

Public Policy Position
Amicus Brief *Amed Imtiaz Uddin v Samira Mukarram*

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,540 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. To date, the State Bar does not have a position on this item.

The Family Law Section has a public policy decision-making body with 21 members. On June 3, 2026, the Section adopted its position after an electronic discussion and vote. 21 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Explanation:

The Section was originally invited by the Court of Appeals to participate in this matter and had approved a position, however, the Court of Appeals issued the published opinion before the Section could participate. The Appellant filed a motion for reconsideration and the Section supported that motion, as the Appellant's position is consistent with the position the Section voted to take prior to the issuance of the Court of Appeals opinion.

The Court of Appeals' opinion effectively narrows MCR 7.202(6)(a)(iv) by reclassifying an attorney-fee award under MCR 3.206(D)(2)(b) as a contempt order rather than a final postjudgment attorney-fee order expressly identified by the Michigan Supreme Court as appealable by right thereby creating a judicial exception not found in the rules' text and causing a jurisdictional trap for family law practitioners.

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

AMED IMTIAZ UDDIN,

Plaintiff-Appellee,

v

SAMIRA MUKARRAM,

Defendant-Appellant.

Court of Appeals No. 377981

Oakland County Circuit Court
Family Division

Case No. 2023-522290-DM

Judge Julie A. McDonald

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BRIEF OF AMICUS CURIAE
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STATEMENT OF JURISDICTION

The State Bar of Michigan's Family Law Section submits its amicus brief pursuant to MCR 7.212(H)(2)(c). The Family Law Section is a recognized practice area section of the State Bar of Michigan. In addition, this Court expressly invited the filing of amicus curiae briefs by Order entered May 8, 2026, directing the Family Law Section and the Appellate Practice Section of the State Bar of Michigan to address the jurisdictional question presented in this appeal.

This Court's invitation did not specify the date by which the amicus briefs were required to be filed, however it did indicate the parties' supplemental briefs were to be filed within 28 days of the order requesting such briefs. As a recognized section of the State Bar, the Section cannot take a public policy position (such as drafting an amicus brief, even upon the invitation of a court) without first gaining the approval of the governing Council, which in turn does not act without first having a recommendation from the Section's Amicus Committee. The Section's governing Council and Amicus Committee, just as the Section as a whole, are made up of licensed attorneys in various areas of family law whose employment ranges from full time family law practitioners to sitting circuit court judges. Although both the Amicus Committee and the Council held expedited meetings on the Court's invitation in this matter, the Section did not have the ability to begin drafting the instant brief until 25 days after this Court had issued its order, as the undersigned drafters were not given permission to begin drafting until the Council had approved a position. This Court issued the opinion in this matter on June 24, 2026 (47 days after the issuance of the order for supplemental briefing) and Defendant-Appellant filed a timely motion for reconsideration with this Court on July 15, 2026. The instant brief was completed and filed by the undersigned drafters as soon as possible thereafter.

STATEMENT OF QUESTION INVOLVED

**WHETHER THE COURT OF APPEALS' OPINION EFFECTIVELY
NARROWS MCR 7.202(6)(a)(iv) BY RECLASSIFYING AN ATTORNEY-
FEE AWARD UNDER MCR 3.206(D)(2)(b) AS A CONTEMPT ORDER
RATHER THAN A FINAL POSTJUDGMENT ATTORNEY-FEE ORDER
EXPRESSLY IDENTIFIED BY THE MICHIGAN SUPREME COURT AS
APPEALABLE BY RIGHT THEREBY CREATING A JUDICIAL
EXCEPTION NOT FOUND IN THE RULE'S TEXT AND CAUSING A
JURISDICTIONAL TRAP FOR FAMILY LAW PRACTITIONERS.**

Defendant-Appellant says:	YES
Plaintiff-Appellee says:	NO
The Circuit Court answered:	--- ¹
The Court of Appeals answered:	NO
The State Bar of Michigan's Family Law Section says:	YES

¹The Circuit Court did not address this specific issue or the issue of contempt but rather ordered Defendant-Appellant to pay Plaintiff-Appellee attorney fees pursuant to Plaintiff-Appellee's Motion to Compel for failure to "cooperate with [the] parties' tax preparer during the marriage."

