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February 28, 2017

Larry Royster  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

**RE: ADM File No. 2016-33: Proposed Amendment of Rule 3.216 of the Michigan Court Rules**

Dear Clerk Royster:

At its February 21, 2017 meeting, the Executive Committee of the State Bar of Michigan (the Committee) considered the above-referenced proposed amendments published by the Court for comment. In its review, the Committee considered recommendations from the Civil Procedure and Courts Committee, Domestic Violence Committee, and Family Law Section. In addition, the Public Policy Committee reviewed and made recommendations to the Committee on the rule proposal.

After this review, the Committee voted unanimously to support the proposed rule amendments, subject to (1) clarifying that a hearing is required before a court may order mediation involving a protected party and (2) explicitly stating that the State Court Administrator Office's domestic violence screening protocol constitutes a "reasonable inquiry" by the mediator.

To clarify that a hearing is required before a court may order mediation, the Committee proposes the following revisions to the proposed language of MCR 3.216(C)(3), shown in bold:

**Unless a court first conducts a hearing to determine whether mediation is appropriate, the court shall not submit a contested issue in a domestic relations action, including postjudgment proceedings, if the Pparties who** are subject to a personal protection order or other protective order, **or who** are involved in a child abuse and neglect proceeding, ~~may not be referred to mediation without a hearing to determine whether mediation is appropriate.~~ The court may order mediation following a hearing if a protected party requests mediation.

To explicitly state the State Court Administrative Office's domestic violence screening protocol satisfies the mediator's "reasonably inquiry" screening requirement, the

Committee proposes adding the following language to proposed MCR 3.216(H)(2), shown in bold:

The mediator must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the State Court Administrator Office as directed by the Supreme Court.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Welch', is written over the typed name and title.

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Lawrence P. Nolan, President