Public Policy Position
HB 5445

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,486 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar of Michigan's position is to oppose HB 5445.

The Family Law Section has a public policy decision-making body with 21 members. On March 1, 2026, the Section adopted its position after an electronic discussion and vote. 13 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 8 members did not vote.

SUPPORT

Explanation:
HB 5445 is designed to close loopholes in the legislation that established the Family Division of Circuit Court nearly 30 years ago. While establishing the Family Division has been a vast improvement for Michigan families, flaws in the legislation have become apparent over the years. Recognizing that, former Section Chair Hon. Dick Halloran (now retired) established a "20-year review" committee and, for nearly a decade, the Family Law Section has been studying how the Family Division operates in each county around the State to see if we could suggest changes to improve the system for Michigan families. The Family Law Section's analysis identified two major problems that the current statutes do not adequately address: education and commitment. Rep. Douglas Wozniak (R-Shelby Township) has introduced HB 5445, which if signed into law will require judges to complete education in family law and related social science before deciding any cases. HB 5445 also achieves the goal of "one family, one judge" through restricting future Family Division judges from rotating off the Family Division bench to other divisions of their Circuit Court. The Family Law Section SUPPORTS this bill.

I. The Family Law Section believes a minimum amount of judicial education is absolutely required before a judge makes decisions impacting children for life.

The Family Law Section does not believe that a minimum amount of practice experience in family law is essential to serve a judge in the Family Division. Examples abound of judges who came to the Family Division bench without any family law experience but were committed to the work, took the time to become well educated in the law and related social science, and are excellent Family Division judges. Minimum education before making decisions that will impact children and families for life is

needed, though, because the current statute provides that "a judge's service pursuant to the family court plan be consistent with the goal of developing sufficient judicial expertise in family law to properly serve the interests of the families and children whose cases are assigned to that judge." MCL 600.1011(3). The current law also provides that a "judge serving pursuant to the family court plan shall receive appropriate training as required by the supreme court." MCL 600.1011(4). While there is a continuing education requirement for judges, it does not require training on any particular subjects depending on a judge's docket, and it does not require training in advance of rendering decisions. As a result, many families have been before jurists who had little, if any, education in family law before they made life-changing and potentially devastating decisions. The Family Law Section therefore concluded that rather than 'developing' sufficient judicial expertise on the job with collateral damage in their wake, Family Division judges must be educated before assessing and deciding the challenging and frequently brutal issues they are presented with. Accordingly, if HB 5445 is adopted, prospective Family Division judges without the requisite education or practice experience must have at least 40 hours of family law training, 40 hours of children's law training, and 16 hours of domestic violence training before hearing any cases, and sitting judges' continuing education requirements will be earned in similar training.

This education requirement is consistent with Rule 1.1(a) of the Michigan Rules of Professional Conduct, which requires lawyers not to "handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it." MRPC Rule 1.1(b) says lawyers are not to "handle a legal matter without preparation adequate in the circumstances." MRPC 1.1 is the bare minimum for a lawyer pushing a particular position on the decisionmaker as an advocate. Prospective Family Division judges should not be making decisions for families without the "preparation adequate in the circumstances" to do so. Why?

• Termination of parental rights cases are the "civil death penalty." The procedural requirements are complex and the discretionary decisions are not easy. Children's developmental stages, mental health considerations, and other complicated dynamics affect whether a family can successfully be reunified or if the child involved needs a different kind of permanence.

• The Child Custody Statute requires individualized consideration of each child. Their developmental needs, the nature of the parent-child bond, and other important issues related to the family dynamics are crucial. Judges who are not well educated in those critical nuances are more likely to find a parent "good enough" and order some stock parenting time schedule – notwithstanding that they may be depriving children of the opportunity to spend more time, or the right kind of time, with the parent who they need more from at that stage of their life.

• Even property and cash flow (support) decisions in Family Division are not simple and straightforward. Friends of the Court can only do so much and, because of the number of self-represented litigants, the judge is often the only lawyer in the room when critical decisions are made.

• The proposed required education -- 96 hours (at least 40 in children's law, 40 in family law, and 16 in domestic violence) is the bare minimum that will allow judges to have an understanding of the basics before they issue rulings that profoundly impact children and families.

