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July 1, 2020

To Whom It May Concern:

The Association of Defense Trial Counsel ("ADTC") is providing its comments on the proposed amendments to MCR 2.403, the Rule mandating Case Evaluation in Michigan, that were proposed on March 19, 2020.

The ADTC Board objects to the deletion of MCR 2.403(O)– "Rejecting party's liability for costs." The deletion of this section severely impacts the efficacy of Case Evaluation, as a whole. Without the imposition of sanctions to a rejecting party, the Case Evaluation court rule will have little to no impact to resolving cases prior to trial – one the primary reasons for mandating case evaluation in the first place. The reality will be that parties will not engage in meaningful settlement considerations and will fail to utilize the Case Evaluation process as it was intended.

The ADTC Board understands the process of revising this Court Rule has been ongoing, but wants to stress that the negative consequence produced by this revision far outweighs any perceived benefit in eliminating the sanction provision. The ADTC Board is requesting that these recommendation not be adopted and that the sanction provision be kept in the Court Rules. We also take issue with the recommended revisions to the revised MCR 2.403, as drafted. Specifically, the change to MCR 2.403(A)(1) and (B)(1) from the use of "may" to "shall." The suggested revisions are as follows:

MCR 2.403(A)(1): A court **shall** submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property unless the parties stipulated to an ADR process as outlined in subsections (A)(2)-(3) of this rule. Parties who participate in a stipulated ADR process approved by the court may not subsequently be ordered to participate in case evaluation without their written consent.

MCR 2.403(B)(1): The judge to whom an action is assigned or the chief judge **shall** select it for case evaluation after the filing of the answer...

By making these provisions mandatory, Case Evaluation remains a viable option for Courts if the parties do not take affirmative action to use another ADR source.

The ADTC Board does not believe this will substantially affect the Court rule, and it makes less work for the Courts, as well as the litigators, as Case Evaluation will be a requirement if no other ADR procedure is utilized.

Case Evaluation is, in fact, valuable, and has repeatedly and routinely proven to be an effective tool in resolving litigated matters. This is especially true with respect to first-party no-fault PIP claims, PIP provider suits, and third-party automobile negligence claims, which account for the majority of litigated case in Michigan. Case Evaluation is and has been instrumental in resolving the vast majority of these types of cases prior to trial.

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The ADTC Board thanks the panel for the opportunity to provide these comments and believes that these opinions are reflective of a majority of attorneys practicing for the defense bar in this state.

Very truly yours,

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