



September 1, 2009

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

**Re: ADM File No: 2009-13
Proposed Amendments of Rules 2.112 and 2.118 of
the Michigan Court Rules**

Dear Mr. Davis:

I am currently the President-Elect of the Michigan Association for Justice (formerly the Michigan Trial Lawyers Association) but am writing this letter not on behalf of MAJ, but rather as an attorney who devotes the majority of his professional time representing people who have been injured as a result of medical negligence.

I wholeheartedly support the comments of Richard L. Warsh in his letter to you dated August 20, 2009 on behalf of MAJ. The proposed amendments contained within ADM File No: 2009-13 are deserving of adoption by the Court with the minor amendments suggested in Mr. Warsh's letter.

I am writing now to address the August 31, 2009 letter by Gregory W. Moore on behalf of the Michigan Osteopathic Association. Mr. Moore's professed fears are unfounded.

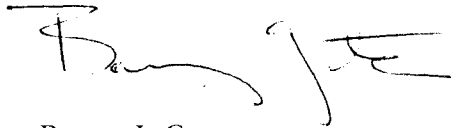
Article VI, Sec. 5 of the Michigan Constitution provides in part: "Sec. 5. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state.

Thus the Constitution provides a benchmark for rulemaking - it is to "simplify the practice and procedure in all courts of this state." Rulemaking should be viewed as providing a "prospective roadmap" to be used to guide the Court of Appeals, trial courts and practitioners. The Court is not blindly bound by precedent if a simpler rule would be more fair and more effective.

Kirkaldy v Rim, 478 Mich 581 (2007) has much to offer, but its remedy, dismissal without prejudice, does not provide a cost-effective remedy for what is often a minor deficiency in an Affidavit of Merit. On the other hand, the proposed amendments contained within ADM File No: 2009-13 do provide balance (as they would also apply to defective Affidavits of Meritorious Defense), and allow amendments to the Affidavits which are far more cost-effective and fair.

Please thank the Court for the opportunity to express my opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry J. Gates". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping underline.

Barry J. Gates
Attorney at Law