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January 31, 2020

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

RE: ADM File No. 2018-35: Proposed Amendment of Rule 8.108 of the Michigan Court Rules

Dear Clerk Royster:

At its January 24, 2020 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendments published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Family Law Section, and Appellate Practice Section.

Based on this review, the Board voted unanimously to support the rule proposal with the amendments detailed below:

- 1) Subsections (E)(1) and (E)(2) should be amended to require courts to order, and court reporters to provide, transcripts at public expense for a litigant who has obtained a fee waiver under MCR 2.002 if the litigant needs the transcript to further pursue the litigation. Transcript costs are not included in the fees that are waived under MCR 2.002; however, these costs often present an insurmountable barrier to our courts for indigent litigants, preventing them from pursuing review of referee or judicial decisions. The Board believes the public cost of providing transcripts should be balanced against the litigants' need for transcripts. Accordingly, the Board recommends that courts should only be required to order transcripts at public expense when two conditions have been met: (a) the litigant has been granted a fee waiver under MCR 2.002 in the particular case; and (b) the court has determined that the litigant needs the transcript to further pursue the litigation pending before the court, including on appeal. In all other circumstances, the court should retain discretion to determine whether to order a transcript at public expense.
- 2) Recognizing that people order transcripts for reasons beyond pursuing litigation in a pending proceeding, subsection (F)(1) should be amended to require the filing of the transcript only when it has been ordered at the public's expense, as follows (suggested changes shown in bold and underline):

After the preparation of a transcript at public expense upon a request of a party or interested person to a case or on order of the trial court, the court reporter or recorder shall promptly file the transcript of the proceedings (or any part thereof).

- 3) With the implementation of a statewide e-filing system, attorneys and litigants will likely download a copy of the transcript. Attorneys and litigants should be allowed to make copies from that unaltered file, rather than having to access the court's e-filing system any time they want to make a copy of an excerpt from a transcript. Accordingly, subsection (F)(2) should be amended as follows (suggested changes shown in bold and underline):

After an official transcript is filed, copies submitted to a court or used in any court proceeding shall be made from the official transcript filed with the court or from an unaltered digital or paper copy of the official transcript.

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
Dennis M. Barnes, President