FAMILY LAW SECTION
Respectfully submits the following position on:

*

ADM File No. 2013-10

*

The Family Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Family Law Section only and is not the position of the State Bar of Michigan.

The State Bar position on this matter is support.

The total membership of the Family Law Section is 2,486.

The position was adopted by an electronic discussion and vote. The number of members in the decision-making body is 21. The number who voted in favor to this position was 21. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:
Family Law Section

Contact person:
Mathew Kobliska, Co-Chair of the Court Rules & Ethics Committee

E-Mail/Phone:
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Proposed Court Rule or Administrative Order Number:
ADM File No. 2013-10 - Proposed Amendments of Rules 2.107 and 2.117 of the Michigan Court Rules
The proposed amendment of MCR 2.107 would provide clarification by adding the term "order" so that after either a final judgment or order has entered, papers should be served on the party after the time for appeal has passed. The proposed amendment of MCR 2.117 would clarify that when an attorney appears in an action by filing or defending a postjudgment motion, the duration of the attorney's appearance would be the same as that of an attorney filing or defending the original pleadings.

Date position was adopted:
September 24, 2013

Process used to take the ideological position:
Position adopted after an electronic discussion and vote.

Number of members in the decision-making body:
21

Number who voted in favor and opposed to the position:
21 Voted for position
0 Voted against position
0 Abstained from vote
0 Did not vote

Position:
Support and Amend

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-10_2013-06-19_formatted%20order.pdf

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September 24, 2013

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

RE: ADM File No. 2013-10 - Proposed amendments to MCR 2.107 and MCR 2.117

Dear Mr. Royster:

The proposals collectively assembled as ADM File No. 2013-10 originated with our Court Rules & Ethics Committee, and approved by the Family Law Section Council as a whole, earlier this year. The proposed amendments would change MCR 2.107 and 2.117 to provide for the termination of the duration of an attorney's appearance upon entry of a "final order" in the same manner as the entry of a judgment. This was of considerable interest to our membership, as postjudgment work represents a significant portion of many of our practices. It was unclear to practitioners and courts alike as to whether an attorney was discharged following the entry of a postjudgment order resolving the issues for which he or she had been retained, and conversely, whether service of process could be effectuated on an opposing attorney after entry of a postjudgment order under the same circumstances.

These proposed amendments were pared down from the proposals which were submitted by our section. While adding "or final order" to "judgment" as being the dates from which the calendar would begin to run on the duration of an attorney's appearance, the proposed modification does not make any reference to postjudgment matters, except in the unauthoritative staff comments. Of additional concern was that the definition of what constitutes a "final order" has a different meaning under the subchapter 7.100 rules than what is intended here.

The Family Law Section Council supports the proposed amendments, with the following recommended amendments (proposal as submitted by SCAO in **bold**, with the Section's proposed additional language <u>underlined</u>):

Rule 2.107 Service and Filing of Pleadings and other Papers

(A) [Unchanged.]

(B) Service on Attorney or Party.

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(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a)-(b) [Unchanged.]

(c) After a final judgment **or final order** has been entered and the time for an appeal of right has passed, papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

(d) [Unchanged]

(2)-(3) [Unchanged]

(C)-(G) [Unchanged]

Rule 2.117 Appearances

(A)-(B) [Unchanged]

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment **or final order** is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment **or final order** by the trial court. Unless otherwise stated or ordered by the court, or as otherwise provided by these rules, an attorney's appearance in motions brought after entry of a judgment or final order, applies only in the court in which it is made, or to which the action is transferred, until a judgment or order is entered which resolves those issues raised by or against the party whom the attorney represents and the time for

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appeal of right has passed.

Our Court Rules Committee believed that it made more logical sense to renumber (C)(2) to (C)(3), and insert the underlined language as a new standalone (C)(2), but noting that there may be resistance to renumbering court rules, decided that appending it to (C)(1) might make it more palatable.

Thank you for the opportunity to comment on these proposals.

Respectfully yours,

Mathew Kobliska

Mathew Kobliska
Chair, Court Rules & Ethics Committee Family Law Section