Public Policy Position
ADM File No. 2015-21

The Appellate Practice Section is a voluntary membership section of the State Bar of Michigan, comprised of 791 members. The Appellate Practice Section is not the State Bar of Michigan and the position expressed herein is that of the Appellate Practice Section only and not the State Bar of Michigan. The State Bar's position on this matter to support ADM File No. 2015-21 with the amendment that would retain the language in the current MCR 7.204 (A)(1) that allows trial courts to extend the 21-day period of appeal if during those 21 days, the trial court finds "good cause" for doing so.

The Appellate Practice Section has a public policy decision-making body with 24 members. On June 5, 2020, the Section adopted its position after an electronic discussion and vote. 21 members voted in favor of the Section's position on ADM File No. 2015-21, 0 members voted against this position, 0 members abstained, 3 members did not vote.

Support with Recommended Amendments

Explanation

The Council supports the proposal with the exception of the proposed amendment to MCR 7.204(A)(1). That rule, at it reads now, allows trial courts to extend the 21-day period of appeal if, during those 21 days, the trial court finds "good cause" for doing so. The proposed amendments would remove this good cause exception. The Council opposes this removal and believes the trial court ought to retain the authority to extend the window for filing an appeal in these very limited circumstances.

Contact Person: Bradley R. Hall
Email: bhall@sado.org

SBM STATE BAR OF MICHIGAN

p (517) 346-6300
p (800) 968-1442
f (517) 482-6248

306 Townsend Street
Michael Franck Building
Lansing, MI 48933-2012

www.michbar.org

APPELLATE PRACTICE SECTION

July 1, 2020

Ms. Anne M. Boomer
Administrative Counsel, Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2015-21

Dear Ms. Boomer:

The Michigan Supreme Court has invited comments on ADM File No. 2015-21. By a unanimous vote, the Appellate Practice Section Council has adopted the following comment in support of these proposed amendments, with one small exception.

The Council believes that the proposed amendments appropriately resolve an issue often raised by parent respondents in child welfare proceedings. Specifically, there has been a recurring question about whether a parent respondent whose parental rights have been terminated may, in his/her appeal of that termination, raise issues and alleged errors relating to the initial adjudication stage.

In most termination cases, there is an adjudication (where the court takes jurisdiction over the child and the respondent parent through a plea or a trial), then a period of time where reunification efforts are made, and finally a hearing on a termination petition if reunification is unsuccessful. Court rules appear to permit respondent parents to appeal the adjudication immediately. Most parents do not; some, after their parental rights were ultimately terminated, have attempted to raise adjudication errors in their later appeal.

In *In re Hatcher*, the Supreme Court ruled that these later challenges to adjudication were impermissible "collateral attacks" on a decision that should have been raised earlier. However, the *Hatcher* rule did not adequately address all situations, as cases arose where the original adjudication error was so stark, or violated due process in such a clear way, that courts found ways to correct adjudication errors even when raised in appeals of final termination orders.

The Council believes that the proposed amendments will lead to improved due process for respondent parents. While these amendments more clearly bar the appeal of adjudication errors unless taken at the time of adjudication, they also condition that bar on the trial court explicitly advising the respondent parent – at the time of adjudication – that an appeal is available and may not be raised later. This process of requiring explicit notice to parent respondents of their rights, and what they will waive if they do not appeal immediately, strikes the Council as a fair approach.

The Council does object, however, to one piece of the proposed amendment to MCR 7.204(A)(1). That rule, at it reads now, allows trial courts to extend the 21-day period of appeal if, during those 21 days, the trial court finds "good cause" for doing so. The proposed amendments would remove this good cause exception. The Council opposes the removal of this provision and believes the trial court ought to retain the authority to extend the window for filing an appeal in these very limited circumstances.

While considering the proposed amendment to MCR 7.204(A)(1), the Council also reached a consensus that this provision could read more clearly with a few organizational edits. Therefore, we propose the following as a potential rewrite of 7.204(A)(1) that would retain the "good cause" language we feel is important:

Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), "entry" means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal's register of actions.

(1) Except where another time is provided by law or court rule, an appeal of right in any civil case must be taken within 21 days. The period runs from the entry of:

(a) the judgment or order appealed from;

(b) an order appointing counsel;

(c) an order denying a request for appointment of counsel in a civil case in which an indigent party is entitled to appointed counsel, if the trial court received the request within the initial 21-day appeal period; or

(d) an order deciding a post-judgment motion for new trial, rehearing, reconsideration, or other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within any further time that the trial court has allowed for good cause during that initial 21-day period.

(2)-(3) [Unchanged.]

We thank you for this opportunity to comment.

Very truly yours,

s/Bradley R. Hall
Chair, Appellate Practice Section