

MSC Order List October 7, 2011

[10. October 2011 By Jeanne Long](#)

On October 7, 2011, the Michigan Supreme Court denied application for leave to appeal in two cases, and it denied a motion to disqualify Justice Markman on the ground that his wife had participated briefly in a different case where the same statute was at issue.

Justice Kelly dissented from the denial of leave in *Matter v Matter*. That case involved interpreting a divorce judgment, specifically, whether the defendant's gross income for the purpose of calculating his spousal support included certain amounts that he treated as investment or passive income. The trial court held an evidentiary hearing and concluded that his spousal support payments should reflect those investments because they were inherently part of his employment. The Court of Appeals reversed over a dissenting opinion.

Justice Kelly noted that the majority opinion in the Court of Appeals failed to acknowledge the equitable nature of spousal support and to recognize the ambiguity in the settlement agreement. Justice Kelly also would hold that the opinion incorrectly applied a de novo standard of review, and it should instead have reviewed for clear error. For these reasons, Justice Kelly would reverse the Court of Appeals decision.