

# MICHIGAN SUPREME COURT



## *Office of Public Information*

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**COURT OF APPEALS CONFLICT RESOLUTION RULE ON AGENDA FOR SUPREME COURT'S JANUARY 23 PUBLIC HEARING; COMMENTS SOUGHT**  
**Proposed change: panel that sees conflict with earlier Court of Appeals decision would be required to explain result it would have reached if not bound by prior ruling**

LANSING, MI, January 18, 2008 – A proposed change to the way Court of Appeals panels approach disagreements with earlier decisions of that court is on the agenda for the Michigan Supreme Court's January 23 public hearing in Lansing.

Under Michigan Court Rule 7.215, a published Court of Appeals opinion issued on or after November 1, 1990 has precedential effect and must be followed by future Court of Appeals panels, as well as state trial courts, unless overturned by the Michigan Supreme Court or a special panel of the Court of Appeals. When a Court of Appeals panel follows an earlier decision only because it is required to under the court rule, it “must so indicate in the text of its opinion, citing this rule and explaining its disagreement with the prior decision,” MCR 7.215 provides. Within 28 days, the chief judge of the Court of Appeals must poll its judges to determine whether to convene a special panel to resolve the conflict between the earlier decision and the ruling that the later panel would have made. “Special panels may be convened to consider outcome-determinative questions only,” the court rule adds.

Under the proposed change (**ADM 2006-06**), a Court of Appeals panel that disagrees with the earlier decision must – “if the ultimate disposition of the case is thereby affected” – not only explain its disagreement with the prior Court of Appeals ruling, but also state the result it would have reached if not bound by the earlier decision. A staff comment to the rule proposal states that the change would also “shift responsibility for making an ‘outcome-determinative’ assessment from the entire bench to the panel deciding the case in which the conflict is raised.”

Also on the public hearing agenda is a change to MCR 5.125, which defines “interested persons” who are entitled to notice in petitions for the appointment of a guardian for an alleged incapacitated person. On January 8, 2008, the Court adopted an amendment (**ADM 2007-27**) of MCR 5.125(C)(22)(d), which formerly provided that persons entitled to notice included the parents of the alleged incapacitated individual – but not if the individual had adult children. The change, according to a staff comment, makes clear “that parents are interested persons entitled to notice in a petition for the appointment of a guardian of an alleged incapacitated individual, regardless of whether the ... individual has living adult children.” The Court will consider whether to retain the amendment, which the Court adopted to conform the court rule to a provision in the Estates and Protected Individuals Code (MCL 700.5311).

These matters, and other proposed and recently-adopted court rules, may be viewed at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/#proposed>.

The hearing will start at 9:30 a.m. in the Supreme Court courtroom on the 6<sup>th</sup> floor of the Michigan Hall of Justice; the hearing will adjourn no later than 11:30 a.m.

The Court regularly holds hearings as part of its public comment process for proposed court rules and other administrative matters, and invites members of the public to share their views on agenda items. Those wishing to speak at the hearing should contact the Clerk of the Court at P.O. Box 30052, Lansing, Michigan 48909 or by e-mail at [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov), no later than Monday, January 21, and should reference the ADM file number for the items on which they wish to address the Court. Speakers will have three minutes each to present their views; Supreme Court Justices may ask questions of the speakers.

A schedule of the Court's public hearing is available online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm>.

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