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May 2, 2016

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

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

RE: ADM File No. 2016-06 – Proposed Amendments of Rules 3.925, 8.119, and 8.302 and New Rule 5.133 of the Michigan Court Rules

Dear Clerk Royster:

At its April 29, 2016 meeting, the Board of Commissioners of the State Bar of Michigan considered the above proposed rule amendments and new rule adoption published for comment. In its review, the Board considered recommendations from the Civil Procedure & Courts Committee and the Criminal Jurisprudence & Practice Committee. The Board voted to support the proposed amendments, but agreed with the following concerns raised by both committees.

Both committees objected to the mandatory disposal of records in MCR 3.925(E). While the Board understands that the Court wants to establish a uniform process for retention, it does not favor mandatory record disposal. Courts should be allowed to retain records for as long as they want, given that those records may have value in future appeals and tracking of habitual offenses, as well as allowing for the correction of human error.

The Civil Procedure & Courts Committee specifically objected to the conditional presumption of death of the testator contained in new MCR 5.133, believing such presumption is best recognized in statute where other such presumptions exist. Additionally, the committee believes it should be discretionary on the probate register to open a 100-year-old will for no other reason than its age; it therefore suggests changing “shall” to “may.”

Lastly, the Civil Procedure & Courts Committee was concerned with the new language of MCR 8.302 in that it does not define “fireproof storage” (and thus leaves trial courts in the dark as to what kind of storage to create and/or maintain) and leaves the scope of the rule excessively broad by applying to “any unsealed testamentary document” (supposedly including those already admitted to probate and potentially even in closed files).

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Lori A. Buiteweg, President