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July 27, 2017

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

**RE: ADM File No. 2016-41: Proposed Amendment of Rules 1.0, 1.2, 4.2, 4.3 of the Michigan Rules of Professional Conduct and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 21, 2017 meeting, the State Bar of Michigan Board of Commissioners (the Board) considered the above-referenced proposed amendments published by the Court for comment. In its review, the Board considered recommendations from the State Bar Workgroup on Unbundling (the Workgroup), which initially developed the limited scope representation rules that were adopted by the State Bar Representative Assembly and submitted to the Court for consideration. In addition, the Board considered recommendations from the Committee on Justice Initiatives and the Family Law Section.

After this review, the Board voted unanimously to support the limited scope representation rules set forth in ADM 2016-41. For the alternatives proposed by the Court for Michigan Rule of Professional Conduct 1.2(b), the Board unanimously preferred Alternative A.

Alternative A provides flexible language that encourages written informed consent when feasible, while Alternative B requires written informed consent with four exceptions. When developing the limited scope representation rules that the State Bar proposed to the Court, the Workgroup considered a number of informed consent options that had been adopted by various states among the 31 states that have already enacted limited scope representation rules. The Workgroup considered language similar to Alternative B; however, the State Bar ultimately chose to recommend the language set forth in Alternative A.

While rules like Alternative B have the benefit of clearly setting forth when informed consent need not be in writing, the State Bar decided not to recommend such language because it is impossible to anticipate and enumerate all exceptions that might be reasonable. Further, the State Bar is concerned that Alternative B could create an unnecessary barrier to attorneys, such as those offering one-time consultations on a pro bono basis to clients of limited means, if the limited scope attorneys are required to obtain and store written informed consent for every client in which the representation does not

clearly fall within one of the enumerated exceptions. While we are opposed to Alternative B for these reasons, perhaps the exceptions in Alternative B could be offered as helpful, but not exclusive, guidance in comments to the rule.

While most states do not require informed consent to be in writing at all, the State Bar proposed Alternative A to encourage limited scope attorneys to obtain informed consent in writing. The language “preferably in writing” was intended to make the preference for written informed consent clear, but allow attorneys the flexibility to deliver needed services when written consent is not feasible or practical, such as in the circumstances described above. For these reasons, the State Bar recommends that the Court adopt Alternative A.

We thank the Court for the opportunity to convey the State Bar’s position.

Sincerely,



Janet K. Welch  
Executive Director

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