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Clerk of the Court

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Michigan Supreme Court

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48933-2012

RE: ADM File No. 2011-08 – Proposed Amendment of Rule 2.116 of the Michigan Court Rules

Dear Clerk Davis:

At its July 27, 2012, meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Board considered a recommendation from the Civil Procedure & Courts Committee. The Board voted to support the amendment with two changes recommended by the Civil Procedure & Courts Committee.

First, the word “barred” should be replaced by a more accurate statement. “Barred” is misleading as to several of the grounds listed in that subrule. For example, an action is not barred by an agreement to arbitrate; rather (at least as to agreements that fall within the arbitration statute) the action is stayed while the arbitration goes forward under the court’s order. MCR 3.602(C). Where the ground is infancy or other disability, the granting of the motion would normally lead to appointment of a guardian ad litem, rather than dismissal. See MCR 2.201(E)(1)(c). In the case of the proposed addition of forum selection agreements, the result would presumably be dismissal without prejudice (perhaps with some discretion to deny the motion for unusual circumstances -- agreement to litigate in Afghanistan or Syria?). But note that the forum selection statute also includes staying the action as permissible relief. MCL 600.745(3). The Committee’s recommendation is to amend the introductory phrase of subrule (C)(7) to read:

“Entry of judgment, dismissal of the action, or other relief is appropriate because of release . . .”

Second, the reference to forum selection agreements in the published proposal is unnecessarily complicated. It would be simpler to refer to an agreement “to litigate in a different forum.”

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
Julie I. Fershtman, President