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p 800-968-1442

f 517-482-6248

www.michbar.org

Corbin Davis
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. 2007-18
Proposed Amendment of Rule 2.117 of the Michigan Court Rules**

Dear Clerk Davis:

At its January 21, 2011 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendments published for comment. In its review, the Board considered recommendations from the Civil Procedure and Courts Committee that both Justice Policy Initiatives and the Consumer Law Section concurred with. The Board voted to oppose the proposed amendment.

The Civil Procedure and Courts Committee commented:

The proposed amendment would add language to MCR 2.117(C)(1) to provide that a lawyer's appearance ends when "the attorney notifies the attorney's client that the attorney is terminating representation of the client." It would further state: "Follow-up or ministerial acts performed by the attorney with regard to the client's file following, notice of termination do not extend the attorney-client relationship.

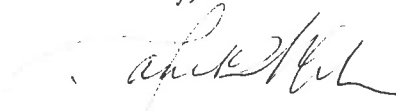
Committee members were unaware of problems in this area that would necessitate this amendment. And it potentially has very serious problems. Once a lawyer has appeared in the case, the lawyer's role is not simply a matter between the lawyer and the client. The court and the other parties to the case are entitled to expect that the lawyer continues to represent the client. The proposed amendment would let the lawyer escape further responsibility simply by telling the client. This would seriously undermine the court's ability to control proceedings. And, faced with an unresponsive attorney, opposing counsel is presented with potential ethical problems in determining whether to contact the opposing client directly. The current rule, which requires court approval of the withdrawal, is preferable.

The last sentence, regarding acts after withdrawal, deals with an entirely separate question that is not appropriate for court rule treatment. That language seems directed at a situation like that in *Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, PC v Bakshi*, 483 Mich 345 (2009) (such ministerial acts do not extend the statute of limitation for purposes of an action for the attorney's fee – and by analogy, perhaps for legal malpractice purposes). But that is a substantive question not appropriate for treatment the court rules. *Seyburn et al v Bakshi* establishes the basic principle, and

variant situations should be dealt with by case law – there are far too many variations for a rule to cover everything.

We thank the Court for its publication of the proposed amendment. Please contact me with any further questions.

Sincerely,



Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
W. Anthony Jenkins, President