INTRODUCTION

This case presents an issue of exceptional importance to the administration of domestic-relations law in Michigan. In its published opinion, this Court held that an attorney-fee award entered pursuant to MCR 3.206(D)(2)(b) – a rule under the Domestic Relations Actions chapter of the Michigan Court Rules providing grounds for attorney fees²-constitutes a form of compensatory civil contempt under MCL 600.1701 and MCL 600.1721 and, therefore, is not reviewable by appeal of right under MCR 7.202(6)(a)(iv). In doing so, the Court conflates attorney fee appeals brought under MCR 3.206(D)(2)(b) and MCR 7.202(6)(a)(iv) with contempt proceedings. In support, the Court points to *Alpena Co Bd of Co Rd Comm'r v Tadajewski*, ____ Mich App ____, ____; ____ NW3d ____ (2023) (Docket No. 374166), a case where the Circuit Court conducted formal contempt proceedings and found the Appellant to be in contempt. The Appellant in *Tadajewski* filed an appeal by right that this Court dismissed for lack of jurisdiction. In contrast, in the present matter, no contempt proceedings were ever conducted. In reaching its conclusion in the present matter, the Court fundamentally altered the jurisdictional framework established by the Michigan Supreme Court and, as will be explained in more detail herein, has hereby created a future jurisdictional trap for family law attorneys seeking appellate relief under MCR 3.206(D).

MCR 7.202(6)(a)(iv) is a jurisdictional rule providing that "a post-judgment order awarding or denying attorney fees and costs under court rule or other law" constitutes a final order appealable by right. MCR 3.206(D) provides in full:

² MCR 3.206(D) is part of the Domestic Relations Action Chapter of the Michigan Court Rules. These rules are specific to domestic relations actions Rule 3.201 Applicability of Rules, states: (A) Subchapter 3.200 applies to (1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, support under MCL 552.451 *et seq.* or MCL 722.1 *et seq.*, the custody of minors or parenting time under MCL 722.21 *et seq.* or MCL 722.1101 *et seq.*,

(D) Attorney Fees and Expenses.

- (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
- (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
 - (a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay, or
 - (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply, or engaged in discovery practices in violation of these rules.

MCR 3.206(D) sets out specified grounds for fees in family law cases. And MCR 7.202(6)(a)(iv) contains no exception for attorney-fee awards entered under MCR 3.206(D)(2)(b), nor does it distinguish between attorney-fee awards based upon the reasons they were imposed. Nevertheless, the Court's opinion judicially engrafts such an exception by recharacterizing a fee award specifically authorized by court rule as an order of civil contempt. The Court, in effect, modifies both court rules. In doing so, this Court relies on select cases and general statutes and court rules.

Respectfully, that analysis departs from settled principles governing interpretation of Michigan court rules and statutes. The proper inquiry is not whether an attorney-fee award under MCR 3.206(D)(2)(b) shares certain remedial characteristics with compensatory contempt. Rather, the dispositive question is how the Michigan Supreme Court has classified that order for purposes of appellate jurisdiction. The Supreme Court answered that question when it adopted MCR 7.202(6)(a)(iv). Because the order at issue is a post judgment order awarding attorney fees under a court rule, it falls squarely within the plain language of that jurisdictional rule as it relates to the issue of attorney fees.

By treating aspects of functional similarity as controlling over the text of the Michigan Court Rules, the published opinion effectively narrows MCR 7.202(6)(a)(iv) to exclude a category of attorney-fee awards that the Supreme Court itself did not exclude. In doing so, the opinion not only conflicts with settled principles requiring courts to enforce unambiguous court rules as written but also creates unnecessary uncertainty concerning appellate jurisdiction in domestic-relations cases throughout the State.

MCR 3.206(D)(2)(b) creates an independent fee-shifting remedy within the Michigan Court Rules. Whether that remedy resembles another procedural device in certain respects does not alter the plain language of MCR 7.202(6)(a)(iv), which expressly identifies post judgment attorney-fee orders entered under court rule as final orders appealable by right.

Because this decision has been published, its consequences extend far beyond the parties to this appeal. Unless corrected, it will introduce uncertainty into the appellate review of domestic-relations attorney-fee awards, invite jurisdictional litigation in routine post judgment proceedings, and effectively amend a jurisdictional rule promulgated by the Michigan Supreme Court. For these reasons, and those discussed below, the Family Law Section respectfully submits that reconsideration should be granted, the published opinion of *Uddin v Mukkaram* be vacated, and Defendant-Appellant's appeal reinstated.

