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May 21, 2019

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

RE: ADM File No. 2018-25: Proposed Amendment of Rule 7.312 of the Michigan Court Rules

Dear Clerk Royster:

At its April 12, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered recommendations from the Criminal Jurisprudence & Practice and Civil Procedure & Courts committees and the Appellate Practice Section.

After this review, the Board voted unanimously to support the proposed rule amendment with the modification that briefing schedules for mini oral arguments on the application (MOAAs) be the same as cases in which the Court grants leave to appeal.

Often, the Court decides a case on its merits following a MOAA, a practice that is reinforced by proposed subrule (K), which explicitly directs parties to "focus their argument on the merits of the case, and not just on whether the Court should grant leave." This means that many times a MOAA is the functional equivalent to a full grant and the parties' only opportunity to present the merits of their case to the Court. Therefore, parties should have the same time to brief MOAAs as full grants to have adequate time to develop the arguments on the merits of their case. This will likely result in higher quality briefs to assist the Court in reaching its decision.

In addition, the Board notes that Judge Ayoub raises an interesting issue in his comment to the Court about how the Court of Appeals' conflict resolution process works with the Court's MOAA process. The Board believes that clarifying whether the Court of Appeals should continue its conflict resolution process when the Court has ordered a MOAA would help further simplify the appellate review process.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Jennifer M. Grieco, President, State Bar of Michigan