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***Jeffrey S. Getting, Prosecuting Attorney***

April 29, 2014

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

Re: ADM File No 2010-32



Dear Mr. Royster:

I am writing to advise you of concerns with and disagreement with the proposed amendment of MCR 3.210 as currently written in ADM 2010-32. The proposed amendment would constitute sweeping changes to the procedure for obtaining judgments in domestic relations cases. I urge the Court to conduct a public hearing on this matter.

MCR 2.603 has produced a reasonable and well documented progeny of law that ensures due process to both parties involved in litigation. It ensures fairness and finality to judgments. Any changes to the law should be thoroughly analyzed for their impact on the court, the litigants and the bar.

The court rules provide for personal service of the defendant and ample time to respond to a complaint. The number of litigants who fail to respond, especially in domestic relations cases will not be changed by granting to them a second and third bite at the apple. The proposed changes to MCR 3.210 would open the door to multiple opportunities to assert a new or different theory of defense. They bring uncertainty to the law and ultimately cause protracted litigation. Most harsh of all, the proposed changes would be detrimental to the welfare of children, because it means a delay in the entry of child support orders.

The proposed rule would unnecessarily require additional hearings in paternity and child support cases throughout the state. 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. This is in contravention of the law as stated in the Paternity Act that "neither party is required to testify before entry of default judgment in a proceeding under this act." *MCL 722.714(6)*.

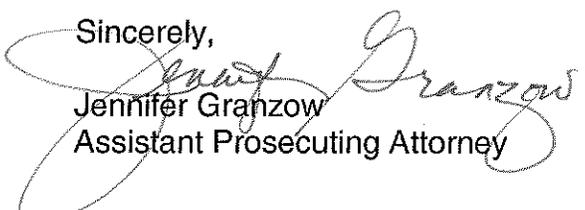
Additionally, the Michigan Court of Appeals in the last 30 days recognized that nothing in the Family Support Act requires a custodial party to testify for a judgment to be granted. In fact the court found, *requiring testimony* in cases brought by the Department of Human Services would impede the statutory authority DHS had to obtain a judgment on behalf of children, *See, Macomb County Department of Human Services v. Anderson* \_\_\_ Mich. App. \_\_\_ (No.313951) (2014). This is not to say that facts and evidence are not presented or required to obtain a fair result. It's to say that mandating testimony in light of the fact that many chose not to participate, defeats the ability to obtain a judgment in a timely manner and one that is in the best interests of the children. The proposed court rule would change this safeguard for children and prevent the entry of judgments in cases where a reluctant parent (either custodial or non-custodial) could avoid an obligation by playing ostrich.

Additionally, the rule changes seem to address a concern that pro per litigants, especially, should have a chance to present their case to the court despite the rules that apply to any other litigant. The law has always held that a pro per litigant is to be held to the same standard as an attorney in the practice of law. The default court rules provide ample opportunity under MCR 2.603 and 2.612 to revisit a judgment. This idea is predicated on the concept that the litigants will actually come forward and seek to do something, to participate or engage in the order process. Many litigants do not choose to avail themselves of the opportunities under the law. Domestic relations judgments would be delayed because of the requirement that a hearing must be held, a proposed judgment drafted and a waiting period has to expire before further action can be taken, this is subsequent to an initial 21 or 28 day period of time that has already been given with no response.

To require hearings in every case to obtain a judgment will hamstring the court system in unintended ways. An analysis of the court's docket will show that 40 to 60% of the entire domestic civil docket in each circuit court derives from the IV-D program's efforts to establish paternity and support for children both in Michigan and other states. A procedure that mandates a hearing in that number of cases will congest the docket, increase costs, delay the entry of orders (to the detriment of children) and impact the efficiency of every other docket because of the demand of conducting unnecessary hearings.

The proposed amendment to ADM 2010-32 adds delay, cost and inconvenience to the court, the litigants and the child support program. The proposed amendment would appear to benefit and reward only the defendant who has chosen not to file an answer to a lawsuit in which he or she was properly served. As such we recommend that the proposed amendment be withdrawn.

Sincerely,

  
Jennifer Granzow  
Assistant Prosecuting Attorney