

Barry J.
Gates
ATTORNEY AT LAW



Clerk,
Michigan Supreme Court
MSC_clerk@courts.mi.gov

2017 MARRA DRIVE
ANN ARBOR, MICHIGAN 48103
TELEPHONE (734) 769-5855
FACSIMILE (734) 769-0617
barrygates@comcast.net

July 31, 2013

RE: ADM File No. 2012-02
Proposed Amendments of Rule 2.302
of the Michigan Court Rules

Dear Clerk:

I appreciate the opportunity to share my point of view with the Justices regarding the Proposed Amendments to MCR 2.302 (ADM File No. 2012-02).

My Background: I am a solo practitioner. I have been an attorney for 37+ years. For the last 27 years my practice has been limited to representing plaintiffs in medical and legal malpractice cases with some serious automobile cases in the mix. In 2010-2011 I was the President of the Michigan Association for Justice but am not writing on behalf of the organization.

I agree with the proposed amendments to what would become MCR 2.302(B)(4)(a)(ii), (c)(i) and (c)(ii). The "discovery-only" expert deposition area was in need of clarification and the proposed changes are as good as any.

However, I respectfully disagree with the proposed change to what would become MCR 2.302(B)(4)(a)(i), regarding answering "expert interrogatories." If adopted the new rule would require a statement as to the "grounds" for each expert opinion, not just a "summary of the grounds."

My observations are: (1) that expert interrogatories are submitted early in the case - usually before any meaningful discovery has occurred - and, (2) eventually, experts are almost always deposed, most of the time by way of a discovery-only deposition.

More often than not experts are formulating and refining their opinions until the time they are deposed. That occurs because of a number of factors, including receipt of transcripts of the fact witnesses after they are deposed, and, if the patient is living, the continued receipt of medical records.

To require more exacting detail in expert interrogatory answers will unnecessarily increase the costs involved as the attorney using the expert will have to re-contact the expert, find out if the recently sent items have changed the expert's opinions and then supplement the answers to the expert interrogatories so that all the grounds for the opinions are provided. While the attorney can seek an order requiring payment for the expert's time in supplementing the interrogatory answers [MCR 2.302(B)(4)(c)(ii)] that process will require more time by the attorneys as well as valuable court time. All of this is unnecessary because most expert depositions are discovery-only where the opposing counsel can ask all the questions desired in a "risk-free, no-holds-barred" setting where the answers cannot be used.

I believe the proposed change to what would become MCR 2.302(B)(4)(a)(i), regarding answering "expert interrogatories" should not be adopted.

Respectfully yours,



Barry J. Gates
Attorney at Law