



LIPTON LAW CENTER P.C.

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September 29, 2009

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

Re: ADM 2009-13

Dear Mr. Davis:

I have been following the recent debate regarding amendment of the Michigan Court Rules relating to amendment of affidavits of merit and affidavits of meritorious defense in medical malpractice cases.

I would like to add my voice to the growing chorus in favor of adopting the rule changes as laid out in the proposal of my fellow MAJ officer, Mr. Barry Gates, which he submitted on September 25, 2009.

I have been litigating a wide variety of personal injury cases for nearly 20 years; our firm has been doing so for nearly a half century. I have watched as the procedures that have developed in malpractice cases has become so cumbersome that delays have become endemic, costs have increased, and citizens have been profoundly prejudiced.

On at least two occasions over the past few years, I have been forced to dismiss notably meritorious cases without prejudice, and then re-file them to avoid arguing over motions for dismissal on the most preposterous grounds. In one, the defense complained that the notary failed to write in the name of her county on her stamp; in another, the defense complained that the seal on the affidavit was not raised. In neither case was a substantive objection raised to the merits of the allegations outlined in the affidavit. Still, under our current system, I felt compelled to dismiss the cases and re-file them, increasing the expenses associated with recovery, and delaying the cases for months.

When the Court considers the proposed rule changes, I would suggest that it consider how the current procedures look to the citizens of the State. Imagine trying to explain to a client – who claims to have lost a close relative or suffered a serious injury due to medical malpractice, and who has already waited through a 6 month notice period before a suit could even be filed – that their case must now be delayed at least 3 more months because the rules of amending

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allegations that apply to every other type of suit are inapplicable to theirs. Respect for the Courts is invariably lessened, and contempt for the judiciary and legal profession is exponentially increased.

Amendment of pleadings has been the accepted practice for decades without any undue hardship on any party. Amendment of affidavits filed with a party's initial pleadings will cause no unfair results, and should also be allowed.

I urge the Court to adopt Mr. Gates position.

Sincerely,

LIPTON LAW CENTER, P.C.

/s/ Marc Lipton

MARC LIPTON (P43877)

Secretary, Michigan Association for Justice
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