

p 517-346-6300

April 30, 2008

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Clerk of the Court

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Michigan Supreme Court

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Lansing, MI 48909

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48933-2012

RE: ADM File No. 2006-32

Proposed Amendment of Rule 2.504 of the Michigan Court Rules

Dear Clerk Davis:

At its April 11, 2008 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. After careful consideration of recommendations from the Civil Procedure and Courts Committee and the Committee on Justice Initiatives, the Board voted to oppose the proposed rule amendment. The two Committees agreed on the following amendments that were supported by the Board:

Regarding subrule (1), the committees support making the provision applicable to both parties, permitting entry of a default as well as a dismissal, but oppose giving the court the authority to do so sua sponte. The court is not a party to the case, and has adequate authority to enforce the rules and its orders. They recommend deleting “, or sua sponte,” from the proposed rule as published.

Regarding subrule (2), the committees oppose any changes to the existing rule for the reasons stated above. A defendant might not want to move to dismiss at that point. The defendant might want to present evidence to strengthen the case for sanctions for bringing a meritless case or to guard against an appellate court disagreeing with the trial judge’s decision. The language “action, claim, or hearing tried without a jury” may be confusing. There was also opposition to striking the word “shown” near the end of the first sentence. The judge is to make the ruling only on the evidence presented.

We appreciate the opportunity to offer this position for the Court’s consideration. Please contact me with any further questions.

Sincerely,



Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Ronald D. Keefe, President