



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

KATHLEEN M. McCARTHY
PRESIDING JUDGE
FAMILY DIVISION

COLEMAN A. YOUNG MUNICIPAL CENTER
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May 1, 2014

VIA E-MAIL TO: ADMCOMMENT@COURTS.MI.GOV

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

Re: ADM File No. 2010-32 (Proposed Amendments of Michigan Court Rule 3.210)

To the Clerk of the Court:

The Bench of the Third Judicial Circuit Court assigned to the Domestic Relations Section of the Family Division is writing to express its support for the amendment of MCR 3.210. The Bench has thoughtfully considered proposed MCR 3.210 and, after careful consideration, wishes to offer an alternate revision of the proposed rule, which would make bring the rule into closer alignment with MCR 2.603.

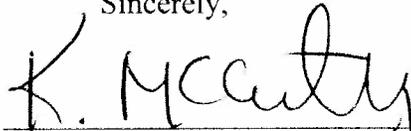
The variation from MCR 2.603, the general court rule applicable to defaults and default judgments, is warranted for domestic relations matters due to the equitable underpinnings of domestic relations law. Thus, this Bench strongly supports the provisions in proposed MCR 3.210 that would allow a defaulted party to participate in the discovery process with the Court's permission. For example, an equitable distribution of property must be made in a divorce action. Even if one of the parties has been defaulted, his or her testimony or evidence may well be necessary to determine the nature of the marital property and how to equitably distribute that property. Similarly, if a party defaults in a child custody matter, the testimony or evidence from the defaulted party will be needed to properly evaluate the best interests of the child. This subrule will help judges properly perform their role as decision makers in these types of matters to achieve a more equitable result consistent with the purpose of domestic relations law.

The addition of separate provisions for consent judgments in proposed subrule (E) will appropriately clarify that consent judgments should not be treated as default judgments, as does the

similar language appearing in subrule (B)(5)(a). These provisions should eliminate this improper procedure, and also reflect the reality of the parties' consent to a judgment.

We appreciate the opportunity to express our support for the proposed amendment.

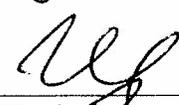
Sincerely,



Hon. Kathleen M. McCarthy
Presiding Judge, Family Division
Third Circuit Court



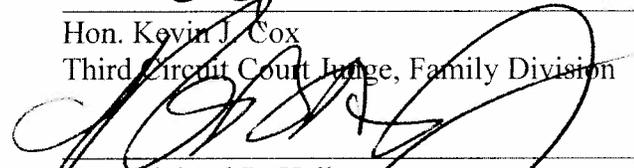
Hon. Eric W. Cholack
Third Circuit Court Judge, Family Division



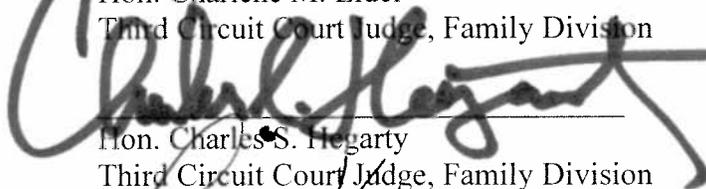
Hon. Kevin J. Cox
Third Circuit Court Judge, Family Division



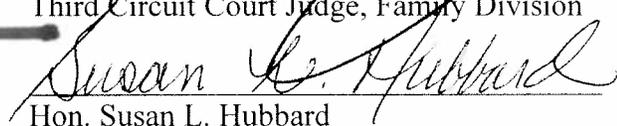
Hon. Charlene M. Elder
Third Circuit Court Judge, Family Division



Hon. Richard B. Halloran
Third Circuit Court Judge, Family Division



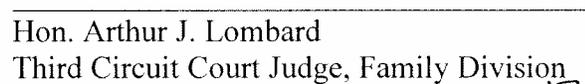
Hon. Charles S. Hegarty
Third Circuit Court Judge, Family Division



