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May 11, 2017

State Representative
Scott VanSingel
P.O. Box 30014
Lansing, MI 48909-7514

RE: HB 4463

House Bill 4463 would allow self-representation by one member or two member husband and wife LLC's in summary proceedings. It would also permit members of those LLC's to designate a non-attorney property manager or agent to represent it under certain circumstances. The Michigan District Judges Association (MDJA) **actively opposes** this bill for several reasons.

This bill is a radical departure from well-established case law in Michigan and in the United States that requires that corporations and other separate legal entities be represented by a licensed attorney. It is the law in Michigan, that if a natural person chooses to represent him or herself in court proceedings, he or she may do so, but should that person choose to be represented by some type of agent, then that agent must be an attorney licensed to practice law in the courts of this state.

Since it is physically impossible for a corporation to personally appear and represent itself except through an agent, and since any agent representing a natural person must be a licensed attorney, then it must logically follow that any agent representing a corporation in court matters must also be a duly licensed and authorized attorney. Clearly, anyone other than an attorney acting on behalf of a corporation in court proceedings would be engaged in the unauthorized practice of law.

Even if the legislature were to decide to abandon the wise policy embodied in these laws, proposed HB 4463 contains provisions that are objectionable. Not only does the bill allow the "mom and pop" LLC's the right of self-representation, it also allows those entities to designate a non-attorney agent or property manager to act as their attorney in these summary proceedings. That non-attorney agent would have neither the legal training nor the ethical responsibilities under the Code of Professional Conduct that is required to appear as trial counsel in the courts of Michigan and the rest of the country. Additionally, this designated agent's qualification to act as trial counsel requires that agent to have "direct and personal knowledge of the facts alleged in the complaint." Thus, the prerequisite to the agent or property manager acting as trial counsel (being an essential witness) would be the same factor that would disqualify a licensed attorney from acting as trial counsel.

Other aspects of HB 4463 are problematic. The bill specifies that only two-member LLC's whose members are married to each other may use the self or designated representation provisions. Furthermore the "mom and pop" LLC wishing to take advantage of the statute would need to have filed a verified statement signed by both members authorizing self or designated representation even if the LLC's operating agreement does not require the authorization by both. It requires court staff to confirm the filing of that authorization to proceed. The section does not specify whether the statement must be filed with the complaint or whether it could be filed on the date of trial. If the court must wait until the date of trial, the failure to file the authorizing statement would necessarily result in an adjournment or dismissal of complaint resulting in additional time and expense to the court and the litigants.

The provisions do not apply where there is a pending divorce or separate maintenance action or if a judgment of separate maintenance has entered. Curiously, the bill does not eliminate the former husband and wife's right to proceed if a judgment of divorce has entered. This is presumably an oversight by the drafter as the dissolution of the marriage between the members would not necessarily cause the dissolution of the LLC (MCL 450.801). The objections of the MDJA to this specific provision is that it places an additional burden of verification on the court not found in any other civil procedure statutes or court rules and raises the potential for delays based upon tardy filings of the statement.

The right of the small LLC to proceed without counsel under HB 4463 is limited to a summary proceeding where the complaint requests "only" a judgment of possession or money judgment. By the language of the act it would, at least by inference, allow self-represented LLC's as a party plaintiff or defendant. It is unclear whether the limitation on the requests for relief was intended to also limit parties seeking ancillary injunctive relief or other equitable remedies. The "only" language also raises the question of limitations on counter-claims involving the various statutory remedies available to tenants and, if it does, it would be in violation of court rules requiring joinder of claims. The problematic language of the bill pointed out in the preceding paragraphs is much less significant however, than the bill's purposeful allowance of the unauthorized practice of law.

The MDJA respects the business decision many people make to incorporate their businesses. There are often occasions in our courtrooms where people are protected from personal liability (sometimes at the expense of an unwary individual who mistakenly thought they were dealing with human beings versus a corporation) merely because they went through the effort to incorporate. To allow corporations to secure the benefits of incorporating, without taking on the responsibilities of incorporating is misguided and opens the door for unethical or unscrupulous behavior.

Please feel free to contact me at jvoet@ioniacounty.org or at (616) 902-1135 if you wish to discuss this bill further.

Sincerely,
Judge Raymond P. Voet
Co-chair, Legislative Committee
Michigan District Judges Association

cc: Rep. Klint Kesto, Chair, House Law & Justice Committee
cc: House Law & Justice Committee members