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September 30, 2013

Via Email: MSC_clerk@courts.mi.gov

Clerk of the Court
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

Re: ADM File No. 2013-10; Proposed Amendments of Rules 2.107 and 2.117 of the Michigan Court Rules; Comments as to Proposed Changes to Rule 2.117 - Appearances.

Dear Mr. Royster:

The purpose of this letter is to submit comments on ADM File No. 2013-10, the proposed amendment to MCR 2.117(C)(1).

The staff comment indicates that "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." It further states that "the proposed amendment of MCR 2.107 would provide clarification by adding the term 'order' . . ."

The proposed amendment to 2.117(C)(1) does not provide "clarification," and, in fact, could make post-judgment appearances more onerous, and therefore, a less desirable engagement for the lawyer, and more expensive for the client. Pursuant to Michigan Rule of Professional Conduct (MRPC), the lawyer should be able to "limit the objectives of the representation if the client consents after consultation." MRPC, Rule 1.2(b).

The term "final order" is not well defined in many post-judgment matters. Moreover, in many types of matters (e.g., family law post-judgment matters), a wide variety of issues could arise in addition to those initially under consideration in the post-judgment proceedings. In Michigan, trial level family law courts retain jurisdiction over issues such as child support and spousal support for many, many years. The language of the proposed amendment causes concern that once an attorney files an appearance in a post-judgment proceeding, the attorney's representation must continue, literally forever. The lawyer may not wish to commit to that, and the client may not wish to pay for it.

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A better approach might be to limit the duration of an appearance by an attorney in a post-judgment proceeding to the matter for which the attorney appeared. This can be done by adding the language "as to the matter for which the attorney appeared," to follow the words "or final order," in the proposed amendment to MCR 2.117(C)(1).

Thus, as better stated, the proposed amended rule would read:

Rule 2.117 Appearance

(A)(B)[Unchanged.]

(C) Duration of Appearance by Attorney.

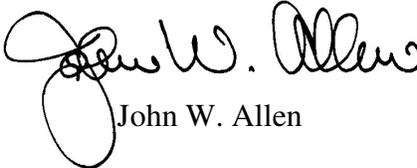
(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment or final order *as to the matter for which the attorney appeared* is entered disposing of all claims by or against 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.

(2) [Unchanged.]

Thank you very much for your consideration of these comments. If you have any questions, please contact us.

God Bless America,

VARNUM



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