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Clerk of the Court
Michigan Supreme Court
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**RE: ADM File Nos. 2005-05 & 2006-20
Proposed Amendments of Rules 2.403, 2.404, 2.410, 2.411 and 3.216 of the
Michigan Court Rules**

Dear Clerk Davis:

At its March 24, 2009 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendment published for comment. The Executive Committee voted to authorize the Committee on Justice Initiatives (CJI) to advocate its position. We would appreciate the Court's acceptance and consideration of CJI's position after the published comment deadline.

CJI is pleased to see the language in 2.403(H)(2) that will make it clear that case evaluation fees must be waived in accordance with MCR 2.002. Currently it appears courts handle case evaluation fee waivers in many different ways. Local courts should have flexibility. However, CJI believes it is important for each court to publish its policies and procedures for fee waivers and apply them consistently. We suggest that the rule require that these policies and procedures be a part of the already required ADR plans. Additionally we recommend that there be a specific authorization for the use of a portion of late fees to pay for the services of case evaluators when fees are waived.

Proposed Language

2.403(H)

(4) The Court shall adopt and publish a written plan describing how it will provide case evaluation services to persons who are eligible for waiver of such fees under Sub rule (2). A portion of any late fees paid to the Court pursuant to Subrule (I)(2) may be aggregated and used to pay the fees of mediators or case evaluators in cases where fees are waived.

Proposed Commentary:

Local courts may use different methods to ensure case evaluation services are provided to individuals for whom mediation fees are waived due to indigency. For example, a court may, as a condition of participation as a case evaluation, require case evaluators to handle up to a certain number of cases pro bono. Alternatively, the court may pay the fees for case evaluators. If the court covers the cost of the waived fees, the court may

choose to allocate a portion of any late fees paid on other case evaluations to pay for this expense.

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

Sincerely,



Hon. Cynthia D. Stephens
Judge, Michigan Court of Appeals
Co-Chair, Committee for Justice Initiatives



Terri L. Stangl
Executive Director, Center for Civil Justice
Co-Chair, Committee for Justice Initiatives

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Edward Pappas, President, State Bar of Michigan