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June 30, 2020

Anne M. Boomer
Administrative Counsel
P.O. Box 30052
Lansing, MI 48909

Re: ADM File 2019-31 – Proposed Amendment of MCR 7.216

Dear Ms. Boomer:

The Court of Appeals submitted this rule proposal requesting the addition of a “Vexatious Litigator” provision to MCR 7.216(C). On May 15, 2020, the Michigan Coalition of Family Law Appellate Attorneys (MCFLAA) filed a comment, in part, expressing opposition to the proposal. On behalf of the Court, I am writing in response to that aspect of their comment letter.

The MCFLAA opposes the addition of a vexatious litigator provision out of concern that it focuses on a party’s behavior, as opposed to the merits of the litigation. The MCFLAA asserts that the proposed rule may “have an unwanted chilling effect on appeals presenting novel or politically unpopular issues.” This concern is absolutely unfounded.

The proposed rule is virtually identical to MCR 7.316(C)(3), which has been in place since 2018. Like that rule, the proposal would authorize sanctions against a party who “habitually, persistently, and without reasonable cause engages in vexatious conduct.” As can be seen, this proposal is making explicit the permissible sanctions that can be imposed by the Court, and does not create any new substantive standard regarding what is vexatious. In other words, “the merits” are the focus on what is vexatious. That’s because the proposal leaves unchanged, and specifically refers to, the actual definitions of vexatious contained in existing MCR 7.216(C)(1)(a)&(b). Hence, the proposal does not expand the types of issues that fall within the rule, it just gives the Court extra tools when dealing with parties who repeatedly engage in vexatious conduct as defined in MCR 7.216(C)(1)(a)&(b).

As can be seen, this language contemplates multiple attempts by a party to litigate frivolous issues in order to harass another party or the Court. That type of repeated, vexatious conduct is wholly distinct from a party bringing a novel or politically unpopular issue before the Court, and no one has suggested that the Court has utilized the definitions within the existing court rule to prevent such issues being presented.

DETROIT OFFICE
CADILLAC PLACE
3020 W. GRAND BLVD. SUITE 14-300
DETROIT, MICHIGAN 48202-6020
(313) 972-5678

TROY OFFICE
COLUMBIA CENTER
201 W. BIG BEAVER RD. SUITE 800
TROY, MICHIGAN 48084-4127
(248) 524-8700

GRAND RAPIDS OFFICE
STATE OF MICHIGAN OFFICE BUILDING
350 OTTAWA, N.W.
GRAND RAPIDS, MICHIGAN 49503-2349
(616) 456-1167

LANSING OFFICE
925 W. OTTAWA ST.
P.O. BOX 30022
LANSING, MICHIGAN 48909-7522
(517) 373-0786

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Finally, as the Court is well aware, the proposed rule provides a necessary tool for the Court to address those somewhat rare, but difficult, instances where a party repeatedly uses the judicial process for harassment purposes. Though the MCFLAA does not think there is a need to address those circumstances, we unfortunately have found that there is, and this proposal will allow the Court to have the explicit power to take appropriate action.

Very truly yours,

A handwritten signature in blue ink that reads "Christopher Murray". The signature is written in a cursive style with a long, sweeping underline.

Christopher M. Murray
Chief Judge