Michigan Supreme Court Streamlines Process for Parties Working Collaboratively in Family Law Cases

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For many years, the Supreme Court has been encouraging alternate dispute resolution for domestic relations cases, beginning with adoption of the mediation court rules 15 years ago, MCR 3.216, and continuing with its support of the recent adoption of the Uniform Collaborative Law Act, MCL 691.1331 et. seq., effective December 8, 2014, the Consent Judgment Rule, MCR 3.210(2), effective January 1, 2015, and court rule amendments regarding limited scope representation, effective January 1, 2018. On April 1, 2019, that trend continued, as new MCR 3.222 and MCR 3.223 became effective. These rules allow parties to file jointly, using non-adversarial language and streamlined processes when the parties participate in a collaborative process, whether using the Collaborative Law process per MCL 691.1331 et. seq., or pre-filing mediation or any other pre-filing process that results in a consent judgment.

Many family law clients who have gone through mediation or a Collaborative Law process do not consider themselves as rivals and are surprised to learn that after all their diligent, hard work, in order to complete their process, they must file as *Plaintiff versus Defendant*, serve a summons, and engage in other court proceedings designed to handle adversaries. Having worked for months to resolve issues amicably, they do not find it palatable or rational for the court system to then force them to become ostensible rivals at the end of that process.

Now, parties who work collaboratively to settle their divorce early will be able to continue to work collaboratively through the court process.

Court Procedure for Collaborative Law Process Per MCL 691.1331 et. seq.

MCR 3.222 establishes the procedure for parties operating under the Uniform Collaborative Law Act. MCR 3.222(B) establishes a process for those who have a pending domestic relations case and then file a Collaborative Law participation agreement, and MCR 3.222(C) sets out the process when parties sign a collaborative law participation agreement prior to filing in court. Below, I summarize the general process outlined in each section of this rule.

Stay of Proceedings for Pending Cases. Pursuant to 3.222(B)(2), parties in a pending case must file notice of their participation agreement and a motion to stay proceedings on a SCAO form. The court may either stay the proceedings without hearing or hold a hearing on the motion. An initial order granting a stay is effective for 364 days, ensuring the court may still meet its docket-clearing deadlines per Administrative Order No. 2013-12, but allows the court, on party stipulation, to extend the stay. Also to ensure expeditious outcomes, the court may require a status report on the Collaborative Law process on a SCAO form, and to safeguard confidentiality of the Collaborative process, the form asks only whether the process is ongoing, concluded or terminated. When the Collaborative Law process concludes or terminates, the parties file notice on a SCAO form, which lifts the stay. If the parties do not file notice prior to expiration of the stay, the court provides notice of intent to dismiss and must provide parties an opportunity to be heard.

Filing Procedures for Commencing a Case. MCR 3.222(C)(1) establishes the process for commencing a case with a consent judgment and MCR 3.222(C)(2) establishes the process for commencing a case prior to finalizing a judgment.
The filing procedures are the same, except the consent judgment is part of the filing in subsection (C)(1), and under subsection (C)(2), the petition declares an intent to file a consent judgment. Under both subsections, the parties file a joint "petition," which is titled "in the Matter of Party A and Party B." The rule defines "Party A" as the equivalent of a plaintiff and "Party B" the equivalent of a defendant, resolving titling questions for post-judgment actions or intersection with other court rules. The joint petition serves as a complaint and answer and appearance of both attorneys, eliminates summons requirements, and starts the statutory waiting period. The SCAO petition form used for parties with a final judgment also serves as a request to enter the judgment. Both subsections instruct that unless requested by the parties, the court clerk will not schedule the matter for pretrial proceedings. Parties without a final judgment may request the court issue orders approving partial agreements, and if the Collaborative process has not terminated within 182 days of the filing date, these parties must file a status report on a SCAO form.

In an effort to prevent coercive use of this process, both subsections require parties to complete a SCAO domestic violence screening form.

Final Judgment Entry. MCR 3.222(D) describes final judgment entry, whether the Collaborative Law process began after case filing or before, and notably, this rule leaves it to the court's discretion as to whether to conduct a hearing prior to entering the judgment. This rule retains the requirement for service of the Judgment, per MCR 2.602.

Dismissal. As described in MCR 3.222(E) and (F), the court may dismiss an action for lack of progress or a party may dismiss the action. The court may dismiss on termination of a stay or if parties have not filed a proposed final judgment within 28 days after expiration of the statutory waiting period. Parties may dismiss pursuant to MCR 2.504 or by filing a Complaint pursuant to MCL 691.1335(4)(b)(i).

