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February 28, 2017

Larry Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2015-22: Proposed Amendment of Rules 3.203 and 3.208 of the Michigan Court Rules

Dear Clerk Royster:

At its February 21, 2017 meeting, the Executive Committee of the State Bar of Michigan (the Committee) considered the above-referenced proposed amendments published by the Court for comment. In its review, the Committee considered recommendations from the Civil Procedure and Courts Committee and Justice Policy Initiative. In addition, the Public Policy Committee reviewed and made recommendations to the Committee on the rule proposal.

After this review, the Committee voted unanimously to support the proposed amendments subject to the following recommended changes to MCR 3.203:

1. Remove all references to text messaging;
2. In subsection (A)(3)(g), change “sent after 4:30 p.m.” to “after the close of the business day;” and
3. In subsection (A)(3)(j), change “the conclusion of the case” to “a judgment or final order is entered and all appeals have been completed.”

The Committee was greatly concerned with the use of text messaging as a manner of alternative electronic service to provide parties with Friend of the Court notices and court papers, particularly because there is no reliable way to ensure that text messages are actually received by the recipient. While in some circumstances, text messaging may be the easiest way to reach parties, it is also inherently unreliable because a person will only receive a text message if he or she has a working cellular telephone and had paid the cellular carrier bills. The use of text messaging in Friend of the Court proceedings is particularly worrisome, given the important interests at stake in these proceedings. Therefore, the Committee recommends that the Court remove text messaging as a means for alternative electronic service in MCR 3.203.

The Committee also noted that not all courts close at 4:30 p.m. The Committee believes that the Friend of the Court should have until the close of the business to send documents via alternative electronic service; therefore, in subsection (A)(3)(j) the Committee

recommends that documents sent after the close of the business day – rather than at 4:30 p.m. – be deemed to be served on the next business day.

Finally, in subsection (A)(3)(j), the Committee believed that it would be unnecessary and overly burdensome on the Friend of the Court to retain archives until the conclusion of the case. Many Friend of the Court cases do not conclude until all of the children reach adulthood. Therefore, the Committee recommends that the Friend of the Court only be required to keep an archive until “a judgement or final order is entered and all appeals have been completed.”

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Lawrence P. Nolan, President