



THE ENFORCER

BY DAVID FINDLING

THE FINDLING LAW FIRM

WITH SPECIAL THANKS TO ERICA J. EHRLICHMAN, ESQ., JOHN W. POLDERMAN, ESQ., KRISTY L. BIDDINGER, ESQ. AND BRANDON J. WILSON, ESQ. FOR THEIR INVALUABLE ASSISTANCE IN PREPARATION.

Pay Me From My Ex's LLC

Your client was awarded alimony but the ex-spouse is not paying. To make matters worse, the ex-spouse doesn't have any assets with the exception of a valuable piece of real property. The property is owned by an LLC of which the ex-spouse is a member. The unpaid alimony is a money judgment and you want to commence collection by executing against the property. But before you try to have the sheriff seize and sell the property, you should consult Michigan's recently revised Limited Liability Act (the "Act").

Execution Against a Debtor's Interest in a Partnership or LLC

Prior to 1914, it was permissible for the creditor of the partner of a partnership to obtain a writ of execution against the assets of the partnership. The writ could then be executed against any assets of the partnership by a sheriff. In your client's case you could have obtained a writ and force the sale of the partnership property. However, states increasingly sought to limit creditors from meddling in the management of partnerships and liquidating its assets. The solution was to require the creditor to obtain a charging order.

What is a Charging Order?

A charging order is not itself a money judgment. Instead, a charging order gives a creditor a lien on the debtor's right to receive distributions pursuant to their interest in a partnership or LLC. The creditor is said to have rights akin to an assignee: that is the creditor has only economic rights and no management or voting rights.¹ The result is that the creditor cannot execute assets of the LLC. If the non-debtor members choose to halt distributions to the debtor, the creditor has no means of forcing distributions to continue. In addition, the charged interest may not be foreclosed upon.²

In Michigan, as in many states, a charging order and right to a member's distributions is "the exclusive remedy by which a judgment creditor of a member may satisfy a judgment out of the member's membership interest in a limited liability company."³ Prior to the 2010 revisions, the Act merely provided that a judgment creditor was given the rights of an assignee of the membership interest. While it was implied that a judgment debtor was only entitled to a member's distributions, the Act now expressly provides that this is indeed a judgment creditor's sole remedy against a member's interest.

A debtor member intent on frustrating the ex-spouse could choose to stop making distributions and decide to paydown the mortgage for the property instead. But the cessation of distributions is not without consequences. First, the debtor would no longer receive the distributions that he may have previously relied upon. Further, other members may not be so keen on an interruption of their distributions because of their fellow partner's financial problems.

Charging Orders and Single Member LLCs: An Exception to the Rule?

In the case of *In re Ashley Albright* the debtor was the owner and sole member of a LLC that owned real property.⁴ The bankruptcy trustee argued that, as the holder of the debtor's interest in a single member LLC, he could force a sale of the company's property. The bankruptcy court agreed on the basis that under Colorado law a creditor could participate in the management of the LLC with the unanimous consent of the "other members" of the LLC. With no other members to object, the court concluded that the trustee was free to assume management of the LLC.

Unfortunately for creditors, the same result can't be achieved in Michigan. Under the Act, an assignee of a debtor's



membership interest may only become a member of the LLC upon the written consent of the members or member.⁵ For obvious reasons, the debtor member will not consent to granting his a creditor a membership interest in the LLC.

Conclusion

While the Act entitles your client to the ex-spouse's membership distributions, the interest may be of little value. This is especially true where the LLC is a single member LLC or the other members are confidantes of the debtor member and choose to limit or redirect distributions. To make matters worse, a creditor seeking information regarding the debtor's membership interest is barred from obtaining an accounting or compelling an answer to any other inquiry.⁶ In sum, getting

paid from an ex-spouse's interest in an LLC may be extremely difficult if not unfeasible.

