

**MICHIGAN PROBATE JUDGES ASSOCIATION
TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
IN OPPOSITION TO HB 4476 AND HB 4480**

February 2, 2016

Good afternoon. My name is Lisa Sullivan. I am the Probate Judge for Clinton County, and I chair the Legislation Committee for the Michigan Probate Judges Association (MPJA).

I am here to share the concerns of MPJA with two of the bills before you: HB 4476 and HB 4480.

With regard to HB 4476, this bill seeks to restrict the use of domestic relations mediation for cases in which there exists a Personal Protection Order against one of the parties or in which domestic violence is alleged. If the goal of this bill is to provide a party with the ability to forego mediation because of abuse, MCR 3.216(D) currently provides that opportunity. In fact, much of the same language from the court rule is included in the bill. Moreover, there are additional occasions throughout domestic relations process to assess the appropriateness of alternative dispute resolution. These occasions include, but are not limited to, conciliation, scheduling conferences, and pre-trial hearings. Finally, the mere existence of a Personal Protection Order is not dispositive of its legitimacy, particularly where it has been obtained on an ex parte basis, and should not be a presumptive bar to mediation.

As a side note, domestic relations mediators are required to have specific training in domestic violence, and as a result, the use of these mediators can offer a less-intimidating, more even-playing field for litigants who have been victims of such violence. For instance, the parties do not have to be in the same room together, and the victim is not subjected to cross-examination by the abuser or the abuser's attorney.

More troubling than HB 4476 is HB 4480, which seeks to amend factor (J) under the "best interest of the child" requirements of the Child Custody Act. First, it is unclear what problem this bill is trying to solve. There has been no evidence that the current language and application of this factor

have yielded unjust results. Next, the original bill included language that is a *mandatory bar* to making certain findings under this factor. It is unclear whether the restrictive will remain in the bill. If it does, it would eliminate judicial discretion. One of the greatest strengths of the "best interest" list is that it is not a cookie-cutter approach to every case. Each family can be assessed in the context of its own dynamics. In fact, the court is not required to treat all factors equally. It can weigh each factor differently, depending on the circumstances.

The proposed changes in this legislation start to shift the focus away from the best interest of the child to the best interest of one parent. Sometimes, and particularly in contested custody cases, these interests are not always the same. It is, also, important to remember that there is already a factor wholly dedicated to the issue of domestic violence. Further, the proposal, as written, does not allow the finder of fact to determine whether the allegations of domestic violence and/or abuse are supported by the evidence. For example, in a recent case, there was a party who made 23 allegations of abuse over the last two years. After police and protective services investigations were completed none of the allegations was substantiated.

Lastly, domestic abuse may not be the only valid reason not to facilitate a relationship with the other parent. For instance substance abuse or mental illness could pose dangers to a child. While MPJA does not believe that the current "best interest" factors need to be modified, it could support a change to Factor (I) to add "absent good cause" to the end of the current language; this modification would address concerns about domestic violence as well as other issues that could put a child at risk.

I appreciate your time this afternoon. Thank you for allowing me this chance to share MPJA's position.