

FAMILY LAW SECTION
Respectfully submits the following position on:

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ADM File No. 2013-03

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The Family Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Family Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Family Law Section is 2,486.

The position was adopted after a discussion and vote at a scheduled meeting. The number of members in the decision-making body is 21. The number who voted in favor to this position was 18. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Family Law Section

Contact person:

Mathew Kobliska, Co-Chair of the Court Rules & Ethics Committee

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Proposed Court Rule or Administrative Order Number:

[ADM File No. 2013-03 - Proposed Amendment of MCR 2.302](#)

The proposed amendment would clarify that discovery is available in postjudgment proceedings in domestic relations matters.

Date position was adopted:

December 7, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

18 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

This proposed amendment would be a welcomed clarification by family law practitioners. A significant portion of the legal work performed on behalf of clients in domestic relations cases occurs after the entry of a judgment of divorce or order of filiation. Issues relating to changes in child custody, parenting time and child support must be addressed by trial courts as family changes occur. A postjudgment motion requires the same fact-intensive analysis that would be required prior to the entry of a judgment or final order.

Particularly as to a modification of child support, an attorney representing a client must ascertain specific facts regarding income and expenses to apply to the state-mandated formula. For a common example, the Michigan Child Support Formula is clear that income for purposes of calculating child support must be determined as

accurately as possible, and that all relevant aspects of a parent's financial status should be considered. MCSF 2.01(B). Income tax is deducted from each party's income for purposes of the formula, but the determination of the income tax burden must be actual, not generalized. MCSF 2.07(B). The necessary information and documentation must be obtained in every child support modification case in order to meet the minimum standards of practice, and the information is almost always in the custody and control of the non-moving party, who often has a distinct disincentive to cooperate.

Postjudgment discovery is assumed in most jurisdictions, but many of our section members report that the rule is not uniformly interpreted in all counties, or even by different family court judges in the same county. It is apparently unclear as to whether the "commencement of an action" in the current MCR 2.302(A)(1) includes the filing of a postjudgment motion in a domestic relations case. Requiring parties in every postjudgment matter to file a motion for discovery is an inefficient waste of court resources and attorney time, and operates to add costs to litigants, some of whom can ill-afford additional motion practice.

Adoption of this proposed court rule amendment would serve the interests of justice, enable greater judicial efficiency, and reduce unnecessary costs to party litigants.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-03_2013-11-06_formatted%20order.pdf