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**To:** "ADMcomment@courts.mi.gov" <ADMcomment@courts.mi.gov>  
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**Subject:** Proposed Amendment to Rule 3.206(C) - SDG comments 6-23-14  
**Attachments:** pdf attorney fee article (BH500044xAF0CA).pdf

To Whom It May Concern,

I noted the proposed amendment of MCR 3.206(C) in the June, 2014 Michigan Bar Journal. For the reasons stated below I oppose such amendment.

Historically, an award of attorney fees and expenses was available under MCR 3.206(C)(2) if a party was able to demonstrate that they were unable to bear the expense of the action and the other party was able to pay. This was important to many types of family law matters (beyond the initial divorce, separate maintenance or annulment proceeding). Given the expanse of litigation in this arena that impacts the best interests of children and where the lack of funds can result in children or disadvantaged individuals being forced to capitulate or otherwise be placed at the disadvantage of having to represent themselves because they would not otherwise qualify for or be able to avail themselves of legal aid (free or otherwise), it is important that we maintain the availability of this provision as currently written. When MCR 2.306(c)(1) and (2) are used appropriately it provides a mechanism to help level the field and provide equal access to the court.

MCR 3.201 provided the availability of attorney fees (when the proofs merited it) in actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, family support under MCL 552.451 et seq., the custody of minors under MCL 722.21 et seq. and visitation with minors under MCL 722.27b et seq. and to proceedings that are ancillary or subsequent to such actions which relate to custody of minors, visitation with minors or the support of minors, spouses or former spouses.

Therefore, the proposed limitation would have the effect of limiting such relief only to a "party in a divorce, separate maintenance, annulment action" and eliminate potential representation for persons who were never married but who have children who will be impacted by custody, parenting time and support proceedings. As a result, in such situations a party's ability to obtain appropriate representation could be severely limited. The change in language could also muddy the waters and/or adversely impact the ability to seek attorney fees based upon need in post judgment proceedings. Issues impacting children aren't limited to divorce proceedings and a significant segment of cases emanate from paternity, family support and custody and parenting time matters between unmarried individuals who have children in common.

While the court rule authorizes the Court to award fees across the broader spectrum of cases delineated in MCR 3.201, case law already limits such awards via the imposition of a "reasonable" standard. So while the court rule opens the door to access to legal representation in broad array of family law related cases, the "reasonableness" standard provides necessary limitations, such that only those fees which were necessary and reasonable are actually subject to award.

As I recently wrote an article on attorney fees in family law litigation and the imposition of the reasonable standard, I affix it to my comments so that you might see that the necessary safeguards are already in place.

Elimination of the ability to seek attorney fees in custody and parenting time matters is of particular concern in a society where not all parents wed and inequities of power are often found to exist. Moreover, I believe that the proposed modification would significantly undercut the rationale for the rule when implemented, which according to the 2003 commentary, as suggested by the Michigan Judges Association, included (but wasn't limited to):

(3) remove the ability of a vindictive litigant to apply financial pressure to the opposing party, (4) create a financial incentive for attorneys to accept a wronged party as a client

Please feel free to contact me if you have any questions, comments or concerns.

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