

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, April 28, 2011, 2 PM
at the State Bar of Michigan Building**

Teleconference 1-877-352-9775, Passcode 9152168764#

AGENDA

1. Call to Order & Welcome
2. Approval of Minutes
3. Old Business
 - a. Juvenile Competency
[SB 0246](#) (Schuitmaker) Juveniles; criminal procedure; juvenile competency standards; revise. Amends sec. 1, ch. XIA of [1939 PA 288](#) (MCL 712A.1) & adds secs. 18n, 18o, 18p, 18q, 18r & 18s to ch. XIA.
Status: 03/09/11 Referred to Senate Judiciary

[SB 0247](#) (Schuitmaker) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends secs. 498d, 498e & 498h of [1974 PA 258](#) (MCL [330.1498d](#) et seq.) & adds secs. 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072 & 1074.
Status: 03/09/11 Referred to Senate Judiciary

[HB 4555](#) (Lipton) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends secs. 498d & 498h of [1974 PA 258](#) (MCL [330.1498d](#) et seq.) & adds secs. 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072 & 1074.
Status: 04/14/11 Referred to House Judiciary

[HB 4556](#) (Lipton) Juveniles; criminal procedure; juvenile competency standards; revise. Amends sec. 1, ch. XIA of [1939 PA 288](#) (MCL 712A.1) & adds secs. 18n, 18p, 18o, 18q, 18r & 18s to ch. XIA.
Status: 04/14/11 Referred to House Judiciary
4. New Business
 - a. [ADM File No. 2011-05 Proposed Amendments of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 1.13, 1.14, 1.15, 1.16, 1.17, 3.2, 4.1, 4.3, 5.2, and 8.4 of the Michigan Rules of Professional Conduct](#)
The proposed amendments of MRPC 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 1.13, 1.14, 1.15, 1.16, 1.17, 3.2, 4.1, 4.3, 5.2, and 8.4 would incorporate language from the comments of these rules into the rule itself.
Issued: March 22, 2011
Commend Period Expires: July 1, 2011
Public Hearing: To be scheduled

- b. [HB 4472](#) (Pscholka) Corrections; parole; appointment of legal counsel for prisoner based upon appeal of parole by victim or prosecutor; prohibit under certain circumstances. Amends sec. 34 of [1953 PA 232](#) (MCL [791.234](#)).
Status: 04/14/11 Referred to House Judiciary
- c. Michigan Supreme Court Terms
Letter from Civil Procedure & Courts Committee
- d. Proposed MCL 712.A.11 – Consent Calendar

5. Committee Reports

- a. Medical Marijuana Subcommittee
- b. Criminal Law Section
- c. Public Defense Update
- d. Custodial Interrogation Recording Task Force

6. Adjournment.



CIVIL PROCEDURE AND COURTS COMMITTEE

January 3, 2011

Elizabeth K. Lyon
Government Relations Director
State Bar of Michigan
306 Townsend St.
Lansing, MI 48933

Re: MCR 7.301(B) and 7.312(E) – Supreme Court Term

Dear Ms. Lyon:

At its meeting on December 18, 2010, the State Bar Civil Procedure and Courts Committee discussed these Court rules, which govern the term of the Supreme Court. The Committee thinks that serious consideration should be given to conforming the term to the election cycle for Justices. This letter explains our thinking. This is an issue that would be of interest to other Bar Sections and Committees, and we understand that you would be able to refer this suggestion to the appropriate groups for their input.

MCR 7.301(B) was adopted in 1989, creating an annual term for the Supreme Court. The term was originally set to run from October 1 through September 30, but the rule was amended in 1995 to have the term run from August 1 through July 31. Under both versions the idea was that the Court would get out all of its opinions in cases that had been argued beginning in October of the previous year by July 31. Much of the motivation was to provide a disincentive to allowing cases to languish for up to several years.

The rule now reads:

(B) Term. The Court will hold an annual term beginning on August 1 and ending on July 31. At every term, the Court will announce a date after which it will not call cases for argument except pursuant to order on a showing of special cause. Except as provided in MCR 7.312(E), the end of a term has not effect on pending cases.

MCR 7.312(E) says:

(E) Reargument of Undecided Cases. When a calendar case, other than one argued pursuant to special order under MCR 7.301(B), remains undecided at the end of the term in which it was argued, either party may file a supplemental brief. In addition, if either party requests with 14 days after the beginning of the new term, the clerk shall schedule the case for reargument.

