MCFLAA

November 9, 2016

Ms. Anne M. Boomer
Administrative Counsel
Michigan Supreme Court
925 W. Ottawa St.
Lansing, MI 489 09

Re: ADM 2015-02 (MCR 7.213 as amended), Settlement Program

Dear Ms. Boomer:

We are a coalition of family law appellate attorneys and are writing concerning the recent amendment to MCR 7.213, the Settlement Program.

The Court indicated that civil cases under the newly effective rule include domestic relations cases. While custody cases will likely not be subject to mediation, there are no guidelines explicitly providing what cases will be included (i.e. parenting time, child support, etc). Historically, there are issues with mediation concerning Personal Protection Orders (and other domestic relations matters where there may have been domestic violence). While referencing the trial court civil mediation rule, the amended rule does not reference the Domestic Mediation court rule – which has protections in place for domestic violence. As written, the amended court rule includes no exceptions for domestic violence cases.

The rule is silent as to how the cases for mediation are selected. Apparently written requests to include a case in mediation may be anonymous (confidential), as are requests to remove. The requests may be in letter form without formal motion. This informal process raises notice issues. It is unclear if inclusion or removal is automatic based on the anonymous communications. There were processes with the former Settlement Office. There appear to be no established procedures here and it is unclear if any of the former processes will be adopted.

The rule does not take into account cases where parties have had fees waived or fees allocated or divided in the lower court. The rule language speaks to equal division of mediator fees (unless the parties agree) and does not acknowledge any other arrangement or order dividing fees even though fees in domestic relations cases are often divided based on need/ability to pay under MCR 3.206(C).

Finally, the sanctions provision appears potentially punitive. This is of special concern in domestic relations cases where there is often unequal bargaining power, including financially.

Anne Argiroff • Scott Bassett • Judith A. Curtis • Kevin Gentry • Trish Oleksa Haas • Liisa R. Speaker

MICHIGAN COALITION OF FAMILY LAW APPELLATE ATTORNEYS
michcflaa@gmail.com

If domestic relations cases are to be included in an appellate settlement program, there should be a separate rule or separate provisions within the newly amended rule accounting for the different concerns present in domestic relations matters. Attempting to address domestic relations appeals in the general settlement program rule is not adequate to take into the account the special needs of these cases, including safeguards related to domestic violence and the limited ability of the parties to pay for an additional court-mandated process.

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