

DOMESTIC VIOLENCE COMMITTEE
Respectfully submits the following position on:

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ADM File No. 2013-17

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The Domestic Violence Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Domestic Violence Committee. The State Bar of Michigan authorized the Domestic Violence Committee to advocate its position.

The State Bar position on this matter is to oppose the proposed amendment.

The total membership of the Domestic Violence Committee is 17.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 17. The number who voted in favor to this position was 14.

Report on Public Policy Position

Name of committee:

Domestic Violence Committee

Contact person:

Ashley Lowe

E-Mail/Phone:

lowea@cooley.edu

Proposed Court Rule or Administrative Order Number:

[ADM File No. 2013-17: Proposed Amendment of MCR 3.206](#)

The proposed amendments of MCR 3.206 would limit the ability of a court to require one party to pay another party's attorney fees during the proceeding to those cases that involve divorce or separation of married persons.

Date position was adopted:

June 18, 2014

Process used to take the ideological position:

Position adopted after an electronic discussion and vote.

Number of members in the decision-making body:

17

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

This proposed court rule amendment would limit the court's discretion to order one party to pay another party's attorney fees based on need to cases of divorce or separate maintenance. That is, a court would not have authority to award need-based attorney fees in domestic relations cases where the parties are unmarried.

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

The committee acknowledges 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 text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-17_2014-04-23_formatted%20order.pdf