COA Opinion: Affirmative defenses do not require a response, and the absence of a response to an affirmative defense stands as a denial of the defense even if the opposing party makes a demand for a response

9. February 2011 By Jeanne Long

In McCracken v City of Detroit, No 294218, the Court of Appeals held that affirmative defenses are not pleadings requiring a response and that the absence of a response stands as a denial of the defense even if the opposing party makes a demand for a response.

In the trial court, the plaintiffs filed a complaint alleging race discrimination and a hostile work environment. The defendants answered the complaint, and in a separately captioned document attached to the answer, defendants filed special and affirmative defenses. At the end of the affirmative defense, the defendants demanded an answer to the affirmative defenses. The plaintiffs did not respond to the affirmative defenses within 21 days.

The defendants then filed a motion for judgment in which they contended that they were entitled to summary disposition because the plaintiffs had admitted the truth of the affirmative defenses by failing to respond to them. The trial court concluded that the defendants were entitled to summary disposition on that basis.

On appeal, the Court of Appeals reversed and remanded. It held that a demand for a response to an affirmative defense does not, under the Court Rules, render the affirmative defense a pleading that requires a response. First, it noted that MCR 2.108(A)(5) provides 21 days in which to respond to a pleading, but that the Rules provide a limited and exclusive definition of "pleading" in MCR 2.110(A). That definition does not include affirmative defenses as pleadings. Additionally, MCR 2.110(B) identifies the pleadings to which a party must respond, and those pleadings are also limited and exclusively defined by the Rule, which does not include affirmative defenses. According to the plain language of MCR 2.110(A) and (B), affirmative responses are not pleadings that require a response.

The Court also addressed the language in MCR 2.111(F)(3) stating that affirmative defenses should be part of the responsive pleadings. It held that although an affirmative defense is part of a responsive pleading, it does not amount to a pleading by itself, nor does an affirmative defense that demands a reply count as a pleading requiring a response.

Finally, the Court held that even if affirmative defenses are pleadings under MCR 2.110, they should not be deemed admitted upon an untimely response. The Court pointed to MCR 2.111(E)(2), which states that "[a]llegations in a pleading that does not require a responsive pleading are taken as denied." The Court held on the basis of this plain language that the failure to respond to an affirmative defense is equivalent to a denial of the defense.

For these reasons, the Court of Appeals held that a party is not required to respond to the opposing party's affirmative defenses, even where the opposing party demands a response, and that the absence of a response to an affirmative defense stands as a denial of that defense.