

MCFLAA

September 18, 2014

Anne Boomer
Administrative Counsel
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2013-17

Dear Ms. Boomer:

The Michigan Coalition of Family Law Appellate Attorneys (MCFLAA) opposes the proposed amendment to MCR 3.206.

Bases for Attorney Fees:

Michigan follows the "American rule" regarding the payment of attorney fees and costs. *Haliw v City of Sterling Heights*, 471 Mich 700, 691 NW2d 753 (2005), citing *Dessart v Burak*, 470 Mich. 37, 42; 678 N.W.2d 615 (2004). Under the American rule, attorney fees are not recoverable from the losing party as costs absent an exception set forth in a statute or court rule expressly authorizing such an award. The American rule is codified at MCL 600.2405(6)¹, which provides that among the items that may be taxed and awarded as costs are "any attorney fees authorized by statute or by court rule" (emphasis added). *Haliw, supra* at 707.

MCL 552.13, part of the Divorce Act, is limited to divorcing parties. MCR 3.206(C), properly authorizes attorney fees in cases involving both married and non-married parties in domestic relations matters (specified in MCR 3.201(A)(1))

¹ MCL 600.2405(6) Costs; items taxable.

The following items may be taxed and awarded as costs unless otherwise directed:

(1) Any of the fees of officers, witnesses, or other persons mentioned in this chapter or in chapter 25, unless a contrary intention is stated.

(2) Matters specially made taxable elsewhere in the statutes or rules. (3) The legal fees for any newspaper publication required by law.

(4) The reasonable expense of printing any required brief and appendix in the supreme court, including any brief on motion for leave to appeal.

(5) The reasonable costs of any bond required by law, including any stay of proceeding or appeal bond.

(6) Any attorney fees authorized by statute or by court rule.

Policy Reasons for Preserving the Current Version of the Court Rule:

MCFLAA agrees with the position of the State Bar of Michigan Family Law Section. MCR 3.206(C) works to allocate fees when one party cannot prosecute or defend a domestic relations action. For example, fee allocation somewhat levels the playing field so that cases involving the rights of all children are decided upon facts, and not one party's ability to outspend the other. See *Harvey v Harvey*, 470 Mich 186, 192-193, 194; 680 NW2d 835 (2004) (addressing the circuit court's duty to ensure the best interest and welfare of the minor children).

Yours truly,

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Michigan Coalition of Family Law Appellate Attorneys