

PROPOSAL FOR NON-OPPOSITIONAL CAPTIONING IN DOMESTIC RELATIONS CASES

Issue

Should the Representative Assembly adopt an amendment to MCR 3.206 to modify the designation of parties in a domestic relations action to petitioner and respondent?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to adopt an amendment to MCR 3.206 to modify the designation of parties in a domestic relations action to petitioner and respondent.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment Rule 3.206 of the Michigan Court Rules as follows:

Rule 3.206 Initiating a Case

(A) Information in Case Initiating Document.

(1) The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D), except that the parties shall be designated and identified as provided in subsections (E) and (F).

(2) [Unchanged]

(3) [Unchanged]

(4) [Unchanged]

(5) [Unchanged]

(6) [Unchanged]

(B-D) [Unchanged]

(E) Designation of Parties. A party who initiates a case by a complaint or petition is designated as a petitioner and a responding party is designated as a respondent. These designations remain throughout the action and in any postjudgment proceedings. To the extent that other provisions of the Michigan Court Rules outside of subchapter 3.200 are applicable to domestic relations actions, the term “plaintiff” will apply to petitioner and “defendant” will apply to respondent.

(F) Captions. In an action for divorce, separate maintenance, or annulment, the case caption must be in the following form: “Regarding the Marriage of [petitioner’s name] and [respondent’s name or joint petitioner’s name].” In other actions for child support or child custody, the caption must be in the following form: “Regarding the Child[ren] of [petitioner’s name] and [respondent’s name or joint petitioner’s name].”

Synopsis

Many in the Family Law community have questioned the need for confrontational pleading format in domestic cases. Our form of casting parties as “Plaintiff” and “Defendant” – separated by “vs.” – is not unique to Michigan. However, many jurisdictions, whether by statute, state court rule, local rule, or just “the way that it has always been done,” address the captioning of actions in family law cases in less combative ways.

Words matter to our clients. The term “visitation” was a powder keg for acrimony, and many in our profession set about to fix it. Continuing in that effort, many of us have suggested putting the word “custody” out to pasture, while retaining our appellate law regarding joint decision-making. The commencement of the case is usually not a happy time for the litigants, with all of the particular aspects inherent in one party suing the other in court to formally exit the relationship. Often, the trajectory of the case is set at that crucial time. Confrontational captioning simply adds fuel to that fire. Courts currently use “Regarding Baby XYZ,” or “In re: Johnson Estate,” and other similar non-confrontational captions in probate and juvenile proceedings.

Background

The State Bar of Michigan Family Law Section Council approved the language of the within proposal, but it was joined with a proposal from the ADR Section, from which the State Court Administrative Office rolled this proposal into a project referred to a newly created special committee to propose revisions to the Court Rules to accommodate the Collaborative Law Act in Michigan. The committee completed its work in 2017, and the changes were thereafter adopted by the Michigan Supreme Court in 2018 and became effective in April 1, 2019. A component of the new MCR 3.222 provided for joint filing between the parties, and the designation of “Party A” and “Party B” in pleadings and captions. The problem is that Collaborative cases are a particular type of cases in which the parties have settled their cases before filing¹, and it is estimated that fewer than 5% of all domestic cases fall under this subchapter of the Court Rules.²

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None.

¹ Some cases are stayed after filing to allow the parties to opt out of the litigation process and engage in the collaborative process.

² The discovery reforms taking effect on January 1, 2020, are not affected by this proposal.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on September 26, 2019

Should the Representative Assembly adopt an amendment to MCR 3.206 to modify the designation of parties in a domestic relations action to petitioner and respondent?

(a) Yes

or

(b) No.