STATEMENT OF INTEREST OF AMICUS CURIAE³

State Bar of Michigan Family Law Section

The Family Law Council (“the Council”) is the governing body of the Family Law Section (“the Section”) of the State Bar of Michigan. The Section is comprised of approximately 2,621 attorneys who practice family law. The Section members elect the members of the Council. Because of its members’ commitment to family law, and as part of the State Bar of Michigan, the Council has an interest in developing sound legal principles in family law.

The Council provides diverse services to its membership outside of participating in Amicus Curiae briefs. The Council provides training, publishes the Family Law Journal, and advocates and comments on proposed legislation relating to family law topics.

The instant case provides a unique opportunity to address a particular circumstance, where the Court of Appeals’ panel committed error—not in the assessment of the contempt doctrine but rather in its departure from the Michigan Supreme Court’s express jurisdictional rule, MCR 7.202(6)(a)(iv). For reasons outlined in this brief, the Section urges the Court of Appeals’ opinion to be vacated.

³ Disclosure per MCR 7.312(H)(4): Neither counsel for either party authored this brief in whole or in part. Neither counsel for either party, nor either party, made a monetary contribution intended to fund the preparation or submission of the brief.

STATEMENT OF FACTS

The facts in this case are straightforward, and an entire recitation is not necessary. Amicus Curiae relies on the facts and procedures set out in the Court of Appeals' Opinion and the parties' briefs.

STANDARD OF REVIEW

The interpretation and application of the Michigan Court Rules present questions of law that this Court reviews *de novo*. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009); *Haliw v City of Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005). In construing a court rule, courts apply the same principles that govern statutory interpretation, with the primary objective of giving effect to the intent of the Michigan Supreme Court as expressed in the rule's plain language. *Haliw*, 471 Mich at 704; *Reed v Breton*, 279 Mich App 239, 242; 756 NW2d 89 (2008). Accordingly, the analysis begins with the text of the rule itself, read in the context of the Michigan Court Rules as a whole. *Henry*, 484 Mich at 495. Where the language of the rule is clear and unambiguous, it must be enforced as written, giving effect to every word, phrase, and clause, and judicial construction is neither necessary nor permitted. *Haliw*, 471 Mich at 704-705; *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 553; 652 NW2d 851 (2002); *Yachcik v Yachcik*, 319 Mich App 24, 32; 900 NW2d 113 (2017). Courts must avoid constructions that render any part of a court rule surplusage or nugatory, instead giving effect to every provision whenever possible. *Haliw*, 471 Mich at 706.

ARGUMENT

THE COURT OF APPEALS' OPINION EFFECTIVELY NARROWS MCR 7.202(6)(a)(iv) BY RECLASSIFYING AN ATTORNEY-FEE AWARD UNDER MCR 3.206(D)(2)(b) AS A CONTEMPT ORDER RATHER THAN A FINAL POSTJUDGMENT ATTORNEY-FEE ORDER EXPRESSLY IDENTIFIED BY THE MICHIGAN SUPREME COURT AS APPEALABLE BY RIGHT THEREBY CREATING A JUDICIAL EXCEPTION NOT FOUND IN THE RULE'S TEXT CAUSING A JURISDICTIONAL TRAP FOR FAMILY LAW PRACTITIONERS.

- A. *The Court of Appeals' interpretation cannot be reconciled with the well-established principle that a specific court rule controls over a more general one and a court rule generally controls over a general statutory provision in the context of practice and procedure.*

The Court of Appeals' analysis improperly elevates general principles governing civil contempt over the specific fee rule in MCR 3.206(D) and the jurisdictional rule adopted by the Michigan Supreme Court to govern appeals from post judgment attorney-fee orders. In doing so, the Court reverses the well-established canon of construction that, where a specific provision and a more general provision address the same subject, the specific provision controls.

Michigan courts have long recognized that statutes—and by extension, court rules—must be read harmoniously whenever possible, giving effect to every provision. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009); *Reed v Breton*, 279 Mich App 239, 242; 756 NW2d 89 (2008). When two provisions arguably overlap, however, "where a statute contains a general provision and a specific provision, the specific provision controls," *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994).

