

## Report on Public Policy Position

**Name of section:**

Consumer Law Section

**Contact person:**

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**Proposed Court Rule or Administrative Order Number:**

[2005-32 - Proposed Amendments of Rules 2.101, 2.102, 2.113, 2.603, 3.101, and 8.119 of the Michigan Court Rules](#)

This proposal, recommended by a workgroup authorized by the Supreme Court, would establish specific rules for court clerks to screen documents that are submitted to a court for filing and return those documents that do not conform to certain minimum filing requirements.

**Date position was adopted:**

July 8, 2010

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote

**Number of members in the decision-making body:**

15

**Number who voted in favor and opposed to the position:**

8 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote

**Position:**

Oppose

**Explanation of the position, including any recommended amendments:**

The Consumer Law Council unanimously opposes the adoption of this rule and urges the State of Michigan to join in opposition. This rule would require the clerk of a court to “determine that the . . .” (f) documents [submitted for filing] are filed in the court of proper jurisdiction. Other subparts of MCR 8.119(C)(1) arguably do require only clerical judgment, e.g., examining signatures, checking for filing fees, and ruling on legibility. Determining the court of proper jurisdiction requires much more knowledge. For example, ICLE’s Court Rules of Michigan Annotated cites over thirty appellate holdings on summary disposition motions claiming lack of subject matter jurisdiction. If appellate review is frequently required to determine jurisdictional matters, we could not expect a clerk, who may have no legal training, to make accurate decisions. In fact, making such a decision requires “the use of legal

discretion and profound legal knowledge,” which is, of course, the type of decisions the Michigan Supreme Court has ruled are to be restricted to licensed attorneys. *Dressel v Ameribank*, 468 Mich 557, 664 NW2d 151 (2003).

Furthermore, if this rule were adopted, there would at least two further problems. First, there is nothing in the rule that allows a filer who objects to the clerk’s decision to have it reviewed by a judge or magistrate. Clerks cannot be assumed to be more accurate than judges. If the initial gatekeeper can bar court entry without review, there is much less access to justice than under current rules.

Second, there is nothing in the rule that allows relating back to the date of filing, if it is rejected by the clerk. The clerk’s decision may be erroneous. If so, the effect could be to prevent filing before a statute of limitations has passed. Even if the clerk’s decision was ultimately determined to be correct, it is unreasonable to penalize a filer so drastically who guessed wrong on a close matter of jurisdiction.

In summary, we urge the court to reject this proposed rule change. If it were nonetheless accepted, it is necessary to add two further parts to allow expedited review and relation back in appropriate circumstances.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:**

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2005-32-04-27-10.pdf>