

**Subject:** ADM File No. 2010-32

>>> "Brown, Elwood" <EBrown@stclaircounty.org> 12/27/2011 3:14 PM >>>

I write to comment on the proposed modifications to MCR 3.210. The rule as proposed will allow a party who is defaulted for failure to plead or otherwise defend, the ability to fully participate in the proceedings as if no default had been entered. This includes the ability to file motions, participate in discovery and participate in trial as well as other dispositional hearings, all without the necessity of filing an answer to the complaint designed to identify matters at issue. If a party can ignore the requirement of filing a responsive pleading and still fully participate in all matters before the court including presenting matters to be decided by the court, why bother with establishing provisions for setting aside a default in subrule (B)(3) as nothing really changes by doing so.

If a defendant fails to answer and a default is entered but nevertheless is allowed to participate in all matters before the court, any motion for entry of a default judgment under subrule (2)(4) at which the defendant appears and is by rule permitted to participate in will by necessity turn into a trial of the case if the parties are in dispute as to the terms of the judgment. This will in all likelihood necessitate the rescheduling of the matter for a trial at which the defendant may or may not again appear to participate. In cases in which a trial does occur and a decision on the issues is made by the judge the resulting judgment is not really a default judgment.

If the goal is to promote the ability of a party to be able to participate in a family law matter, this goal would be better served and less confusing by simply providing that a motion to set aside a default for failure to plead or otherwise defend should be liberally granted unless it appears that the motion was brought for purposes of delay or harassment.

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