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December 13, 2016

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

RE: ADM File No. 2015-02 – Proposed Amendment of Rule 7.213 of the Michigan Court Rules

Dear Clerk Royster:

The Executive Committee of the State Bar of Michigan has considered the above-referenced rule amendment published for comment. In its review, the Committee considered recommendations from the Civil Procedure & Courts Committee, the Alternative Dispute Resolution Section, and the Appellate Practice Section.

The Committee voted to support the amendment with several recommended amendments. Two of the amendments, recommended by the Civil Procedure and Courts Committee, would ensure that mediation occurs early in the appellate process and protect parties from the costs and expenses of simultaneously mediating and preparing appellate briefs. The third amendment, based on the position of the Appellate Practice Section, would exclude domestic relations from the mediation rule. The Committee agrees that because domestic relations cases deal with unique concerns, it would be better to adopt a separate rule to determine if such appeals would be suitable for mediation.

- To ensure that mediation occurs early in the appellate process, we recommend adding the following language after the first clause of subsection (A)(1)(a): "preferably as soon as practicable after the filing of the docketing statement."
- To expressly exclude domestic relations cases from appellate mediation rule, we recommend adding the following sentence at the end of subsection (A)(1)(a): "Appeals of domestic relations actions are excluded from mediation under this rule."
- To protect parties from the costs and expense that would otherwise be incurred if they were required to mediate and prepare appellate briefs at the same time, we recommend adding the following sentence at the end of subsection (A)(1)(d): "The Court will consider any recommendation from the mediator as to whether any filing deadlines should be tolled or extended."

With the amendments, (A)(1) would read as follows (additional language in bold):

(1) Selection for Mediation.

(a) At any time during the pendency of an appeal before the Court of Appeals, preferably as soon as practicable after the filing of the docketing statement, the chief judge or another designated judge may order an appeal submitted to mediation. When a case is selected for mediation, participation is mandatory; however, the chief judge or another designated judge may remove the case on finding that mediation would be inappropriate. Appeals of domestic relations actions are excluded from mediation under this rule.

(b)-(c) Unchanged

(d) The submission of an appeal to mediation will not toll any filing deadlines in the appeal unless the court orders otherwise. The Court will consider any recommendation from the mediator as to whether any filing deadlines should be tolled or extended.

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