

p 517-346-6300

July 31, 2008

p 800-968-1442

f 517-482-6248

www.michbar.org

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

RE: ADM File No. 2007-28
Proposed Amendment of Rule 3.901 of the Michigan Court Rules; Proposed
Adoption of New Rule 3.930 of the Michigan Court Rules

Dear Clerk Davis:

At its July 25, 2008 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. The Board of Commissioners unanimously voted to **support ADM File No. 2007-28**. The Board recognized this as a desirable application of current MCR 2.518 to juvenile proceedings.

After the Board's consideration of this proposal, it received the following position statement from the Appellate Practice Section. I offer their suggested amendments for your consideration without the opportunity for the State Bar's consideration of its endorsement:

The Appellate Practice Section supports ADM 2007-28 in principle, but requests that proposed MCR 3.930(B) be revised to add language for a specific notice provision that assures the preservation of the record until the possibility of appellate review has passed.

Specifically, the Section notes that proposed MCR 3.930(B) is identical to the current MCR 2.518(B) on receipt and return of disposal of exhibits. The Section believes that both the current MCR 2.518(B) and the proposed MCR 3.930(B) significantly lack any notice provision to the parties. The Section is concerned that the current language allows trial courts to dispose of exhibits without notice before the time of appeal has expired. As Longhofer, Michigan Court Rules Practice (2004), Text to MCR 2.518, Author's Commentary § 2518.3, p. 307, points out, a similar provision in MCR 2.316(B)(2)(b) involving the removal of discovery materials from the court file requires notice to the parties and counsel of record, when possible. Similar language in these other file retention procedure rules would be preferable.

The Section proposes that an analogous provision be incorporated in the proposed MCR 3.930(B) and that MCR 2.518(B) be amended to track this

language as well. The Section believes that standardizing these record retention rules by the inclusion of a specific notice provision would preserve the record until the possibility of appellate review has passed.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Welch".

Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Ronald D. Keefe, President
Paul Bernard, Chair, Appellate Practice Section