

March 31, 2022

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

**RE: ADM File No. 2021-07 – Proposed Amendment of Rule 1.8 of the Model Rules of Professional Conduct**

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-07. The Board reviewed recommendations from the Civil Procedure & Courts Committee, Professional Ethics Committee, and Alternative Dispute Resolution Section. The Board voted to oppose the proposed amendment.

The Board believes that the proposed amendment unnecessarily interferes with the ability of attorneys and their clients to enter into engagement agreements on mutually agreeable terms. Additionally, prohibiting arbitration clauses in such agreements absent independent representation will impose additional costs and complexity on clients seeking legal representation. Finally, a concern has been raised that the proposed amendment conflicts with the Federal Arbitration Act, 9 USC 1 *et seq.*, and may discourage the use of alternative dispute resolution.

Recognizing the complexity and competing public policy interests involved in this matter, the Board has also authorized both the Professional Ethics Committee and Alternative Dispute Resolution Section to advocate their respective positions on the proposal.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,



Peter Cunningham  
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court  
Dana M. Warnez, President