

Report on Public Policy Position

Name of committee:

Civil Procedure and Courts Committee

Contact person:

Frank Greco

E-mail:

frankgreco@charter.net

Proposed Court Rule or Administrative Order Number:

[2007-18 Proposed Amendment of Rule 2.117 of the Michigan Court Rules](#)

The proposed amendment would revise MCR 2.117 to provide that an attorney-client relationship continues until a final judgment is reached and the period allowed to appeal by right has expired unless the attorney discontinued the relationship before that time. Also the proposal would clarify that follow-up or ministerial actions performed by the attorney following notice of termination do not extend the attorney-client relationship.

Date position was adopted:

December 18, 2010

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting

Number of members in the decision-making body:

17

Number who voted in favor and opposed to the position:

11 Voted for position

0 Voted against position

0 Abstained from vote

6 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The proposed amendment would add language to MCR 2.117(C)(1) to provide that a lawyer's appearance ends when "the attorney notifies the attorney's client that the attorney is terminating representation of the client." It would further state: "Follow-up or ministerial acts performed by the attorney with regard to the client's file following, notice of termination do not extend the attorney-client relationship.

Committee members were unaware of problems in this area that would necessitate this amendment. And it has very serious problems. Once a lawyer has appeared in the case, the lawyer's role is not simply a matter between the lawyer and the client. The court and the other parties to the case are entitled to expect that the lawyer continues to

represents the client. The proposed amendment would let the lawyer escape further responsibility simply by telling the client. This would seriously undermine the court's ability to control proceedings. And, faced with an unresponsive attorney, opposing counsel is presented with potential ethical problems in determining whether to contact the opposing client directly. The current rule, which requires court approval of the withdrawal, is far preferable.

The last sentence, regarding acts after withdrawal, deals with an entirely separate question that is not appropriate for court rule treatment. That language seems directed at a situation like that in *Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, PC v Bakshi*, 483 Mich 345 (2009) (such ministerial acts do not extend the statute of limitation for purposes of an action for the attorney's fee – and by analogy, perhaps for legal malpractice purposes). But that is a substantive question not appropriate for treatment the court rules. *Seyburn et al v Bakshi* establishes the basic principle, and variant situations should be dealt with by case law – there are far too many variations for a rule to cover everything. And the language in the proposal is so general that it wouldn't provide significant guidance anyway.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in <http://courts.michigan.gov/supremecourt/Resources/Administrative/2007-18-11-23-10.pdf>