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June 25, 2014
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. 2012-02 – Proposed Amendment of Rule 2.302 of the Michigan Court Rules

Dear Clerk Royster:

At its last meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Board considered a recommendation from the Civil Procedure & Courts Committee. The Board voted unanimously to reaffirm the State Bar's support Alternative A.

Alternative A was originally proposed by the Civil Procedure & Courts Committee and approved by the Representative Assembly. The Civil Procedure & Courts Committee noted that its recommendation on this issue maintains existing law; it is simply a clarification that discovery-only depositions may proceed only upon order or stipulation, as already provided under the court rules. However, Alternative B recommends a significant change in existing civil procedure that has no stated precedent in any other jurisdiction. The Board saw no justification for a wide-open regime as opposed to simply moving the court if a party believes circumstances justify the discovery-only deposition. Alternative B would lead to gamesmanship. An opposing party could, upon receipt of a discovery-only deposition notice, simply notice the same deponent for a full deposition, thus frustrating the intent of the proposed rule. This would lead the parties back to Court for a clarifying order, which is precisely where they should be, absent agreement, as called for under the existing rules.

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
Brian D. Einhorn, President