Hon. Susan L. Hubbard
Third Circuit Court Judge, Family Division



Hon. Connie M. Kelley
Third Circuit Court Judge, Family Division



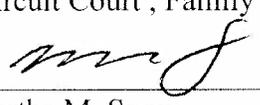
Hon. Arthur J. Lombard
Third Circuit Court Judge, Family Division

Lisa M. Neilson with permission

Hon. Lisa M. Neilson
Wayne County Probate Judge Assigned to
Third Circuit Court, Family Division

Lynne A. Pierce with permission

Hon. Lynne A. Pierce
Third Circuit Court Judge, Family Division



Hon. Martha M. Snow
Third Circuit Court Judge, Family Division

Rule 3.210 Hearings and Trials

(A) [Unchanged.]

(B) Default Cases.

(1) The entry of a default and a default judgment in all cases governed by this subchapter ~~Default cases~~ are governed by MCR 2.603, except as modified by this rule.

(2) Default.

(a) Effect of Default. Except as provided under subrule (B)(2)(b), after the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court under MCR 2.612.

(b) Participation after Default. The court may permit a party in default to participate in discovery as provided in Subchapter 2.300, file motions, and participate in court proceedings, referee hearings, mediations, arbitrations, and other alternative dispute resolution proceedings. The court may impose conditions or limitations on the defaulted party's participation.

(c) Default may be entered for failure to appear for a court proceeding.

(3) Default Judgment.

(a) Judgment Fee. If a party is in default, proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court. If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it.

(b) Nonmilitary Affidavit. Nonmilitary affidavits required by law must be filed before a default judgment is entered in cases in which the defendant has failed to appear.

(c) Notice of Hearing and Motion for Entry of Default Judgment. A party moving for default judgment must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment upon the defaulted party at least 14 days before the hearing on entry of the default judgment, and promptly file a proof of service.

(d) Hearing on Default Judgment. Except as otherwise provided by statute or court rule, a judgment of divorce, separate maintenance, annulment, or order of child custody may not be entered as a matter of course on the default of a party without a hearing on the entry of default judgment, subsequent to notice under subrule (B)(3)(c). In all other cases governed by this subchapter, a default judgment may be entered without a hearing after the default of a party.

(e) Evidence. The moving party may be required to present evidence sufficient to satisfy the court that the terms of the proposed judgment are in accordance with law. The court may consider relevant and material affidavits, testimony, documents, exhibits, or other evidence.

(f) Minor Children. In cases involving minor children, the court may take testimony and receive or consider relevant and material affidavits, testimony, documents, exhibits, or other evidence, as necessary, to make findings concerning the award of custody, parenting time, and support of the children.

(g) Modification of Proposed Judgment. If the court determines that the proposed judgment is materially insufficient or inappropriate, the party who prepared it must, within 14 days, submit a modified judgment under MCR 2.602(B)(3), in conformity with the court's ruling, or as otherwise directed by the court.

(h) Service of Default Judgment. Upon entry of a default judgment and as provided by MCR 3.203, the moving party must serve a copy of the judgment as entered by the court on the defaulted party within 7 days after it has been entered, and promptly file a proof of service.

(C)-(D)[Unchanged.]

(E) Consent Judgment.

(1) At a hearing, or at any other time if the case was filed under the Family Support Act, MCL 552.451 et seq., the Uniform Interstate Family Support Act, MCL 552.1101 et seq., the Status and Emancipation of Minors Act, MCL 722.1 et seq., and the Paternity Act, MCL 722.711 et seq., any party may present to the court for entry a judgment approved as to form and content and signed by all parties and their attorneys of record.

(2) If the court determines that the proposed consent judgment is not in accordance with law, the parties shall submit a modified consent judgment in conformity with the court's ruling within 14 days, or as otherwise directed by the court.

(3) Upon entry of a consent judgment and as provided by MCR 3.203, the moving party must serve a copy of the judgment as entered by the court on all other parties within 7 days after it has been entered and promptly file a proof of service.