



STATE OF MICHIGAN
17TH JUDICIAL CIRCUIT COURT

KATHLEEN A. FEENEY
CIRCUIT JUDGE

April 30, 2014

SUITE 10200 A
180 OTTAWA AVENUE NW
GRAND RAPIDS, MICHIGAN 49503-2751

Ms. Anne Boomer
Michigan Supreme Court Administrative Counsel
P.O. Box 30052
Lansing, MI 48909

Re: ADM 2010-32
Amendment of MCR 3.210

Dear Ms. Boomer:

We are writing in support of ADM 2010-32.

Both of us have been involved in the five year process to revise the default and default judgment rules for our domestic relations cases. We believe that the current rule represents a collective and collaborative effort to address defaults in domestic relations cases where the current rule set forth in MCR 2.603 falls short. We conducted work groups in Grand Rapids and Southfield, we worked with Jim Ryan and Max McCullough who wrote a wonderful monograph on defaults and default judgments, we consulted with the Family Law Section as well as the Friend of the Court, Legal Aid, and other stakeholders. Testimony has been presented before the Michigan Supreme Court regarding the original rewrite and this revised version. We believe that the rule as it currently stands neither serves the interests of justice nor provides appropriate guidance to either the bench or the bar in domestic relations cases. We also believe that ADM 2010-32 is our best effort in remedying the issues that separate civil cases from domestic relations cases.

Two assistant prosecutors have filed identical objections to the proposed amendments to MCR 3.210 in paternity and child support cases because the new rule would require additional steps by their offices to obtain a default judgment and those additional steps would create significant additional hearings and permit delay. Others have joined their requests and one has stated their opposition. We write to address those concerns.

Current law requires notice to the Defendant that the Plaintiff intends to seek a default judgment. The moving party must file a motion for entry of default judgment and be prepared to offer evidence of the relief requested. MCR 2.603(B)(3). It is our understanding that some prosecuting attorneys present default judgments to the judge without a hearing or submit a default judgment under MCR 2.602(B)(3) notwithstanding that no judicial hearing has been held nor judicial pronouncement made to support a judgment. While this has been the practice in many jurisdictions and those orders have been signed, we believe there is no authority in the court rules or the statutes to present these default judgments to the court in the absence of a judicial hearing. While the Paternity Act permits the entry of a default judgment per MCL 722.714(6), we believe that the Michigan Court Rules set forth the procedure for entry of default judgments and that

procedure must be followed. Notably, MCR 2.602(B) and MCR 2.603 make no exception for paternity or child support orders.

While we share their concern regarding the need for additional hearings, we believe that the hearing dates must be set and, when the defendant does not appear, the order will enter. There will be additional costs associated with mailing notices but the number of hearings that will need to be held may not be significant given the history of nonparticipation.

Judge Feeney testified before the Michigan Supreme Court that based upon *Koy v Koy*, 274 Mich App 653, 660 (2007), and other cases (see *Sprenger v Bickle*, 302 Mich App 400, 429 (2013)), the trial court, even in the context of a default in a divorce proceeding, must make findings of fact. So the default in a custody, paternity or divorce case does not stop the court from making findings, for example, under the 12 best interest factors set forth in MCL 722.23 before entering a contested default judgment. In Judge Feeney's 14 years on the circuit bench and Judge Young's 17 years on the circuit bench, we have conducted only a handful of trials to enter a default judgment after the default was not set aside. Critically, proposed MCR 3.210(B)(2)(d) states that the court MAY permit the defaulted party to participate; it does not mandate participation. So another bite at the apple may never occur, but the parties have their due process rights protected and the court has the opportunity to make the findings necessary to enter a judgment.

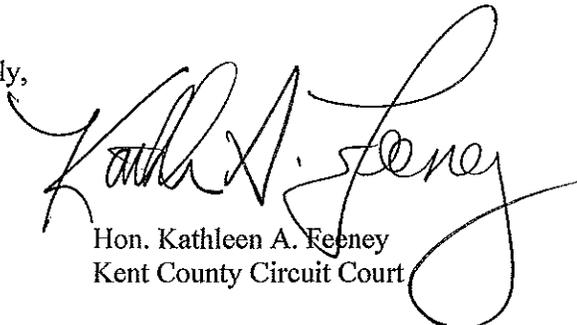
Further, we believe that defaults will still have merit. In those situations where the default is not set aside, the party obtaining the default is able to submit relevant and material evidence without needing to call witnesses in furtherance of the default judgment. So the CPS reports, doctor's reports, school records, etc. can be submitted for the court's consideration despite their hearsay nature--all due to the default. This procedure was discussed at great length and finally agreed to by the committee after much debate.

Both Guy Sweet from the Ingham County Prosecuting Attorney's office and Brian Harger from the Iosco County Assistant Prosecuting Attorney's office have filed identical letters with the Michigan Supreme Court asking that the Court revise subsection (B)(1) to exclude from MCR 3.210 default cases under the Family Support Act, UIFSA, the Status and Emancipation of Minors Act and the Paternity Act. Despite that exclusion, they also requested that (E)(1) be rewritten to state that, notwithstanding the (B)(1) exclusion, consent judgments may be entered in FSA, UIFSA, SEMA and PA actions under the revised court rule. Obviously, we defer to the collective wisdom of the Justices in making these amendments to the rule.

Thank you for this opportunity to address the Michigan Supreme Court regarding ADM 2010-32.


Hon. Joan E. Young
Oakland County Circuit Court

Sincerely,


Hon. Kathleen A. Feeney
Kent County Circuit Court