Order

Entered: December 21, 2004

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2004-13

Proposed Amendment of
Rule 2.504 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.504 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.mi.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated below by underlining
and deletions are indicated by overstriking.]

Rule 2.504 Dismissal of Actions

(A) Voluntary Dismissal; Effect.

(1) ~~*By Plaintiff; by Stipulation.*~~ Subject to the provisions of MCR 2.420 and MCR 3.501(E), an action may be dismissed by the plaintiff ~~without an order of the court and on the payment of costs~~

(a) by filing a notice of dismissal <u>or a proposed order of dismissal, or by otherwise requesting dismissal</u> before service by the adverse party of an answer or of a motion under MCR 2.116, whichever first occurs; or

(b) by filing a stipulation of dismissal signed by all the parties.

Unless otherwise stated in the notice <u>or order</u> of dismissal or stipulation, the dismissal is without prejudice, except that a dismissal under subrule (A)(1)(a) operates as an adjudication on the merits when filed by a plaintiff who has previously dismissed an action in

any court based on or including the same claim. Where a plaintiff obtains a dismissal under subrule (A)(1)(a), the adverse party is entitled to reimbursement for any costs incurred before the dismissal.

(2) ~~*By Order of Court*~~. Except as provided in subrule (A)(1), an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper.

(a) If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the court shall not dismiss the action over the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(b) Unless the order specifies otherwise, a dismissal under subrule (A)(2) is without prejudice.

(B)-(E) [Unchanged.]

Staff Comment: The proposed amendment of MCR 2.504(A) would clarify that any second voluntary dismissal pursuant to subrule (A)(1) constitutes an adjudication on the merits, even where the plaintiff obtains a court order finalizing the dismissal and whether or not the plaintiff is ordered to pay costs.

The staff comment is not an authoritative construction by the court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2004-13. Your comments will be posted on the Court's website, along with the comments of others, at: www.courts.mi.gov/supremecourt/Resources/Administrative/index.htm.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 21, 2004

Deputy

Clerk