1. An assignee can only become a member of a multi-member LLC upon "a unanimous vote of the members entitled to vote" or a member of a single-member LLC upon the consent of the member. See MCL 450.4506(1).
2. MCL § 450.4507(5).
3. MCL § 450.4507(6).
4. 291 B.R. 538 (Bankr.D.Colo. 2003).
5. See MCL 450.4506(1).
6. *Id.*

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19. Family Violence Prevention Fund: Features Fathering After Violence, <http://www.endabuse.org/content/features/detail/803/> (last accessed January 4, 2011).
20. Daniel G. Saunders, Ph.D., Prof. Univ. of MI, Training Presenter, Michigan Poverty Law Program Road Show, *Child Custody & Visitation Decisions: Risk Factors & Safety Concerns*, Lansing Community College, West Campus, October 16, 2007) (Lansing, MI).
21. *Id.*
22. *Id.*
23. *Id.*
24. Family Violence Prevention Fund: Features Fathering After Violence: The Reparative Framework, <http://www.endabuse.org/content/features/detail/803/> (last accessed January 4, 2011)

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1. Requests from litigants should be directed to the Amicus Committee, and may be submitted to any Council member.
2. The amicus request must clearly indicate whether leave to appeal has been requested and/or granted. If leave has been requested but not yet granted, the requesting attorney must indicate whether an amicus is requested to support granting leave, or on the substantive issues. Absent exceptional circumstances, no amicus request will be considered until the Court has granted leave to appeal.
3. Amicus requests must be in writing, accompanied by five copies of each of the following:
 - a. A short and concise memorandum setting out the legal issue(s) addressed by the appeal;
 - b. Previously submitted briefs (from both parties) and opinions in the case, together with the order granting leave to appeal, if appropriate, and a list of the filing deadlines, including the deadlines for the amicus curiae brief;
 - c. A list of significant cases that an amicus brief should consider, together with copies of any cases outside Michigan;
 - d. A brief statement explaining why the Family Law Council should grant the request. This statement should specifically reference the Case Selection Criteria and the impact of the case on the domestic relations bar as a whole. The statement should also address the potential expenditure of Council time and resources.
 - e. For amicus requests prior to the Court granting leave to appeal, a statement setting out “exceptional circumstances” to justify Family Law Council involvement.
 - f. A proof of service indicating that all materials submitted to the Amicus Committee have been concurrently served on all other counsel in the matter.
4. The requesting party may be required to meet with the Amicus Committee to discuss Family Law Council involvement. In this event, the Amicus Committee shall notify the opposing attorney of the date, time and location of the meeting and invite them to be present and participate in the meeting. A meeting of the Amicus Committee will be convened for this purpose at which the requesting party should be prepared to discuss the importance of the issue(s) presented; how Council support will benefit the party, the bench and the bar at the present state of litigation; the likelihood of the case eventually progressing to the Supreme Court (for cases on which the Supreme Court has not yet granted leave); and practical considerations, such as the level of commitment of the requesting attorney and his/her client to pursuing the case.
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In passing on a request for appearance as Amicus Curiae, the Amicus Committee of the Family Law Section shall consider the following criteria:

1. Whether the legal issue involved is of substantial interest to the domestic relations bar.
2. Whether the legal issue involves a conflict in case law, or a case of first impression, or a novel or previously unresolved question, or whether there is a need for clarification of a legal issue, the disposition of which is likely to have broad-range effects beyond the particular case.
3. Whether the legal issue involved affects fundamental rights of individuals or involves a constitutional question.
4. Whether the case presents an opportunity to ameliorate or reverse prior judicial decisions or legislative enactments which adversely impact on domestic relations law.
5. Whether the issue or case impacts on the practice of family law from the view of practitioners.
6. Whether the briefs of the parties before the court, or briefs of other amicus curiae, adequately address the legal issues presented.
7. Whether the facts presented are strong enough, and the record sufficiently developed, to support the position to be asserted.
8. Whether the position to be asserted is appropriate in view of the recent pronouncements of the appellate courts and consistent with the Family Law Council’s principles and philosophy.
9. Whether there exists sufficient time to request amicus status and properly prepare a brief.
10. Whether sufficient resources are available, given the Council’s amicus caseload, to grant the particular request.
11. Whether the Court has requested the submission of briefs.
12. Whether the case should be referred to another Section of the State Bar.



