

PROSECUTING ATTORNEY

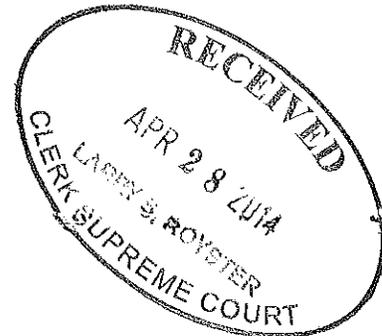
FAMILY LAW DIVISION
82 Ionia Ave N.W., Suite 425
Grand Rapids, Michigan 49503
Telephone: (616) 632-6645
Fax: (616) 632-6646



WILLIAM A. FORSYTH
Prosecutor

April 25, 2014

Mr. Larry S. Royster
Clerk of the Court
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909



RE: ADM File No 2010-32

Dear Mr. Royster:

We are writing to voice our disagreement with the proposed amendment of MCR 3.210 as currently written in ADM 2010-32. The proposed rule would unnecessarily require more than 1,500 additional hearings for our office alone. As proposed, the rule would require a court to hold a hearing to enter judgments obtained through the default of a party and hearings to admit stipulated consent judgments entered between the parties. Such hearings would create tremendous inconvenience for all concerned with little benefit. The additional time spent by prosecutor staff and court personnel will undoubtedly cause difficulty in meeting SCAO recommended timelines in Family Court domestic cases and will, in all likelihood, negatively impact guidelines for neglect and abuse cases as well.

In regard to default judgments in domestic relations cases, the proposed rule requires hearings in **all** domestic cases. The statutes for divorce, annulment, and separate maintenance (MCL 552.1 et seq) already require hearings in open court and current rules provide for that. The proposed rule, however, would also require hearings in cases brought under the Family Support Act, (MCL 552.451 et seq), the Uniform Interstate Family Support Act, (MCL 552.1101 et seq), the Status and Emancipation of Minors Act, (MCL 722.1 et seq) and the Paternity Act (MCL 722.711) as well. This would be true despite the specific language of the Paternity Act: *"If the defendant does not file and serve a responsive pleading as required by the court rules, the court may enter a default judgment. Neither party is required to testify before entry of a default judgment in a proceeding under this act."* MCL 722.714(6).

Furthermore, the proposed rule would apply to consent judgments as well and would therefore require hearings in every case, even though the parties have stipulated to the judgment.

In lieu of the proposed amendment, we propose that, if the existing rules regarding the entry of judgments are modified, the new rule allow actions brought by IV-D funded agencies to continue using the current rules or, in the alternative, it would simply not apply to actions brought under the Family Support Act, the Uniform Interstate Family Support Act, the Status and Emancipation of Minors Act, and the Paternity Act.

It is our understanding that Guy Sweet of the Ingham County Prosecutors Office Family Support Unit has proposed the above-described alternative. In particular he has suggested the following changes:

Subsection (B)(1) "Default cases under the Family Support Act, MCL 552.451 et seq, the Uniform Interstate Family Support Act, MCL 552.1101 et seq, the Status and Emancipation of Minors Act, MCL 722.1 et seq, and the Paternity Act, MCL 722.711 et seq are governed by MCR 2.603. This subrule applies to the entry of a default and a default judgment under all other cases governed by this subchapter."

Subsection (E)(1) "At a hearing or at any other time if the case was filed under the Family Support Act, MCL 552.451 et seq, the Uniform Interstate Family Support Act, MCL 552.1101 et seq, the Status and Emancipation of Minors Act, MCL 722.1 et seq, and the Paternity Act, MCL 722.711 et seq, any party may present to the court for entry a judgment approved as to form and content and signed by all parties and their attorneys of record."

Additionally, a statewide group of assistant prosecuting attorneys along with Tom Robertson, Executive Director of the Prosecuting Attorneys Association of Michigan, have collaborated to suggest the following:

(B)(4) Notice of Hearing and Motion for Entry of Default Judgment.

(a) A party moving for default judgment must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment upon the defaulted party at least 14 days before the hearing on entry of the default judgment, and promptly file a proof of service. The proposed judgment may include uncompleted provisions if accompanied by notice that blank provisions will or may be addressed by the court at the hearing.

If the action involves custody, parenting time, or support but does not require a hearing under subrule (B)(5)(a) and the proposed judgment is not different than the relief requested in the complaint or the relief can be determined based on information available to the moving party and stated in or attached to the motion or complaint, the moving party for default judgment may serve a verified motion

for default judgment supporting the relief requested and a copy of the proposed judgment upon the defaulted party, along with a notice that it will be submitted to the court for signing if no written objections are filed with the court clerk within 14 days. If no written objections are filed within 14 days, the moving party may submit the judgment or order to the court for entry. If objections are filed, the moving party shall notice the motion for entry of default judgment for hearing as stated in this subrule.

E(1) At a hearing, or at any other time if the case was filed under the Family Support Act, MCL 552.451 et seq, the Uniform Interstate Family Support Act, MCL 552.1101 et seq, the Status and Emancipation of Minors Act, MCL 722.1 et.seq, and the Paternity Act, MCL 722.711 et. seq, any party may present to the court for entry a judgment approved as to form and content and signed by all parties and their attorneys of record.

In our opinion, the proposed amendment to ADM 2010-32 needlessly adds delay, cost and inconvenience to prosecutors, courts and litigants and would appear to benefit and reward only the defendant who has chosen not to file an answer to a lawsuit in which he/she was properly served. As such, we would support any of the aforementioned alternatives.

Thank you for your time and consideration. If you have any questions or concerns or wish to discuss this matter further, please feel free to contact us.



William A Forsyth
Kent County Prosecuting Attorney



Mark A Vermeer
Senior Assistant Prosecuting Attorney
Kent County Prosecutor's Office, Family Law Division

Cc: Tom Robertson, Guy Sweet