



# REFEREES ASSOCIATION OF MICHIGAN

December 15, 2004

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RE: ADM File No: 2004-40

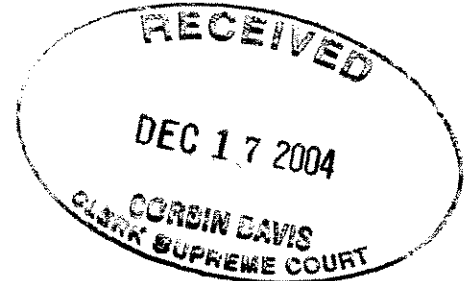
Dear Clerk:

The Board of Directors of the Referees Association of Michigan, representing over one hundred Domestic Relations and Juvenile Court Attorney-Referees in the State of Michigan, met on December 10, 2004 to consider the referenced proposals to amend MCR 3.215. By unanimous votes of the Board taken on December 10, I am authorized to submit the following comments on the referenced Proposed Amendments of MCR 3.215 on behalf of the Referees Association of Michigan:

Concerning proposed MCR 3.215 (B) (1): RAM believes that the Court should be allowed to refer any motions that fall within the jurisdiction of the Family Division of the Circuit Court, which would cover all domestic relations motions, matters in the Juvenile Division, and such matters as PPO hearings and bite cases, etc.

As to proposed MCR 3.215(C)(2): RAM suggests that, beginning with the third line, following the word, "referee," the remainder of the proposal should be stricken, and replaced with the following: "...must submit a recommendation for an adjournment order." As a practical matter, if the Referee decides to adjourn the hearing, the hearing will not occur at that time, and it would be absurd to ask the Judge assigned to affirm or reverse the adjournment, since that would often not be able to be accomplished until after the adjourned date. Referee's should be recognized as having sufficient independent discretion to determine whether an adjournment under MCR 2.503 is appropriate, or whether to proceed over objection.

Dealing with proposed MCR 3.215(D)(3), RAM requests deletion of the words "for good cause," from the proposed rule, and the proposed stricken language ("in extraordinary circumstances") should be restored. MCR 2.402 and MCR 3.210(A)(4) already provide for telephone/communication equipment hearings. The result of the proposed rule would be to make it easier to obtain a telephone hearing with a



Referee than with a Judge. There is no apparent justification for this, and it is ill-advised to have two different standards for the same type of hearing, on the same facts.

Concerning proposed MCR 3.215(E)(1): RAM believes that the last full sentence should be stricken since it is covered elsewhere in the court rule.

As to proposed MCR 3.215 (E) (3), etc.: RAM believes that where the expression "judicial hearing" appears in the court rule, it should be replaced with the expression, "*de novo* hearing," to be consistent with the statute (*See also*, proposed (E) (4) and (E) (5), etc.)

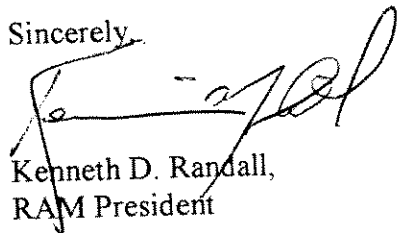
Relating to proposed MCR 3.215 (E) (7): RAM believes that the following language should be inserted in line two, after the words, "in writing," : "...or on the record." This would allow for stipulations to waive the right to a *de novo* hearing to be made either in writing or on the record, consistent with MCR 2.507(H), and saves time and expense, without depriving the parties of any rights afforded by current rules.

On proposed MCR 3.215 (F) (2) (a): RAM proposes that the language following the first line, ending with "of a referee hearing," be stricken, and that the subrule conclude with a period after the first line. The added language, while consistent with the current rule, is redundant, and frankly confusing as to what the "record" of the Referee's hearing might consist of. "Record" is commonly understood to mean the transcript or video recording of a hearing, together with any exhibits admitted into evidence and pleadings filed in the matter. There is no reason to embellish; in addition, there is utterly no reason why a Referee's "memoranda, recommendations or proposed orders," should be included in the record, and they should therefore be eliminated from the language of a subrule dealing with a *de novo* hearing that involves a review of the record.

Finally, concerning proposed MCR 3.215 (G) (2): RAM proposed that this subrule be stricken in its entirety, and leave the Court with the discretion whether the effectiveness of the interim order entered pursuant to the Referee's recommendation should be stayed pending the review request period. As to proposed MCR 3.215 (G) (1): RAM believes that the language proposed by the Michigan Judges Association is superior to the proposed rule: "(G) (1): The referee's recommended order, if approved by the court, must (underlining in original) take effect on an interim basis, except as provided by (the MJA's counterproposal concerning) subsection (G) (2), or unless otherwise ordered by the court, pending either entry of the court's order resolving a timely objection or the expiration of the 21-day period in the absence of a timely objection."

Thank you for your anticipated careful consideration of the comments of the Referees Association of Michigan concerning a proposal to amend the Court Rules governing us. We would be happy to answer any questions you might have, and would be pleased to testify at any public hearings to be scheduled on these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Randall", written over a horizontal line.

Kenneth D. Randall,  
RAM President