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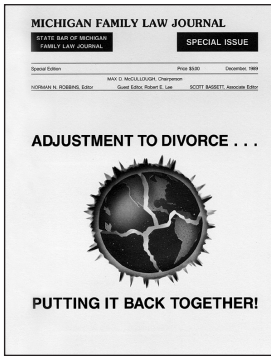
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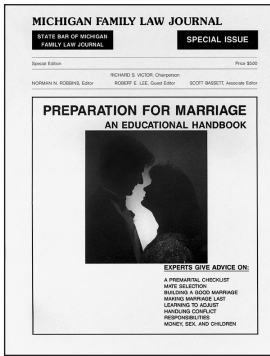
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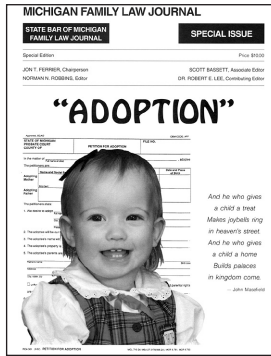
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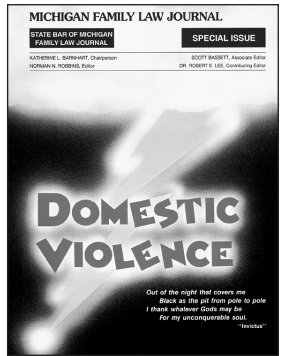
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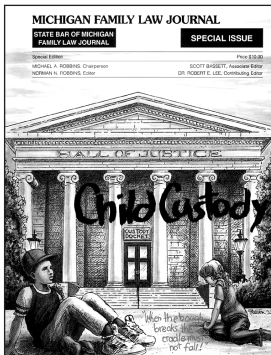
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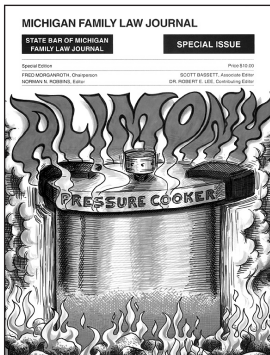
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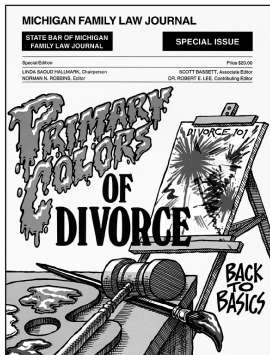
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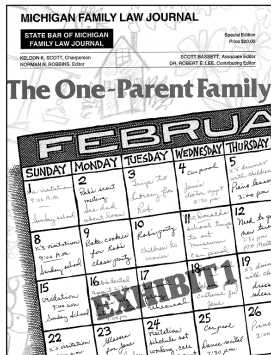
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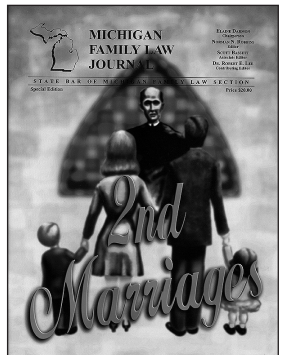
