(iii) provides for post-judgment appeals of right of domestic relations orders modifying legal and physical custody and domicile.
- MCR 2.301(A)(4) authorizes post-judgment discovery upon the filing of a motion in domestic relations actions defined in subchapter 3.200.

Custody orders are already treated differently than most other post-judgment orders; post-judgment orders changing custody or residence (domicile) are appealable by right. There is no application process, there is only mandatory review, and the brief on appeal will be subject to any briefing requirements.

Other exceptions or specifics carved out for domestic/custody cases recognize that these cases often require more discovery and more nuanced arguments for preparation. These cases often involve litigation which may continue over an extended period of time, involving multiple transcripts, which requires additional discussion and argument upon appeal.

Domestic cases involving custody determinations require review of the 12 statutory best interest factors, which can be lengthy and intricate, and often require a thorough analysis of some or all of those factors. If there is more than one child, a separate analysis of the best interest factors for each child is required, which also demands more space.

Domestic cases already have more discovery requests because there is more information to exchange (and custody cases arising from a Judgment of Divorce will often have other issues like property division, child support, and /or spousal support).

Briefs in custody cases are due within 28 days after transcripts are filed, whereas all other cases receive 56 days. Appellees receive only 21 days to file their brief, whereas others receive 35 days. The abbreviated time periods in custody case limit time for editing briefs. The editing process itself is time-consuming and the shortened custody time period is already taken up with reading transcripts, which are often extensive, reviewing the record and exhibits, and drafting fact-intensive briefs often with a number of issues.

Parties cannot stipulate to an extension of time in a custody case, the only way forward is to file a motion and show good cause for the requested relief. The motion process itself is cumbersome.

The collective experiences of the Amicus Committee of the Family Law Section indicate that many briefs are commonly between 18,000 and 22,000 words, even when working within the limit of 50 pages. While the option to request more words is available, it takes substantially more time and judicial resources to file and review the motion, have that

motion be denied, and then resubmit the brief within the extra 21 days allowed for correction. Permitting domestic relations appeals involving children to have briefs with additional words, up to 20,000, would alleviate this burden.