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July 1, 2014

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

Dear Clerk Royster:

I am the current President of the Michigan Association for Justice (MAJ) (formerly the Michigan Trial Lawyers' Association). On behalf of our 1600 members, I appreciate this opportunity to share our point of view with the Justices regarding the Proposed Amendments to MCR 2.302 (ADM File No. 2012-02).

Our members range from solo practitioners to members of law firms of all sizes. What almost all of them have in common is that they do trial work, including participating in discovery and taking depositions.

While the comments of others have addressed only the discovery-only deposition aspect of ADM File No. 2012-02, there are actually two significant issues. I will address those issues in reverse of the order found in the Court Rules:

**Alternative A or Alternative B - Discovery-Only Depositions:**

Our members' practices and opinions cover the gamut on discovery-only depositions. Some do discovery-depositions themselves. Others are against discovery-only depositions by any party. Others take a middle position and agree to discovery-only depositions in exchange for not having to answer expert interrogatories.

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We agree with the State Bar that Alternative A provides the better approach to the discovery-only depositions issue. Counsel for the parties can agree on an Order or do a stipulation, or can have the trial Court decide the appropriate way to proceed. In this respect it is what is currently in the rules.

**Proposed Change Regarding Expert Interrogatories:**

We respectfully disagree with a second proposed change that is contained within Alternative A - a proposed change of 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."

Our position is based on what we see in practice: (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, often by a discovery-only deposition.

Experts usually are formulating and refining their opinions until the time they are deposed. The expert must assess transcripts of the deposition testimony of fact witnesses, and, if the plaintiff is still living, medical records continue to be generated by treating physicians and then reviewed by the expert witnesses.

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, determine if recently sent materials 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 many expert depositions are discovery-only where the opposing counsel can ask all the questions desired in a "risk-free" setting where the answers cannot be used later.

It also does not appear that the proposed amendment to "expert interrogatories" was ever specifically vetted.

- The Court's Staff Comments to ADM File No. 2012-02 dated April 3, 2011 and March 26, 2014 never mention a proposed change to the rules regarding expert interrogatories.
- Janet Welch's June 25, 2014 letter to the Court on behalf of the State Bar regarding ADM File No. 2012-02 never mentions a proposed change to the rules regarding expert interrogatories.
- The State Bar's Representative Assembly approved what has become Alternative A at its meeting on September 15, 2011 but the Synopsis in the Meeting Materials [[www.michbar.org/generalinfo/pdfs/9-15-11discovery.pdf](http://www.michbar.org/generalinfo/pdfs/9-15-11discovery.pdf)] does not specifically address a proposed change to the expert interrogatory rule, and the question voted upon (see below) only mentions discovery-only depositions and not expert interrogatory answers:

Should the State Bar of Michigan support the Civil Procedure & Courts Committee's proposal to amend Michigan Court Rule 2.302 regarding discovery only depositions?

- Alternative B does not propose a change to the rules regarding expert interrogatories.

We believe the proposed change to MCR 2.302(B)(4)(a)(i) contained within Alternative A regarding answering "expert interrogatories" has not been vetted and should not be adopted.

Respectfully yours,

*Scott A. Goodwin*

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