This principle, that a more recently enacted law takes precedence over an older statute, and a more specific statute controls over a more general statute is, settled authority. See *Parise v Detroit Ent'm, LLC*, 295 Mich App 25, 27; 811 NW2d 98 (2011). Further, if a court rule established by the Michigan Supreme Court conflicts with a statute on a matter pertaining to

practice and procedure, the court rule prevails and governs. *People v McGuffey*, 251 Mich App 155, 166; 649 NW2d 801 (2002); *People v Conat*, 238 Mich App 134, 162; 605 NW2d 49 (1999).

More recently, in *Milne v Robinson*, 513 Mich 1, 13-15; 6 NW3d 40 (2024), the Michigan Supreme Court again recognized that the general/specific interpretive principle is grounded in the common-sense presumption that the rule maker devoted greater attention to the precise subject addressed by the specific provision than to the broader subject governed by the general provision. Accordingly, when a specific provision addressed a subset of circumstances encompassed by a more general provision, courts ordinarily presume that the specific provision reflects the rule maker's more deliberate judgment and therefore governs as an exception to the more general rule. That principle along with the "practice and procedure" rule articulated in *McGuffey* and *Conat* are dispositive here.

MCR 3.206(D)(2)(b) specifically authorizes a trial court in a domestic-relations action to award attorney fees incurred because a party has refused to comply with a prior court order despite having the ability to do so. In contrast, the law governing compensatory civil contempt establishes a broader remedial framework applicable across numerous proceedings in which contempt sanctions may be imposed. Even assuming that an attorney-fee award under MCR 3.206(D)(2)(b) shares certain remedial characteristics with compensatory contempt, those similarities cannot displace the Michigan Supreme Court's more specific jurisdictional directive contained in MCR 7.202(6)(a)(iv).

Notably, in defining "final judgment" or "final order under MCR 7.202, MCR 7.202(6)(a)(iv) expressly identifies **"a post-judgment order awarding or denying attorney fees and costs under court rule or other law"** as a final order appealable by right. The rule distinguishes neither attorney-fee awards based upon the reason they were imposed, nor does it

exclude awards entered pursuant to MCR 3.206(D)(2)(b). Had the Michigan Supreme Court intended to exempt attorney-fee awards that arise from noncompliance with court orders, it easily could have done so. It did not.

Rather than applying the specific language chosen by the Supreme Court, the Court of Appeals' published opinion effectively substitutes the more general law of compensatory contempt for the specific appellate jurisdiction established by MCR 7.202(6)(a)(iv). That approach turns the general/specific canon on its head. The question is not whether the attorney-fee award resembles a contempt sanction; it is whether the Michigan Supreme Court has specifically classified that category of order for purposes of appellate jurisdiction—which the Michigan Supreme Court did.

Construing MCR 7.202(6)(a)(iv) according to its plain language harmonizes both court rules and gives effect to each. MCR 3.206(D)(2)(b) identifies the circumstances under which attorney fees may be awarded in domestic-relations proceedings. MCR 7.202(6)(a)(iv) separately determines when such post judgment attorney-fee orders are final and appealable by right. There is no conflict between the rules, and both may be given full effect. The Court's published opinion, by contrast, effectively reads an exception into MCR 7.202(6)(a)(iv) that the Michigan Supreme Court did not adopt, thereby narrowing the jurisdictional rule through judicial interpretation rather than faithful application of its text.

For these reasons, the Court should adhere to the settled principle that the specific governs the general and hold that MCR 7.202(6)(a)(iv)—the Supreme Court's specific jurisdictional rule governing post judgment attorney-fee orders—controls over any generalized analogy to

compensatory contempt.⁴ The Court of Appeals' contrary interpretation cannot be reconciled with Michigan's established rules of construction.

B. *The plain language of MCR 7.202(6)(a)(iv) controls when read together with MCR 3.206(D).*

MCR 7.202(6)(a)(iv) expressly defines as a "final judgment" or "final order" "a post judgment order awarding or denying attorney fees and costs under court rule or other law." The rule is clear and unambiguous and contains no qualification, limitation, or exception for attorney-fee awards entered pursuant to MCR 3.206(D)(2)(b). Had the Supreme Court intended to exclude attorney-fee awards arising from a party's failure to comply with a court order, it could have expressly done so but did not. Courts are not at liberty to engraft exceptions that the Supreme Court declined to include.

