

Public Policy Position

Proposed Amendment to MCR 7.203 by Adding a New Section (A)(3)

The Government Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 1,273 members. The Government Law Section is not the State Bar of Michigan and the position expressed herein is that of the Government Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Government Law Section has a public policy decision-making body with 21 members. On December 7, 2024, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 6 members did not vote.

Support

Explanation:

GLS is seeking an amendment of MCR 7.203 because it does not address the appeal of a circuit court decision on appeal from an administrative zoning decision. A planning commission or legislative body deciding an administrative zoning matter is apparently not a "tribunal" under the holding of a 2023 Michigan Court of Appeals unpublished case.

In *Northstar Aggregates, LLC v Watson Twp*, 2023 Mich App LEXIS 5340 (7-27-23), unpub COA #363567, the Watson Township Planning Commission (WTPC) denied the Plaintiff's application for a special land use permit to operate a sand and gravel mining business on certain property in the Twp that was zoned low-density residential. The Plfs' appealed that decision to the Circuit Court. Sitting on appeal, the Circuit Court affirmed the WTPC. When the Plfs took a claim of appeal to the COA, the WTPC argued the COA lacked jurisdiction because there was no appeal by right to the COA under MCR 7.203(A). The COA had to decide whether the WTPC was a "tribunal" for MCR 7.203(1)(a) purposes, stating: A tribunal encompasses an administrative agency when it is acting in a judicial or quasi-judicial capacity. *Natural Resources Defense Council v Dept of Environmental Quality*, 300 Mich App 79, 86; 832 NW2d 288 (2013). Quasi-judicial proceedings include procedural characteristics common to courts, such as a right to a hearing, a right to be represented by counsel, the right to submit exhibits, and the authority to subpoena witnesses and require parties to produce documents *Id.* at 86. The Court stated "While some of these characteristics might apply, overall we cannot find that the WTPC acted in a quasi-judicial capacity. See *Ansell*, 332 Mich App at 453 n 1 the appeal in the circuit court was not taken from a court or tribunal because the planning commission is not a court and did not act as a tribunal in issuing the permits." [Northstar

Aggregates, LLC, at p*59-*60].

The proposed amendment to MCR 7.203 adding section (A)(3) would make it clear that a final order or final judgment from a Circuit Court on a zoning ordinance determination is an appeal by right.

PROPOSED AMENDMENT OF MCR 7.203 WITH REGARD TO APPEALS TO THE
COURT OF APPEALS FROM CIRCUIT COURT DETERMINATIONS ON APPEAL FROM
ADMINISTRATIVE DECISIONS MADE BY LOCAL GOVERNMENTS UNDER A
ZONING ORDINANCE

Amendment is CAPITALIZED

Rule 7.203 - Jurisdiction of the Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court

(a) on appeal from any other court or tribunal;

(b) in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

An appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.

(2) A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule;

(3) A FINAL JUDGMENT OR FINAL ORDER OF THE CIRCUIT COURT ON
APPEAL FROM A ZONING ORDINANCE DETERMINATION UNDER MCR 7.122

(B) Appeal by Leave. The court may grant leave to appeal from:

(1) a judgment or order of the circuit court and court of claims that is not a final judgment appealable of right;

(2) a final judgment entered by the circuit court on appeal from any other court;

(3) a final order of an administrative agency or tribunal which by law is appealable to or reviewable by the Court of Appeals or the Supreme Court;

(4) any other judgment or order appealable to the Court of Appeals by law or rule;

(5) any judgment or order when an appeal of right could have been taken but was not timely filed



GOVERNMENT LAW SECTION

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