II. The Family Law Section believes that Family Division cases should be heard by judges who are

committed to the important work of the Division.

When Family Divisions in Michigan's Circuit Courts officially opened January 1, 1998, for the first time divorce, child custody, support, adoptions, child protective proceedings (abuse and neglect), termination of parental rights, emancipation of minors, juvenile delinquency, and name changes all were assigned to one court division. Later, the Family Division was charged with handling Personal Protection Orders. Most recently, Extreme Risk Protection Orders and Assisted Reproduction and Surrogacy Parentage Act matters came under the Family Division umbrella. Before the legislature created the Family Division of Circuit Court with Public Act 388 of 1996, however, domestic cases were assigned to judges who presided over civil and criminal cases, too, while children's law cases went to probate court. It was a near-universal experience that judges largely viewed the family docket as the least desirable or lowest priority, and judges often adjourned domestic matters in favor of their criminal and civil cases. This sometimes delayed trials for years and children lived in limbo.

Establishment of the Family Division has been a vast improvement. The idea and purpose of the Family Division is "one family, one judge." However, experience has shown a substantial number of judges prefer the civil/criminal docket and jury trial system. As a practical matter, this means that new judges get assigned to the Family Division then rotate out as soon as they can. Relatedly, MCL 600.1023 requires assignment of matters within the jurisdiction of the family division in the same circuit to be assigned to the same judge "whenever practicable." This loophole has been exploited in some circuits based on the preference of the sitting judges. Other circuits apply it so that pending matters are temporarily reassigned and then returned to the original judge – resulting in more disruption, rather than less. The result is new judges are assigned then rotate through the Family Division in many circuits, or that all or virtually all judges in the circuit have a blended docket in others. So in all but a few circuits, families across our great State have faced anything but "one family, one judge;" families have had several different judges preside over their case at different times. One practitioner reported that in a post-judgment matter, five different judges made decisions in a case over the course of just three years.

Having a series of different judges, and judges without sufficient education in family law making decisions, is a bigger problem in Family Division cases than in other kinds of cases because:

• Cases involving children continue in the Court's jurisdiction until the children become what society considers adults. Family Division cases are not usually completed within a year or less as is common in other types of cases.

• Many (perhaps most) domestic cases (DM, DO, DP, DC, DS, etc.) cases involve one or more parties who are self-represented. Again, oftentimes the only lawyer in the courtroom is the judge. Unlike civil and criminal cases, other lawyers are not present to assist the judge in determining what the applicable and/or procedure law is despite the gravity an adverse decision can have on the rest of their -- and, more importantly, their children's -- lives.

• Vulnerable individuals -- children and domestic violence survivors, for example -- have to repeat their testimony and tell their stories over to each new judge. This reinforces the trauma they have already experienced and inflicts new trauma when parties have to repeat testimony before different decision-makers.

• Abusers often see a new judge as a new opportunity to reestablish contact with their victims, because the new judge is another person they have a chance to charm and convince. This increases the cost and stress on the children as well as on the other parent.

• In practice, having different judges also increases confusion when self-represented parties do not always understand which case is implicated in the notices they receive and they appear at the wrong court.

• Family law is largely case law, the statutes bestow significant discretion on judges, and it is not realistic to expect judges who are new to the bench and looking to the day they can leave the family docket to give each family before them the individualized attention they deserve.

• There is a real risk of inconsistent decisions when two different judges are ruling on parent/child contact – often applying different legal standards and following different procedures.

Current Family Division judges won't be required to stick around if they really don't want to, because they are grandfathered and will be able to transfer out of the Family Division if they choose. Future Family Division judges, however, will be precluded from 'jumping ship' and will have to run for a seat in another division of the circuit court if they don't want to continue to be a Family Division judge. And experience shows that this rotating bench is not "just a Wayne County [or insert another larger circuit court here] problem." Family Law Section members report this happens in circuits all around the State.

"One family, one judge" is therefore absolutely necessary to avoid inconsistent decisions and to promote judicial efficiency. The Family Law Section believes the best way to achieve that goal is to require minimum experience or education and a commitment to stay on the Family Division bench, and HB 5445 achieves both objectives.

Contact Person: Donald C. Wheaton, Jr.
Email: don@lawyerhousecalls.com