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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. 2017-06: Proposed Amendment of Rules 7.300 et seq. 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 Civil Procedure & Courts Committee, the Criminal Jurisprudence and Practice Committee, the Justice Policy Initiative, the Appellate Practice Section, and the Family Law Section.

The Board is fully supportive of the Court's efforts to amend the Michigan Court Rules to reflect the process of filing electronic pleadings; however, as currently drafted, the rules raise a number of concerns in need of further review, a few of which are discussed below. To address these concerns and others raised by the State Bar sections and committees, the State Bar urges the Court to appoint a workgroup to review and improve the proposed rules and rule language, and offers its assistance in this regard.

First, the Board is concerned with the vexatious litigator provision set forth in MCR 7.316(C)(3). As currently proposed, this rule allows the Court "on its own initiative or on motion of another party" to "impose filing restrictions" on a party that is deemed to be a vexatious litigator, including "prohibiting the party from continuing or instituting legal proceedings in the Court without first obtaining leave, prohibiting the filing of actions in the Court without the filing fee or security costs required by MCR 7.209 or MCR 7.319, or other restriction the Court deems just." These filing restrictions raise access to justice concerns, as they potentially could prevent a party with valid issues from accessing the Court. The Board is not aware of a persistent problem with vexatious litigators requiring a separate court rule, and the Court already has broad authority to address problems raised by vexatious litigators through the vexatious proceedings provisions set forth in MCR 7.316(C)(1) and (2).

In addition, the Board is concerned that specifically referencing certain types of electronic media in proposed MCR 7.312(D)(1) could lead to future issues and confusion, given the ever-evolving nature of technology. For example, a "CD" or "thumb drive" may become obsolete in the not too distant future.

The Board also questions the use of the term “administrative dismissal” in proposed MCR 7.318, as the difference between a dismissal and an administrative dismissal is not evident.

The State Bar shares the Court’s interest in modernizing the Michigan Court Rules to account for technology and electronic filing, and the State Bar would be happy to provide whatever support that the Court deems appropriate to further improve these court rules.

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

Sincerely,



Janet K. Welch
Executive Director

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