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September 10, 2014

Ms. Anne M. Boomer, Administrative Counsel
Michigan Supreme Court
925 W. Ottawa St.
P.O. Box 30052
Lansing, MI 48909

RE: Supplement to Family Law Section Position Statement
ADM File No. 2013-17
Proposed Amendment to MCR 3.206(C)

Dear Ms. Boomer:

The Family Law Section of the State Bar of Michigan previously submitted its Report on Public Policy Position on or about July 28, 2014. The comment period is now closed, but we thought to send this letter to you with additional authority for the proposition that fee allocation may be authorized by court rule.

While the “American rule” is firmly entrenched in Michigan law, exceptions have long been recognized by the Court when authorized by statute or court rule or a common-law exception. *See, e.g., Popma v. ACIA*, 446 Mich 460, 474, 521 NW2d 831 (1994); *Nemeth v. Abonmarche Dev., Inc.*, 457 Mich 16, 37-38, 576 NW2d 641 (1998); *Dessart v. Burak*, 470 Mich 37, 42, 678 NW2d 615 (2004); *Haliw v. Sterling Hts.*, 471 Mich 700, 706, 691 NW2d 753 (2005); and *Smith v. Khouri*, 481 Mich 519, 751 NW2d 472 (2008).

Further, the Michigan Legislature has acknowledged the court’s authority to establish rules for payment of attorneys’ fees from one party to the other. MCL 600.2405(6) includes as taxable costs in an appeal “any attorney fees authorized by statute or court rule.”

Again, thank you for the opportunity for the State Bar of Michigan Family Law Section to comment on ADM File No. 2013-17.

Respectfully submitted on behalf of the Family Law Section:

/s/ Mathew Kobliska
Mathew Kobliska
Chair, Court Rules & Ethics Committee
Family Law Section