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December 13, 2011

Mr. Corbin R. Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RECEIVED
DEC 16 2011
CORBIN DAVIS
CLERK SUPREME COURT

Re: AM 2010-22 & MRPC 7.3:
Controlling Family Law Attorney "Trolling"

Dear Mr. Davis:

I am writing in support of the passage of AM 2010-22 and MRPC 7.3. There are many compelling reasons why litigants in a family law matter should be provided protection from unsolicited interference by attorneys in the legal process. From my perspective, the most compelling reason is the fact that an unsolicited contact by an attorney may undermine the ability of a party to enjoy the very protection that a court may provide, through ex parte temporary protective orders.

On occasion, after a complaint for divorce is filed, an Ex Parte Order with regard to the parties' rights and responsibilities of the children is required to, for example, maintain either equal access to the children, or to declare the address at which the children must reside, where there is credible evidence one parent may attempt to remove the children from the state or the country. On other occasions where the parties are cohabiting and have an existing arrangement for the payment of debts, one of the parties has threatened to cease contributing to the payment of bills and customary expenses such as mortgage, electric, water, gas, phone, car payments or car insurance, if a divorce is filed. In such cases, an ex parte order may provide for continuation of the existing debt payment obligations.

Regularly, Ex Parte Orders are utilized where a party has recently engaged in excessive expenditures beyond that reasonably necessary, or has threatened to sell or transfer an interest in property outside of the marital estate, cancel insurance coverage, or incur liens or debts not reasonably necessary if a divorce action is started. In many instances the parties and children need to rely on the continuation of health insurance coverage, and to some degree a continuation of employment benefits provided to the family. That includes remaining as beneficiary on the other party's pension, 401(k) or child related benefit provision. If the facts show that these rights have been threatened, an attorney may wish to protect those rights with a temporary restraining order preventing the wasting of marital assets, or the cancellation of insurance and other employment benefit coverage.

For the purposes of this discussion, assume that a complaint has been filed and pursuant to MCR 3.310(B)(1), the litigants have shown ". . . by specific facts set forth in affidavit or verified pleading that irreparable injury, loss or damage will result in the delay required to affect notice, <u>or that notice itself will precipitate adverse action before an order can be issued</u>." (Emphasis

added) Herein lies the rub. A litigant files an action seeking ex parte relief. The problem with it is, in today's busy courts, oftentimes a complaint and affidavit for ex parte relief, and the proposed orders, may sit in the judge's inbox for several days before they are acted upon. The order is entered and then put in the outbox, or mailed back to the litigant. It is not unusual that a week or more may pass before the orders are entered. Then it becomes necessary for the orders to be acquired, put into the hands of the process server, and served upon the opposing party. Assume that the court has in fact found specific facts showing irreparable harm may result if notice itself is given of the intention to seek this relief.

Now, consider the fact that with the current solicitation, oftentimes the defendant in the case is given notice that a complaint has been filed against him/her, before the judge has had a chance to review the orders, before there is a chance for the orders to be acquired by the requesting party, and well before the defendant is actually served with them. This gives the defendant the opportunity to undermine the very protections that the court has sought to put into place, through the entry of ex parte interim orders. This is also true with Personal Protection Orders. Although the courts typically process these far more quickly than a regular ex parte interim order, these too oftentimes result in a delay between the time that a petition is filed, and the defendant actually getting served.

In all of these instances, the unsolicited involvement of an attorney during these first 14 days, or prior to the defendant being served, may result in the adverse action attempting to be prevented, actually happening. The public policy behind the Court Rule involving temporary restraining orders is undermined by family law trollers, who provide advance notice to defendants, prior to their being served with legal process. The very protection the court seeks to provide a litigant, is sabotaged by this predatory action.

The proposal, as suggested by the Family Law Council, does not impose a blanket suppression on solicitation of a client. It merely gives the plaintiff a reasonable chance to get the case filed, have the specific facts of the complaint reviewed by the court, and if appropriate, an order issued and the defendant served. This is only right. Family law cases can be some of the most tumultuous legal proceedings in civil practice, and oftentimes, Ex Parte relief is required. This relief will be forever denied litigants, if attorney solicitation/trolling is allowed to continue.

I would respectfully request that this Honorable Court support the passage of AM 2010-22 and MRPC 7.3 to ensure the protection of Michigan citizens.

Sincerely,

CARLO J. MARTINA, P.C.

Carlo J. Martina