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June 28, 2011

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

RE: ADM File No. 2011-04 – Proposed Amendments of Rule 3.911 and Rule 3.915 of the Michigan Court Rules

Dear Clerk Davis:

At its June 10, 2011 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendments published for comment. In its review, the Board considered recommendations from the Domestic Violence Committee and the Justice Policy Initiative. The Board voted unanimously to support the proposed amendments. I am providing their rationale for your consideration:

Domestic Violence Committee:

The proposed amendments to MCR 3.911 and 3.915 would address fundamental constitutional due process rights in child protective proceedings; a respondent-parent's right to counsel and right to jury trial.

The proposal to amend MCR 3.911 would eliminate the requirement that a request for jury trial be made within 14 days of the court's notice and would expand the time to no later than 21 days before trial.

The proposal to amend MCR 3.915 would require counsel for indigent parents be appointed at all child protection hearings, including the preliminary hearing. This proposal recognizes that some courts fail to appoint counsel until well into the proceeding and after a parent's fundamental rights have been compromised.

Both amendments benefit parents and children by providing fundamental due process rights to protect a parent's constitutional right to parent their children absent a finding of unfitness. See *Troxel v Granville*, 530 US 57 (2000). By strengthening due process rights, the rules will protect children who may have been inappropriately removed from their homes.

Justice Policy Initiative:

The preliminary hearing is a critical stage of the court proceedings. It will determine where the children will be placed as well as parental visitation. The parents can be overwhelmed by this initial decision making process. They can be confused, hostile, fearful and may not have sufficient information or an understanding of the proceeding to make a rational decision about where their children will be living while the case proceeds through the court. Neither the

judicial officer nor the prosecutor (attorney general) is in a legal position to try to assist the parents without having a conflict. It is necessary that the parents or guardian have the opportunity to consult with an attorney. In this way, the parents or guardian will have the opportunity to ask questions, try to get an understanding of the nature of the process and be assisted in making rational decisions that will not only affect them but also their children. Some counties have already been providing house counsel or appointed attorneys at this critical stage of the case.

There can also be criminal implications that can arise from cases of child abuse or neglect. This could result in the children being permanently removed from the parents and their parental rights terminated. They could also be charged in a criminal action where their liberty and freedom could be at stake. Statements the parents make during the preliminary hearing could be used against them in a future hearing or criminal case. The assistance of an attorney is necessary at this critical stage of the proceedings to make sure the rights of all parties are protected.

The change in the amount of time to request a jury trial will clear up an ambiguity in the manner in which jury trials are requested. It gives the parties sufficient time to review discovery materials prior to making a jury determination. This clarification will assist the court in its trial calendar as well as seeing that the cases move along in a timely manner.

We thank the Court for its publication of the proposed amendment. Please contact me with any further questions.

Sincerely,



Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
W. Anthony Jenkins, President
Hon. Terry L. Clark, President, Michigan District Judges Association
Hon. Annette M. Jurkiewicz-Berry, President, Michigan Judges Association
Hon. John A. Hohman, Jr., Chair, Judicial Conference
Hon. Kenneth L. Tacoma, President, Michigan Probate Judges Association