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July 30, 2014

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

RE: ADM File No. 2013-17 – Proposed Amendment of Rule 3.206 of the Michigan Court Rules

Dear Clerk Royster:

At its July 25, 2014 meeting, the Board of Commissioners of the State Bar of Michigan considered the above proposed rule amendment published for comment. In its review, the Board considered recommendations from the Domestic Violence Committee and the Family Law Section, both of which opposed the amendment. The Board voted unanimously to oppose the amendment.

The Domestic Violence Committee opposed the proposed amendment for the following reasons:

- The committee acknowledged that a legal question exists regarding whether a court must have specific statutory authority before it can award attorney fees based on need. If the Supreme Court determines that the rule must be amended for this reason, the committee strongly urges that the current statute permitting an award of attorney fees in divorce actions, MCL 552.13, be amended to also permit attorney fee awards in other actions regarding minor children, including paternity, custody, parenting time and support or that an attorney fee award provision be added to the specific statutes.
- Many domestic violence survivors who are single parents will be at a disadvantage in custody disputes if they are unable to request attorney fees based on need and the ability of the other party to pay. While the abusive parent will have resources to hire an attorney, the low-income victim will not and, under this proposal, will not even have the option of requesting attorney fees from the high-income party.
- Survivors who are in flight from violence will have no access to resources or support networks to enable them to bring or defend against a custody or support petition.
- Batterers use tactics that inhibit survivors' ability to engage in a court action. Batterers often prevent or interfere with survivors' access to financial resources or the ability to obtain or maintain employment, thus limiting a survivor's ability to hire an attorney. Batterers often file multiple and motions in an effort to harass or bankrupt the survivor.

The Family Law Section opposed the proposed amendment for the following reasons:

- Further limitations on access to justice by unmarried parents will have deleterious effects on children in Michigan.
- MCR 3.206 (& MCR 3.204 prior to 1993) evolved to acknowledge the importance of a more level playing field in matters involving minor children.
- Fee allocation is inherently procedural and not governed or limited by statute.
- The creation of a distinction in MCR 3.206(C) between children of married parents and children of unmarried parents raises constitutional concerns, including implicating Federal and State constitutional equal protection and due process guarantees.
- The proposed court rule change to exclude fee allocations in all non-marital domestic cases should not be based on an individual case.

We thank the Court for the opportunity to comment on the proposed amendment.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Brian D. Einhorn, President