



p 517-346-6300 August 13, 2015  
p 800-968-1442 Larry S. Royster  
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www.michbar.org Michigan Supreme Court  
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Lansing, MI 48909

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

**RE: ADM File No. 2015-09 – Proposed Amendment of Rule 2.403 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 24, 2015 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Board agreed with a recommendation from the Civil Procedure & Courts Committee to support the proposed amendment with a further amendment.

The Board recommends not striking the word “attorney” from the rule and would not add the word “legal” before services because doing so could impact the types of case evaluation sanctions that are currently available.

Rule 2.626 of the Michigan Court Rules, currently says that

An award of attorney fees may include an award for the time and labor of any legal assistant who contributed nonclerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, Section 6 of the Bylaws of the State Bar of Michigan.

The amendment to Rule 2.403, as currently drafted with the last clause “which may include legal services provided by attorneys representing themselves or the entity for whom they work,” would arguably not include the time and labor of a legal assistant or those other matters covered by MCR 2.626.

The Board is also concerned that removing the word “attorney” from the term “attorney fee,” would invite litigants to argue that MCR 2.626 no longer applies (which was not the intent of the drafter). The Board recommends a further amendment to provide clarity:

Rule 2.403 Case Evaluation

(O)(6)(b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation, which may include legal services provided by attorneys representing themselves or the entity for whom they work, including the time and labor of any legal assistant as defined by MCR 2.626.

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  
Thomas C. Rombach, President