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April 29, 2014

Ms. Anne Boomer, Administrative Counsel
Mr. Larry S. Royster, Clerk of the Supreme Court
Michigan Supreme Court
PO Box 30052
Lansing, MI 489069

RE: ADM File No. 2010-32

Dear Ms. Boomer and Mr. Royster:

We write concerning the proposed amendment of MCR 3.210. Our view is that it is not necessary to so broadly change the procedure for obtaining judgments by default in domestic relations cases when alternative practices may reach the intended result. We also take this opportunity to urge the Court to conduct a public hearing on this matter.

MCR 2.603 has withstood the test of time and extensive appellate litigation, so any change should be both necessary and well-reasoned. Under present practice, once a default is properly entered, the allegations in the plaintiff's complaint are deemed admitted. Under the proposed amendment this would no longer be true. It is fundamentally unfair to deny the plaintiff notice of what the defendant is raising as a defense. And it is in direct conflict with MCR 2.603(A) (3) which precludes any litigation by the defaulted party until the default is set aside. Plaintiff would have no idea until the hearing which allegations were contested.

Section **(B) (2) (d)** of the proposed amendment authorizes the Court to allow a party in default to fully litigate the matter after having done nothing for 21 or 28 days after service of process, plus waiting 14 additional days after service of the proposed judgment and notice of hearing. The defaulted party simply needs to show up at the hearing. This imposes unnecessary

delay into the proceedings. Michigan jurisprudence has long held that, “The timeline requirements are particularly important in child support cases, whereupon there is a financial obligation of support for a minor child; and a need for finality regarding the obligation of support.” Artibee v Cheboygan Circuit Judge, 397 Mich 54, 56 (1976). “The object of the (paternity) proceedings is to determine with finality the obligation of support.” Artibee at 58. Prosecuting Attorneys who handle Title IV-D cases for the Department of Human Services have a keen interest in promoting justice for all parties in litigation as well as obtaining sound judgments that can withstand close scrutiny. However, this section gives the defendant a mechanism to delay the inevitable or sit on his or her rights to the detriment of children.

Section **(B) (5) (c)** would require the moving party to establish at a hearing that the terms of the judgment are in accordance with law. We do not object to that burden. However, allowing a party who is in default to engage in all aspects of litigation as if the default does not exist appears to be overkill. This Court could consider a rule permitting automatic review of the amount of child support entered by a default order without a showing of a change of circumstances. This would permit the defaulted party an opportunity to present financial information if he has failed to do so in the past with retroactive application. It would not, however, allow the defaulted party to avoid paying child support during the review process. In addition, this Court could consider a rule allowing a defaulted party in a paternity case the opportunity to obtain genetic testing up to a year after a default judgment is entered. These types of safeguards for the defaulted party seem more feasible than open-ended discovery and full litigation.

Proposed section **(B) (5) (a)** indicates that proofs *must* be taken in open court for entry of a default in divorce, separate maintenance, or annulment judgments except as otherwise provided by statute or court rule. However, **(B) (5) (d)** states that the Court *may* take testimony and consider evidence necessary to make findings concerning custody, parenting time, and child support. This provision would include all actions. However, the Paternity Act [see MCL 722.714(6)] states that neither party is required to testify before entry of a default judgment under that act. The recently-published Michigan Court of Appeals opinion in *Macomb County Department of Human Services v. Anderson*, __ Mich. App. __ (No.313951) (2014) indicates that there is nothing in the Family Support Act that requires a “custodial parent to appear at the

hearing” and in fact, “requiring the custodial parent’s presence at a hearing under MCL 552.452 could potentially impede the DHS’s statutory right to seek support from a noncustodial parent if the custodial parent may be uncooperative.” Clarification is needed as to whether the proposed rule is intended to re-write the Paternity Act and the Family Support Act.

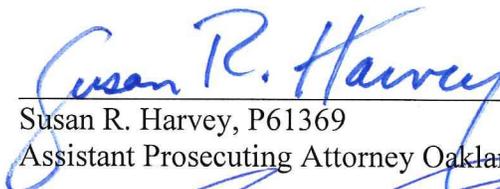
We are not opposed to provisions that provide due process. However, careful consideration should be given to the practical implications of the amendment. Failure to plead or defend has no consequences under the proposal. It is our position that open-ended discovery and litigation after default entry gives rise to a delay that unjustly affects the child who is in need of support. There appear to be other, less burdensome mechanisms for an order to be reviewed without completely delaying the judgment entry. Adding a review process, appointing an attorney in all paternity cases, or allowing paternity testing in post judgment cases for a limited period all seem to us to be more practical. In addition, requiring that proofs be taken for all defaults may create an undue burden on the custodial parent and ultimately on the Department of Human Services.

Thank you for your time and consideration. Please feel free to contact the undersigned.

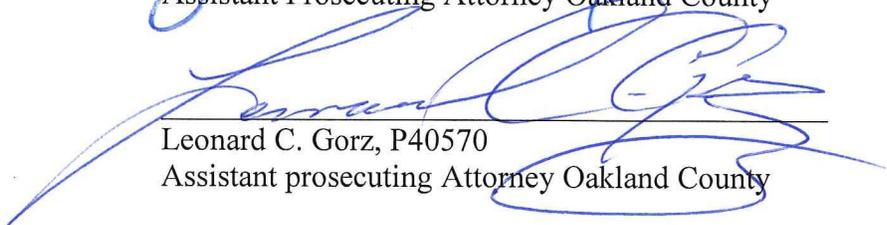
Sincerely,



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