



## 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.

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