Michigan courts have consistently held that court rules are interpreted according to the same principles governing statutory construction. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009); *Reed v Breton*, 279 Mich App 239, 242; 756 NW2d 89 (2008). The objective is to give effect to the intent of the court rule itself and the best evidence of that intent is the plain language of the rule. *Henry*, 484 Mich at 495, 500. Accordingly, "[t]he starting point is the language of the court rule itself," and where that language is clear and unambiguous, "no further judicial interpretation is permitted." *Reed*, 279 Mich App at 242; *Wilcoxon v Wayne Co*

⁴ Under the "canon of construction . . . *casus omissus pro omisso habendus est* (nothing is to be added to what the text states or reasonably implies)," courts are prohibited "from supplying provisions omitted by the Legislature." *Mich Ambulatory Surgical Ctr v Farm Bureau Gen Ins Co*, 334 Mich App 622, 632; 965 NW2d 650 (2020). Similarly, the principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) supports the conclusion that MCR 7.202(6)(a)(iv) includes all post judgment orders awarding or denying attorney fees and costs, without exception. See *People v Antaramian*, 346 Mich App 710, 721; 13 NW3d 380 (2023). The inclusion of "attorney fees and costs under court rule or other law" in MCR 7.202(6)(a)(iv) necessarily excludes any unstated limitations or exceptions. Also see MCR 1.103.

Neighborhood Legal Servs, 252 Mich App 549, 553; 652 NW2d 851 (2002). Because Michigan courts interpret court rules under the same principles applicable to statutes, the same limitation governs the interpretation of the Michigan Court Rules. *Henry*, 484 Mich at 495.

The published opinion cannot be reconciled with these settled principles. The Court of Appeals nevertheless concluded that because attorney fees awarded under MCR 3.206(D)(2)(b) resemble compensatory contempt-or one component thereof, they fall outside the jurisdictional definition established by MCR 7.202(6)(a)(iv). But the rule itself contains no such exception. The Court's opinion therefore reaches its conclusion only by adding limiting language that the Michigan Supreme Court chose not to adopt. Michigan appellate courts have repeatedly recognized that courts may not revise the text of a court rule under the guise of interpretation. *Wilcoxon*, 252 Mich App at 553; *Henry*, 484 Mich at 495.

The Court's construction effectively rewrites MCR 7.202(6)(a)(iv) to read:

"A post-judgment order awarding or denying attorney fees under court rule except attorney-fee awards entered pursuant to MCR 3.206(D)(2)(b) that may be characterized as compensatory contempt."

Of course, MCR 3.206 contains no such language. Courts may interpret court rules; they may not amend them. See *Henry*, 484 Mich at 495; *Wilcoxon*, 252 Mich App at 553; also see *People v Orr*, 275 Mich App 587, 595; 739 NW2d 207 (2007) ("a court cannot read into a court rule provision not written by the Supreme Court").

Because the language of MCR 7.202(6)(a)(iv) is plain and admits of no exception applicable here, the inquiry should end where it begins—with the text adopted by the Michigan Supreme Court. By creating an unwritten exception to that text, the published opinion departs from Michigan's settled principles of court-rule interpretation and narrows appellate jurisdiction in a manner the Supreme Court itself has never authorized.

C. *The Court Improperly Created a Judicial Exception to a Supreme Court Rule*

The Michigan Supreme Court has exclusive authority to promulgate, amend, and interpret court rules under Mich. Const. 1963 art. VI, §5. This authority is reinforced by separation-of-powers principles, which prohibit lower courts from modifying Supreme Court rules. As the Michigan Supreme Court has emphasized, "[t]he function of enacting and amending judicial rules of practice and procedure has been committed exclusively to this Court . . . ; a function with which the legislature [or lower courts] may not meddle or interfere save as the Court may acquiesce and adopt for retention at judicial will." *McDougall v Schanz*, 461 Mich 15, 15-16; 597 NW2d 148 (1999) quoting *Perin v Peuler (On Rehearing)*, 373 Mich 531, 541; 130 NW2d 4 (1964). The exclusive rule-making authority in matters of practice and procedure is reinforced by separation of powers principles. See *Mich Const 1963, art 3, §2*; *McDougall, supra*.

