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July 31, 2008  
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. 2007-30  
Proposed Amendment of Rules 2.107 and 2.117 of the Michigan Court Rules**

Dear Clerk Davis:

At its June 13, 2008 meeting, the Board of Commissioners of the State Bar of Michigan considered the proposed amendments published for comment. The Board reviewed a recommendation from the Civil Procedure and Courts Committee and voted to **support ADM File No. 2007-30**, along with amendments suggested by the committee as listed below:

1. If such an electronic service provision is adopted, it should be established as a uniform statewide rule, rather than a multiplicity of local variants. Such a rule could be written so that a local court could choose not to use electronic service of notice, but if a court chooses to use electronic service of notice, it must follow the uniform procedure.
2. Under MCR 8.112(B), the mechanism for having individual courts adopt procedures by local administrative order is appropriate only for matters of internal court management. The current proposal suggests language outside of the scope by requiring that attorneys and parties be informed of the practice, and requires them to do acts in litigation – providing email addresses or opting out of the procedure. Cf. MCR 8.112(A)(2). If this procedure is to be established by local option rather than statewide, it may be more appropriate to require adoption of local rules.
3. The rule should incorporate some of the safeguards that were included in the recent amendment of MCR 2.107(C)(4) covering email service by parties. For example, it might be wise to apply MCR 2.107(C)(4)(c), (e), (f), (h) and (i) to documents that courts send by email. Those subrules cover subjects such as document format, subject line, the time service is deemed to have been made, and archiving requirements.
4. The rule should allow only email service, not fax transmissions. There is greater risk of information not receiving the intended recipient when transmitted via fax and not email. Email is an almost universal tool used by lawyers.
5. If the rule is adopted, it should be limited to service of notices on attorneys and not parties who appear pro se. Attorneys regularly receive communications from courts, and can be expected to establish office procedures for handling receipt of such documents. Those

considerations do not apply to pro se litigants, for whom litigation is an unusual experience. Therefore, there should not be a presumption of electronic service for pro se parties.

6. The procedure would be simplified if MCR 2.117(A)(1) and (B)(2)(a) required parties and attorneys always to include email addresses on their papers (or state that they don't have one), along with their addresses and phone numbers. This would avoid the potential awkwardness of the proposed amendments of MCR 2.117, under which the requirement for providing an email address is triggered only if the particular court has adopted an administrative order about which some attorneys and parties may not be aware.

7. There should be an explicit requirement that attorneys and parties are to notify the court of changes in address, phone number or email address. This could be included in MCR 2.117(A)(1) and (B)(2)(a).

We appreciate the opportunity to offer this position for the Court's consideration. Please contact me with any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Welch".

Janet Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Ronald D. Keefe, President  
Frank Greco, Chair, Civil Procedure and Courts Committee