Court Procedure for Entry of Consent Judgments.

MCR 3.223 establishes summary proceedings to enter a consent judgment as an original action. The purpose of this rule is to recognize the needs of parties using other collaborative processes, such as pre-filing mediation. However, there is nothing in this rule that prohibits parties who sign a Collaborative Law participation agreement from using this process instead of the MCR 3.222 procedure.

The joint petition to commence this action, described in MCR 3.223(C)(1), mirrors the petition in MCR 3.222(C)(1): it is titled "in the Matter of Party A and Party B;" requests entry of a proposed consent judgment, which must be attached; is signed by both parties; and, requires completion of a SCAO domestic violence screening form.

Like MCR 3.222(C)(1), the joint petition serves as a complaint and answer and appearance of any attorney who signs the petition. Also, filing this petition eliminates the summons requirement, starts the statutory waiting period, and instructs that unless requested by the parties, the court clerk

will not schedule the matter for pretrial proceedings. This rule also allows parties to file stipulations and motions for temporary orders.

The main differences between this rule and 3.222(C) reflect the possibility that some of these parties may not be represented by attorneys. Therefore, to help ensure informed consent of both parties, this rule requires Party "A" to file a notice of the filing on a SCAO form. See subsections (C)(3) and (C)(4). In addition, to further ensure informed, voluntary consent, this rule requires a hearing on the proposed consent judgment, which both parties must attend, and a party may object to this summary process, resulting in dismissal of the case. See subsections (C)(4)(g), (C)(5), and (D). If a party dismisses the case and the parties have a signed settlement agreement, although this summary process will be dismissed, a party may still, of course, argue validity of the settlement agreement but will need to proceed using the standard litigation process.

Waiving the Six-Month Waiting Period.

Recognizing that prior to filing these joint petitions, parties have likely worked for many months crafting consent judgments that meet both parties' needs, both MCR 3.222(C) and 3.223(C) emphasize that nothing in the rules "precludes the court from waiving the six-month statutory waiting period in accordance with MCL 552.9f." MCL 552.9f begins the waiting period from the time of filing the complaint and allows the court to earlier take testimony "in cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the court." The purpose of the 6-month waiting period is to allow a "cooling off" period and to ensure couples with children carefully consider all aspects of their situation, providing time to work through all issues. In these collaborative cases, a settlement agreement reached after months of work serves as the complaint. Therefore, if both parties choose to waive the waiting period, the length of time spent by the parties working together for a peaceful resolution could, and should, appeal to a court as a compelling necessity allowing for earlier judgment entry.

Conclusion.

Many of us recall the days when domestic relations cases were handled by the civil courts and no family division existed, when a non-custodial parent "visited" with his or her child instead of having "parenting time" and when "joint legal custody" did not exist. By addition of these new rules, Michigan joins a significant number of states that have already enacted similar changes, supporting use of collaborative processes and continuing to recognize that families are still families -- even when going through divorce or other family disagreements requiring court action.

Much has changed in the way clients want to use our courts and refer to their issues. These new rules simply continue the family-friendly changes that began decades ago. I hope that attorneys and judges will take the time to understand these rules and the forms created by SCAO to implement them, so that we may meet the needs of clients who want to move forward as part of healthy, reconfigured families.

About the Author

Lisa Taylor was appointed by the Supreme Court Administrative Office to serve on the Collaborative Law Court Rules Committee that drafted MCR 3.222 and 3.223. She has been an attorney for over 25 years, earning both her Bachelor of Arts in Economics and her Juris Doctor from the University of Michigan. She trained as a civil mediator in 1999 and then as a domestic relations mediator in 2007. Lisa became a full-time mediator in 2008, dedicating her practice to empowering families to civilly settle their differences. She is a member of Professional Resolution Experts of Michigan (PREMi) and of the State Bar of Michigan's Family Law Section, and she currently serves as Secretary of the State Bar's Alternative Dispute Resolution Section Council. Lisa received the Alternative Dispute Resolution Section's George N. Bashara, Jr. Award for exemplary service in 2016 and its "Hero of ADR" Award in 2017. She can be reached at Taylor-Made Solutions, PLLC, (248) 909-0631 and lisataylor@apeacefuldivorce.com.