

MCFLAA

September 2, 2015

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

Re: ADM File No. 2013-26- Proposed Amendment of Rule 7.209 of the Michigan Court Rules

Dear Mr. Royster:

We are a coalition of attorneys who work principally as domestic relations appellate practitioners. We write to comment on the Proposed Amendment to MCR 7.209 in ADM File No. 2013-26. We believe the proposed amendment should expressly exclude judgments and orders in domestic relations actions from the ability to obtain a stay without judicial intervention, merely by posting a 110% bond.

Domestic relations cases involve a unique set of circumstances and rules. First, in a divorce, except in the rare case of invasion of separate property, the money being paid is a division of a joint marital asset, even if titled in the sole name of one spouse. It is different from a money judgment where one party pays from its assets to another typically unrelated party.

Often a newly divorced spouse will require immediate access to his/her share of the marital estate as divided in the divorce judgment to meet basic needs or to maintain the home in which the spouse and the children reside. Immediate access to the property award may also be necessary to avoid defaulting on important obligations and risk losing to foreclosure or repossession that spouse's share of the assets.

We do not suggest that stays never be granted in domestic relations cases. We suggest only that there be judicial review of the stay request to assure that the mere posting of a 110% stay bond by the appellant does not wreak irreparable harm on the appellee. It is a consideration significantly different than in other types of civil matters.

Exempting domestic relations cases from the rule, indeed from the definition of a money judgment, is consistent with existing case law declining to treat a divorce-related provision for the payment of money as a money judgment. In *Reigle v Reigle*, 189 Mich App 386 (1991) it was held that the interest on money judgments statute, MCL 600.6013, does not apply to payments ordered in a divorce judgment. *Olson v Olson*, 273 Mich App 347 (2006), concurred, emphasizing the need for the court to exercise its equitable powers when determining interest on money awards in divorce cases. See also *Saber v Saber*, 146 Mich App 108 (1995). As with interest, equitable concerns should be evaluated when a stay is sought.

In domestic relations actions, the possibility that a party may not get his/her share of an asset that already belongs to him/her simply upon posting a bond is not desirable. As

michflaa@gmail.com

MICHIGAN COALITION OF FAMILY LAW APPELLATE ATTORNEYS

noted above, there may be significant detrimental financial implications, including loss of residence, inability to pay attorneys and experts, etc. In a domestic relations matter, the rule should require that a court look into those ramifications before a stay is ordered.

Therefore, for the reasons stated above, we request that the proposed amendment permitting a stay without judicial intervention upon the posting of a bond be amended to expressly exclude domestic relations matters. No stay should be granted in a domestic relations matter without a court considering the equitable implications of granting or denying the stay.

Respectfully submitted,

Anne Argiroff	Scott Bassett	Judith A. Curtis	Kevin Gentry	Trish Oleksa Haas	Liisa R. Speaker
Farmington Hills	Portage	Grosse Pointe	Howell	Grosse Pointe	Lansing

Michigan Coalition of Family Law Appellate Attorneys