By concluding that attorney-fee awards under MCR 3.206(D)(2)(b) are not appealable of right, the Court of Appeals effectively inserted an exception into MCR 7.202(6)(a)(iv), which provides for appeals of right from "a post-judgment order awarding or denying attorney fees and costs under court rule or other law." The Court of Appeals' decision in *Uddin* thus constitutes an impermissible judicial amendment of a jurisdictional rule, which it lacks the authority to undertake. The Court of Appeals' decision in *Uddin* to exclude attorney-fee awards under MCR 3.206(D)(2)(b) from the scope of MCR 7.202(6)(a)(iv) undermines the Supreme Court's exclusive authority to define the jurisdiction of Michigan courts.

Moreover, the Court of Appeals' reliance on *Tadajewski* is misplaced both factually and legally. *Tadajewski* addressed the appealability of broad compensatory contempt orders where a contempt proceeding actually was conducted before the lower court-unlike what occurred in the present case. In addition, *Tadajewski* did not involve MCR 3.206(D)(2)(b) or the specific language

of MCR 7.202(6)(a)(iv) also unlike the present case. The Court of Appeals' extension of *Tadajewski* to exclude attorney-fee awards under MCR 3.206(D)(2)(b) from the scope of MCR 7.202(6)(a)(iv) lacks a basis in the rule's text or Michigan precedent and impermissibly usurps the Michigan Supreme Court's exclusive rulemaking authority.

D. *MCR 3.206(D)(2)(b) creates an independent fee-shifting remedy-not a contempt proceeding.*

The Court of Appeals' analysis rests upon a fundamental premise that finds no support in the text of the Michigan Court Rules: that an attorney-fee award entered pursuant to MCR 3.206(D)(2)(b) is, in substance, a compensatory contempt sanction. The premise is incorrect because it conflates two distinct procedural mechanisms that the Michigan Supreme Court has intentionally treated as separate remedies.

Nothing in MCR 3.206(D)(2)(b) invokes contempt. The rule authorizes an award of attorney fees when a party "refused to comply with a previous court order, despite having the ability to comply," thereby causing the opposing party to incur attorney fees. MCR 3.206(D)(2)(b). By its plain language, the rule establishes the substantive prerequisites for shifting litigation expenses; it does not authorize a finding of contempt, impose a contempt sanction, or invoke the court's inherent contempt authority.

Michigan appellate courts have consistently recognized MCR 3.206(D) as an independent fee-shifting rule governing attorney-fee awards in domestic-relations actions. In *Richards v Richards*, 301 Mich App 683, 699-700; 874 NW2 704 (2015), the Court explained that MCR 3.206(D) authorizes an award of attorney fees when the moving party establishes one of the rule's specified grounds and satisfies the rule's evidentiary requirements. *Richards* explained that MCR 3.206 "was enacted to reduce the incidents of parties' vindictive and wrongful behavior in domestic

relations cases, and to shift the costs associated with such behavior to the party engaging in the wrongful behavior." *Id.* at 701-702.

The Supreme Court's own commentary confirms that MCR 3.206(D)(2)(b) was intended to create a fee-shifting mechanism—not an alternative contempt procedure. The Staff Comment accompanying the 2003 amendment explains that subsection (D)(2)(b) was added to permit recovery of attorney fees incurred because of a party's refusal to comply with a prior court order, thereby shifting litigation costs caused by that misconduct and promoting compliance with court orders. The twenty-three-year-old Staff Comment does not suggest that the amendment transforms such fee awards into contempt sanctions or incorporates the procedural framework governing contempt proceedings.⁵

Equally significant is what the rule does **not** require. MCR 3.206(D)(2)(b) contains none of the procedural hallmarks of contempt. Contempt proceedings are governed by MCL 600.1701 *et seq.* and MCR 3.606 and ordinarily require:

- initiation of contempt proceedings through ex parte motion with attached affidavit;
- issuance of an order to show cause;
- notice of contempt allegations;
- an opportunity to defend;
- proof of willful disobedience sufficient to support a contempt adjudication;
- an adjudication of civil contempt;
- invocation of the court's inherent contempt authority;
- potential fines or incarceration; and,

⁵ The Michigan Supreme Court's Staff Comment states:

"The April 1, 2003, amendment of MCR 3.206(C), effective September 1, 2003, was suggested by the Michigan Judges Association to: (1) reduce the number of hearings that occur because of a litigant's vindictive or wrongful behavior;(2) shift the costs associated with wrongful conduct to the party engaging in the improper behavior;(3) remove the ability of a vindictive litigant to apply financial pressure to the opposing party; (4) create a financial incentive for attorneys to accept a wronged party as a client; and (5) foster respect for court orders.

