

Michigan Court Rule 3.222(C-K)
JUDGMENT OF DIVORCE OR SEPARATE MAINTENANCE (New)

Issue

Should the Michigan Court Rules eliminate the litigation and other inapplicable requirements under existing court rules for parties who sign attorney-approved settlement agreements before they file a Complaint for Divorce or Separate Maintenance?

Synopsis

Currently, spouses who sign attorney-approved settlement agreements before they file a Complaint for Divorce or Complaint for Separate Maintenance are required to:

- a. serve one of the spouses;
- b. file an Answer;
- c. attend a pretrial conference, if one is scheduled by the court;
- d. engage in alternative dispute resolution processes if so ordered by the court;
- e. file a motion for entry of judgment, notice of hearing, praecipe and/or other locally-required procedures necessary to obtain a hearing date for entry of a judgment.

The proponents of these changes desire to implement an applicable, streamlined approach to entry of the judgment of divorce or separate maintenance.

Fiscal and Staffing Impact on State Bar of Michigan

None. Prior Action by Representative Assembly

None. Suggested Changes

Additions are underlined.

Deletions are ~~stricken~~.

RULE 3.222 PRE-FILING DIVORCE SETTLEMENTS AND SEPARATE MAINTENANCE AGREEMENTS.

(A) Applicability of Rule 3.222. Rule 3.222 is applicable only to pre-filing divorce settlements and pre-filing separate maintenance agreements. The other rules of Subchapter 3.200 and the general provisions of the Michigan Court Rules that do not conflict with this rule also apply.

(B) Captions.

(1) The party who files the judgment of divorce signed by both parties and their attorneys shall be identified as the "Petitioner" and the other party as "Respondent."

(2) The action shall be identified, "In Re the Matter of [Petitioner/Respondent]."

(3) A pre-filing divorce settlement case shall be entitled, "Petition for Dissolution of Marriage Pursuant to Pre-Filing Divorce Settlement."

(4) A pre-filing separate maintenance case shall be entitled “Petition for Separate Maintenance Pursuant to Pre-Filing Settlement.”

(5) Immediately following the language required in MCR 2.113(2), the petition must contain the following statement, signed by the attorneys, who may not be attorneys *in pro per*, for both parties:

The parties have signed a settlement agreement and/or judgment of divorce that resolves all issues of their case and contains all of the provisions necessary for a judgment of divorce or a judgment of separate maintenance to satisfy the requirements set forth by statute and court rule.

(C) Judgment of Divorce or Separate Maintenance. An original proposed judgment of divorce or proposed judgment of separate maintenance, signed by both parties and their attorneys, must be filed with the Petition.

(D) Summons. No summons shall be issued.

(E) Service. No service upon the non-filing party shall be required.

(F) Answer. No answer shall be required.

(G) Pre-Trial Conference. No pretrial conference shall be held.

(H) Entry of Judgment of Divorce or Judgment of Separate Maintenance.

The Clerk of the Court shall, within 7 days of the date of filing the Petition, issue a notice of hearing to take place within 21 days of the expiration of 60 days from the date of filing the Petition. The Petitioner or Respondent shall present the testimony required by statute and the judgment of divorce or the judgment of separate maintenance shall be entered by the Court at the time of the hearing. In cases involving minor children, the court shall find, pursuant to statute, that compelling circumstances exist to accelerate the statutorily mandated waiting period for entry of a pre-filing judgment of divorce or separate maintenance because the parties have reached a complete agreement resolving all issues of their divorce or separate maintenance agreement and that the proposed judgment of divorce or separate maintenance is in the best interests of the minor child(ren).

(I) Alternative Dispute Resolution. The parties shall not be ordered to engage in alternative dispute resolution processes between the time of filing of the Petition and the final hearing.

(J) Adjournments. Adjournments of the date of entry of the judgment of divorce or separate maintenance are governed by Rule 2.503.

(K) Dismissal of Actions. Subject to the provisions of MCR 2.420 and MCR 3.501(E), an action may be dismissed by the petitioner or respondent without an order of the court and without the payment of costs by filing a notice of dismissal before entry of the judgment of divorce or separate maintenance.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on April 29, 2006

MCR 3.222(C-K) should be added to provide for an applicable, streamlined approach to entry of judgments in filings involving pre-settled divorce and separate maintenance cases.

a. Yes

or

b. No