

JULY 2010 MICHIGAN BAR EXAMINATION MODEL ANSWERS

ANSWER TO QUESTION NO. 1

Plaintiff's motion for entry of a default should be denied. When served with a complaint, a defendant "must serve and file an answer or take other action permitted by law or these rules within 21 days after being served with the summons and a copy of the complaint." MCR 2.108(A)(1), emphasis added. Because defendant took other action, filing and serving his motion for summary disposition within 21 days, his action precluded a default being entered against him. A defendant may file an answer or take other action. Doing neither could expose him to default. A summary disposition motion under MCR 2.116(C)(10) can be filed at any time. Defendant was on solid ground by responding by filing his motion, so plaintiff's motion must be denied.

Defendant's motion for summary disposition should be granted. Defendant has properly supported his motion for summary disposition where plaintiff has not supported his response. In *Skinner v Square D Co*, 445 Mich 153, 160-161 (1994), the Supreme Court discussed the parties' obligations under MCR 2.116(C)(10):

"The Michigan Court Rules provide a precise description of the respective burdens that litigants must bear when a motion for summary judgment is filed pursuant to MCR 2.116(C)(10). Specifically, MCR 2.116(G)(4) mandates that the party seeking summary judgment must specify the issues for which it claims there is no genuine factual dispute. Provided the moving party's motion