- an opportunity to purge the contempt.⁶

In contrast, MCR 3.206(D)(2)(b) establishes an independent basis for shifting attorney fees within a domestic-relations action. A moving party needs only to establish the elements expressly identified in the rule. The resulting order is an attorney-fee award—not a contempt order.

The Court of Appeals nevertheless reclassified a fee-shifting rule as a contempt rule because both remedies may compensate an opposing party for losses caused by noncompliance with a court order. However, functional similarity does not alter legal character. Michigan law has long recognized that different procedural mechanisms may pursue similar remedial objectives while remaining doctrinally distinct. The question is not whether MCR 3.206(D)(2)(b) and compensatory contempt share some remedial characteristics; the question is what remedy the Michigan Supreme Court actually created. The answer is found in the text of the rule itself: the Supreme Court created a rule authorizing attorney fees—not contempt sanctions.

Notably, in the underling case, Plaintiff-Appellee filed a motion to compel Defendant-Appellant—not a motion to show cause Defendant-Appellant. Defendant-Appellant was never given notice that her actions were being analyzed through a “contempt” prism. Unquestionably, the procedural mechanisms of a contempt proceeding were never invoked before the Circuit Court unlike in *Tadajewski*. There is no basis whatsoever to retroactively classify the lower court proceeding in the present matter as a contempt proceeding. The absence of the procedural hallmarks of contempt confirms that MCR 3.206(D)(2) establishes an independent domestic relations remedy rather than a contempt sanction.

⁶ See MCR 3.606; MCL 600.1701; MCL 600.1711; MCL 600.1715; and see *Porter v Porter*, 285 Mich App 450, 455-461; 776 NW2d 377 (2009); *Estate of Grabel v Brown*, 257 Mich App 96, 108-109; 667 NW2d 68 (2003).

E. *The published opinion will create significant statewide problems for domestic-relations appeals.*

The consequences of the Court's published decision extend far beyond the parties to this appeal. Because published opinions of the Court of Appeals are binding on all lower courts and subsequent panels of the Court of Appeals under MCR 7.215(C)(2), unless and until either vacated by this Court on reconsideration or overruled by the Michigan Supreme Court or a special conflict panel, the jurisdictional rule announced in this case will govern domestic-relations litigation throughout Michigan.

MCR 3.206(D)(2)(b) is not an obscure procedural rule. It is one of the principal attorney-fee provisions utilized in domestic relations practice. Trial courts throughout this State routinely invoke the rule when one party's refusal to comply with prior court orders unnecessarily prolongs litigation and forces the opposing party to incur additional attorney fees. See *Richards, supra* at 699-702. The rule serves an important case-management function by shifting litigation costs caused by wrongful conduct and encouraging compliance with court orders, thereby promoting the efficient administration of domestic-relations cases.

The practical consequences are substantial. Following this decision, every attorney confronted with an attorney-fee award under MCR 3.206(D)(2)(b) must first decide whether the award should be treated as an appealable post-judgment attorney-fee order or as an order of compensatory contempt. Because the opinion provides no objective standard for distinguishing one from the other, prudent practitioners will face an untenable choice: file an appeal of right and risk dismissal for lack of jurisdiction, file an application for leave and risk unnecessary expense and delay, or file both to preserve appellate rights. None of those outcomes promotes the efficient administration of justice.

The plain language of MCR 7.202(6)(a)(iv) provides precisely the certainty and uniformity that appellate jurisdiction demands. The published opinion creates a procedural trap that deprives litigants of appellate review through uncertainty over the proper method of invoking appellate jurisdiction.

CONCLUSION AND RELIEF REQUESTED

For reasons set forth herein, Amicus Curiae the Family Law Section respectfully requests this Court grant its request to grant Defendant-Appellant's Motion for Reconsideration and vacate its published opinion, *Uddin, supra*, thereby reversing its opinion finding Defendant-Appellant to be in civil contempt under MCR 3.206(D)(2)(b).

CERTIFICATE OF WORD COUNT

This Brief complies with the word limitations contained in MCR 7.212(B)(1), as the entirety of this brief contains 5626 words.

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Respectfully submitted,

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