

Michigan Judges Association

Founded 1927

June 22, 2011

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TIMOTHY R. WARD

Dear Representative Walsh,

I write concerning the proposed HB 4672 and HB 4673 on your agenda for hearing on June 23, 2011. The proposed amendments to current statutes address the definition and distribution of separate and marital property in divorce or annulment. The Michigan Judges Association learned of the house bills late last week. Our Family Law Committee and Executive Committee have not had sufficient time to study these proposals.

I am informed that several organizations which deal with domestic relations cases in the circuit court have indicated opposition to the bills. Specifically, the State Bar of Michigan - Family Law Section, the American Academy of Matrimonial Lawyers of Michigan, the Michigan Probate Judges Association, and the Family Law Committee of the Oakland County Bar Association have stated their concerns in writing about the effect of the amendments. Certainly, their concerns deserve consideration as their membership is intimately involved in family disputes of this type. Further, their clients comprise important constituents of judges and legislators.

The Michigan Judges Association supports legislative efforts to streamline court operations and the management of cases. Some proponents of these bills have argued that the amendments would codify existing law and clarify definitions of separate and marital property so as to reduce the need for litigation. Opponents claim that the amendments would unfairly change existing law and policy resulting in increased disputes. These opposing points of view should be examined.

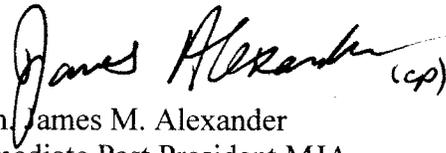
For example, opponents of the legislation point out that the consideration of fault in the division of property is omitted. While "no fault" divorce was adopted by the legislature approximately forty years ago, our Courts have held that fault is a factor the court may consider when dividing property. Sparks v Sparks, (440 Mich 141). Was this omission inadvertent? Or was this intended to alter existing case law and policy? If it is the latter, then discussion concerning the consequences and impact on the innocent spouse is imperative.

The legislation, as drafted, might also lead to the unintended consequence of additional litigation. Pre filing conduct regarding disposition, manipulation or segregation of “separate property” could become an issue and cause more hearings and trials. Section 3 (B) would, in our opinion, also lead to more litigation and appellate consideration of the value of a spouse’s “personal effort to nonmarital property”.

Our concerns, and those raised by our colleagues, preclude our support of the bills as currently drafted. We are willing, and look forward, however, to working with you and your committee to draft a bill that would resolve your concerns.

Thank you for your consideration, and for all you do for the people of our state.

Very truly yours,

A handwritten signature in black ink that reads "James M. Alexander" with the initials "(cp)" written at the end of the signature.

Hon. James M. Alexander
Immediate Past President MJA
Co-Chair Legislative Committee