

p 517-346-6300

September 26, 2012

p 800-968-1442

Corbin Davis

f 517-482-6248

Clerk of the Court

www.michbar.org

Michigan Supreme Court

P.O. Box 30052

Lansing, MI 48909

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

RE: ADM File No. 2011-14 – Proposed Amendment of Rule 2.105 of the Michigan Court Rules

Dear Clerk Davis:

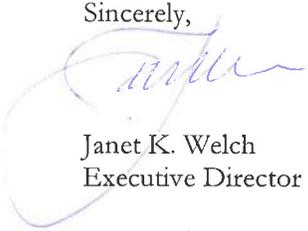
At its September 4, 2012 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Committee considered recommendations from the Civil Procedure & Courts Committee. The Committee voted unanimously to oppose the amendment.

The Committee believes that what constitutes “diligent inquiry” is best left to the trial court’s discretion and that attempting to either mandate or call out one particular method of a “diligent inquiry” is not suitable for a court rule and will lead to the need for continual revision as technology and norms evolve. Moreover, the ambiguity of the proposed language could lead to litigation to clarify its meaning. Specifically, it is unclear whether the proposal creates a mandatory requirement of internet inquiry (where access exists) when an address is “unknown” (which is what the commentary suggests), or whether an internet search is simply one example of a diligent inquiry. If the former is intended, “must” is a better word than “shall.” Moreover, if the former is intended, the rule leads to an odd result: when an address is believed to be known (e.g., a mailing address with no forwarding address on file with the post office), no inquiry is required even though the “known” address may be wrong, but when it is “unknown,” an online search is mandatory.

Beyond this issue, the proposed language falsely presupposes a neat and orderly internet. What is meant by “an online search” is undefined and, in this context, perhaps indefinable. Does it simply mean any search engine search? If so, such a search might well yield highly unreliable results. Is the moving party supposed to attempt to accomplish service at each of the addresses which come up in an internet search? This could be a substantial, inefficient, and unproductive burden, especially for a common name. The other option would be to endorse a particular type of online search (e.g., public records searches available through Westlaw), but given the frequency with which established norms change on the internet, revising a rule to constantly reflect state-of-the-art is a fool’s errand.

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
Bruce A. Courtade, President