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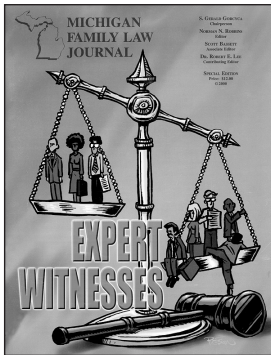
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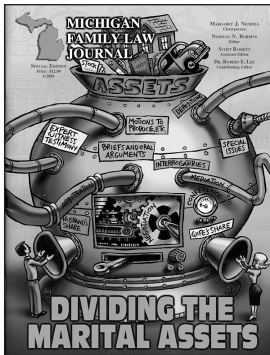
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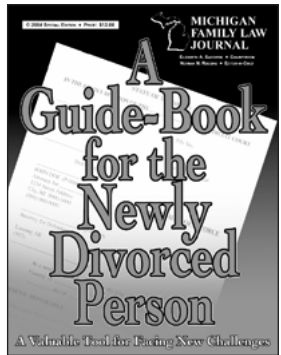
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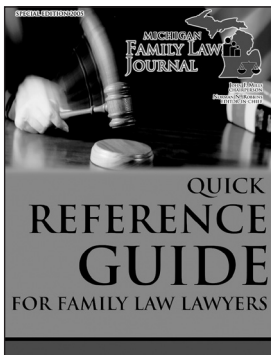
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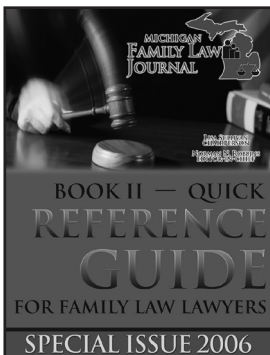
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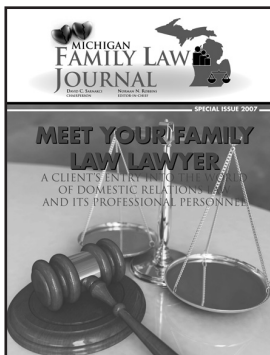
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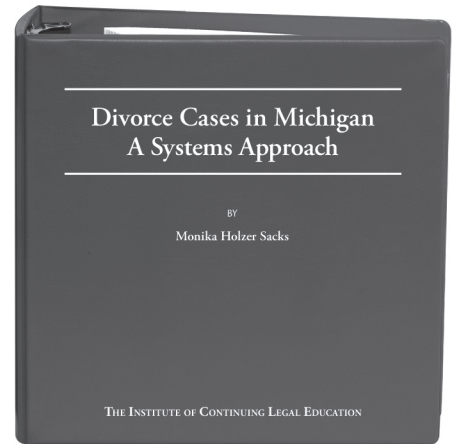
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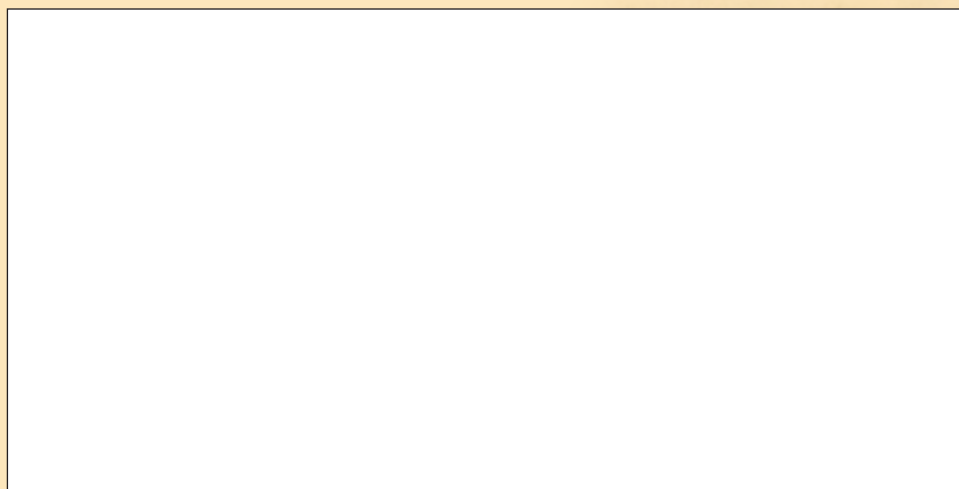
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