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Michigan Supreme Court  
Office of Administrative Counsel  
P.O. Box 30052  
Lansing, MI 48909

RE: ADM File #2014-13 Proposed Amendment of MCR 2.403

To the Justices of the Michigan Supreme Court and Office of Administrative Counsel:

In a previous correspondence, I addressed the proposed amendment of MCR 2.403(L) on behalf of the Michigan Association of Municipal Attorneys to object to the reduction of time to accept or reject a case evaluation from 28 to 14 days. I would also like to address the Court as an attorney who has spent over 35 years in the practice of municipal law and who served as the City Attorney for Battle Creek and currently serves as the City Attorney for Kalamazoo.

In my view, the proposed reduction in time to accept or reject a case evaluation accomplishes very little. While it will permit a trial court judge and his or her clerk to save 2 weeks' time in determining whether a case has been resolved or must be set for trial, that savings comes at the expense of consideration of the advice of counsel and deliberation by the litigants, which is particularly acute for local governmental bodies.

As the Court is well aware, under the Michigan Open Meetings Act, public bodies are required to set a yearly schedule of meetings, which can be changed only by formal action or by the calling of a special meeting. The City Charters of both Battle Creek and Kalamazoo require two regular City's Commission meetings a month; as such there are usually four months year when there occurs a 21-day gap between regular meetings. If the proposed amendment is adopted, a special meeting, at some cost and expense would have to be called in order for a quorum public body to gather, after issuing the requisite public notice, so as to decide whether or not to accept or reject a case evaluation.

While the likelihood that any particular private individual will be a litigant in a civil case seeking damages is small, governmental bodies regularly find themselves as defendants in civil cases and the decision to settle or continue to litigate is a decision approached by elected public bodies with a very different perspective than that of an individual. Though it may seem that permitting 28 days to a private individual litigant to make up his or her mind may seem a long time, for a governmental body, composed of elected members, accustomed to a deliberative process and as the guardians of the public trust and treasury, the decision to accept or reject the case evaluation is not one that is taken or entered lightly. Getting a single person to make a decision can be accomplished over the phone or by email, but this option is not available to

public bodies due to the Open Meetings Act. And getting a board composed of 7 or more elected officials to meet at a particular date and time, and then getting a majority of them to agree on a course of action is not something easily accomplished within 14 days, nor should it be necessary to do so.

If the proposed change to MCR 2.403(L) is adopted, it will likely lead to motions in the trial courts on the part of municipal attorneys seeking additional time for their clients to accept or reject case evaluation and/or requesting that their clients be permitted to avoid case evaluation as an alternative dispute resolution (ADR) method. In short, the dockets of trial courts will become even more crowded, which is the opposite of what ADR is supposed to accomplish.

I have long advocated for the use of alternative dispute resolution. I have often participated in case evaluation both as an advocate and panelist, and though not perfect, it works. Because of my years of experience, I greatly appreciate the wisdom demonstrated by the drafters and the Court when the 28 day time frame to accept or deny mediation, now termed case evaluation, was instituted as part of the Michigan Court Rules. To change it now, accomplishes little and would diminish the case evaluation process, particularly as it concerns local governmental bodies. As a municipal lawyer, I ask that the Court not adopt the proposed amendment to MCR 2.403(L) due to its negative impact on local governmental body litigants.

Respectfully Submitted,



Clyde J. Robinson (P30389)  
City Attorney  
City of Kalamazoo

CJR/ser