Setting October 1 as the time for starting argument of cases for the new term unnecessarily creates the likelihood of disruption when, as often happens, there is a change in personnel on the Court on

January 1 of odd numbered years as a result of the election the previous November. Most cases that have been argued in October and November will not be decided before the new Justice or Justices take office (or there will be pressure to rush those opinions out), so that fewer than 7 Justices will consider those cases, unless they are reargued. [In October and November of 2008 and 2010, there were oral arguments in a total of 33 Calendar Cases – and 17 arguments on applications.] And further disruption is caused, as in 2008 and 2010, when cases scheduled to be argued in December are adjourned with fairly short notice. This is likely to be repeated in 2012 and 2014, as in each of those years an incumbent Justice will be ineligible to run for reelection.

When the Term of Court rule was originally under consideration the two arguments for the October 1 start were (1) that is what the US Supreme Court does, and (2) the Justices like to avoid scheduling anything for the months of February and August. Neither reason is persuasive. The US Supreme Court doesn't have the January 1 turnover problem. And the Michigan Justices can still take off February and August (from oral arguments and conferences – most of them are actually working much of those months anyway).

Thank you for handling the circulation of this suggestion. If you or a Section or Committee has questions, feel free to contact me.

Frank J Greco
Chair, State Bar Civil Procedure and Courts Committee
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Proposed MCL 712A.11 - Consent Calendar

MCL 712A.11

(1) Except as provided in subsection (2), if a person gives information to the court that a juvenile is within section 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. If the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed. If the court determines that formal jurisdiction should not be acquired, but protective and supportive action by the court will serve the best interest of the juvenile and the public, the court may proceed on the consent calendar, as provided in subsection (8).

(2) – (7) Unchanged.

(8) The court may establish an informal docket called the “Consent Calendar.” Cases placed on the consent calendar are not adjudicated. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian, agree to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time prior to disposition. A case involving the alleged commission on an offense listed in MCL 780.781(1)(g), may only be placed on the consent calendar upon compliance with the procedures set forth in the Crime Victims Rights Act, MCL 780.786b.

(a) Prior to placing a case on the consent calendar, notice and an opportunity to be heard shall be provided to the prosecuting attorney. The prosecutor shall provide the victim with notice as required by article 2 of the Crime Victims Rights Act, MCL 780.781 et seq.

(b) Consent calendar cases must be maintained in a non-public manner.

(i) Access to consent calendar case records shall be provided to the juvenile, parents, guardian, or legal custodian, the guardian ad litem, counsel for the juvenile, the Department of Human Services if related to investigation of neglect and abuse, law enforcement, prosecutor, and other courts.

(ii) Consent calendar “case records” mean the pleadings, motions, authorized petitions, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, consent calendar plan, and court orders.

(iii) The contents of the confidential file, as defined in MCR 3.903(A)(3), shall continue to be maintained confidentially.

(c) The court shall conduct a consent calendar conference with the juvenile and the parent, guardian, or legal custodian, to discuss the allegations. The

prosecuting attorney and victim may, but need not, be present. If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court shall issue a written consent calendar case plan. The plan may include actual court costs and shall include restitution pursuant to the Crime Victims Rights Act, MCL 780.781 et seq. A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian. The consent calendar case plan is not an order of the court, but shall be included as a part of the case record. The court may not enter an order of disposition in a case placed on the consent calendar. Violation of the terms of the consent calendar case plan may result in the court returning the case to the formal calendar.

(d) Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and shall destroy all records of the proceeding in compliance with the Michigan Trial Courts General Records Retention and Disposal Schedule.

(e) If the court did not authorize the original petition and it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition.

(f) If the court authorized the original petition and it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, only after a hearing.

(g) Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge.

(h) Upon successful completion of the consent calendar, courts shall report the successful completion of the consent calendar to the juvenile and the Michigan State Police. The state police shall maintain a nonpublic record. This record shall be furnished to a court, police agency, or office of a prosecuting attorney upon request of any of the listed agencies.

(i) The state court administrative office will collect data regarding the consent calendar and shall publish an annual report that includes information and statistics detailing the use and success of the consent calendar.