

## REQUESTS FOR ATTORNEY FEES IN MICHIGAN CASES

Memorandum from Circuit Court Judge David A. Hoort  
8th Judicial Circuit, Michigan:

In domestic relations cases, attorney fees are authorized by both statute, MCL 552.13, and court rule. MCR 3.206(C) provides: (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, 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.

MCL 552.13(1), authorizes the court to require a party to pay to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency. Attorney fees are authorized when the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of litigation. *Stackhouse v Stackhouse*, 193 Mich App 437 (1992).

When requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services. *Miller v Meijer, Inc*, 219 Mich App 476, 479-480 (1996). Reasonable fees are not equivalent to actual fees charged. *Zdrojewski*, 254 Mich App at 72.

In determining whether requested attorney fees are reasonable, the trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services.... In determining this number, the court should use reliable surveys or other credible evidence of the legal market. (The Michigan Bar Journal article not only ranks fees by percentile, it differentiates fee rates based on locality, years of practice, fields of practice including litigation, personal injury, and transactional litigation.) This number should be multiplied by the reasonable number of hours

expended in the case.... The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. *Smith v Khouri*, 481 Mich 519 (2008). The burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” This “satisfactory evidence” of customary fees “can be established by testimony or empirical data found in surveys and other reliable reports.” *Id.* at 531–532. Mere “anecdotal statements” are not sufficient. *Id.* at 532. To determine “the reasonable number of hours expended in the case,” the attorney requesting fees “must submit detailed billing records, which the court must examine and opposing parties may contest for reasonableness.” The burden of establishing the reasonableness of the hours reported lies with the attorney requesting fees. Only after the trial court has determined a reasonable fee by multiplying the reasonable hourly rate by a reasonable number of hours billed, should the court “consider the other factors and determine whether they support an increase or decrease in the base number.

*Wood v DAIIIE*, 413 Mich 573 (1982) lists six factors to be considered in determining a reasonable attorney fee: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.

The Michigan Rules of Professional Conduct list eight factors in Rule 1.5(a) for the determination of attorney fees: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.