Civil Procedure & Courts Committee
March 1, 2014 - 10 a.m.
Dickinson Wright PLLC Office
Troy, Michigan

MINUTES

Committee Members: Thomas H. Bannigan, Richard D. Bisio, Pamela C. Dausman, Michael J. Distel, Robert J. Ehrenberg, Lori J. Frank, Elisa M. Gomez, Hon. David M. Lawson, Sean P. McNally, Joey Scott Niskar, George M. Strander, Alan R. Sullivan, Matthew Arthur Tarrant, Victoria A. Valentine, Randy J. Wallace, Peter H. Webster
SBM Staff: Peter Cunningham

1. Call to Order

2. Minutes from the November 16, 2013 Meeting – The minutes require several changes and will be revised for the next Civil Procedure & Courts committee meeting.

3. Old Business

   a. ADM File No. 2012-02 – Proposed Amendment to Rule 2.303 of the Michigan Court Rules – Follow-up.

   b. Resubmission of Proposed Change to MCR 2.602 to Representative Assembly.

      The committee will resubmit the proposal to the April Representative Assembly.

4. New Items

   a. ADM File No. 2010-32 - Proposed Amendment of MCR 3.210
      These proposed amendments of MCR 3.210 would clarify default and default judgment procedures to be used in domestic relations cases. The proposed amendments also would allow parties to reach agreement on issues related to property division, custody, parenting time, and support, and enter a consent judgment on those issues if the court approves. These proposed amendments were developed by a workgroup of family law practitioners and judges (assisted by SCAO staff) who were instrumental in creation of an earlier version of this proposal that had been published for comment. Following reconsideration of some provisions of the earlier version, members of the group reconvened and formulated a revised proposal, which is the subject of this publication order.
      Issued: January 29, 2014
      Comment Period Expiration: May 1, 2014

      The committee voted unanimously to Support with deference to the Family Law judges and practitioners who drafted the proposal. The committee suggests that "or when justice so requires" be added to MCR 3.210(B)(3) and (6)(a) in order to provide the family law judge the needed flexibility which is otherwise built in to the rule proposal.

   b. ADM File No. 2012-03 - Amendment of MCR 1.111
      The amendments of MCR 1.111 make technical revisions and insert an interim review process

for cases in which a court denies a request for an interpreter or orders reimbursement of interpretation costs. These revisions are adopted with immediate effect, but pending public comment and a future public hearing.
Issued: January 29, 2014
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The Committee takes no position given our understanding that this change is designed, in part, to comply with mandates of federal law and requests of the DOJ; as we are unaware of the particulars of those matters, we defer to the drafters to ensure compliance. The Committee also supports the Committee on Justice Initiatives' recommendation. Finally, the committee suggests consideration of adding a subsection (H)(2)(f) to apply to situations where someone other than "a court" (as noted in (H)(1)) makes the determination; such instances are clearly contemplated by the definition of "case or court proceeding" of MCR 1.111 (A)(1).

c. [ADM File No. 2013-41 - Amendments of Administrative Order No. 1998-5](#)
The amendments of Administrative Order No. 1998-5 modify the way county-funded courts pursue disputes over court funding. These modifications are adopted with immediate effect, but pending public comment and a future public hearing, in light of the recent enactment of 2013 PA 172.
Issued: January 29, 2014
Comment Period Expiration: May 1, 2014

The committee takes no position but raises the following drafting issues:
- **Para 1. The phrase "With notice, the court …" should be "With notice, the chief judge of the court…"**
- **Para 1. The proposal requires that a request for SCAO appointment must be made by both the court <u>and</u> the local funding unit. It should be made clear for purposes of this Order whether such a request is "mediation" as it is used in the statute MCL 141.438(6) and (8) and MCL 141.436(9). It seems to be, but it is suggested that it should be expressly stated.**
- **Where there is a requirement that the mediator certify in writing that the parties are unable to resolve the issue by mediation before an action can be filed [see MCL 141.438(6) and 141.436(9)] it seems that the mediator can preclude the filing of an action and put in jeopardy the requirement for a county funded court to file funding disputes within certain number of days (either 60 or 90) after the adoption of a general appropriations act or amendment thereto. See MCL 141.438(7) and (8). If that is the case, the proposal should be amended to not allow a meditator to preclude a court from filing an action.**
- **Para 2 "If the court concludes…" should be "If the chief judge of the court concludes…"**
- **Para 2 the added requirement that the chief judge of the court conclude that a civil action is necessary to compel funding does not seem to make sense because in Para 1 the chief judge of the court has already provided written notice that the chief judge has approved commencement of legal proceedings. It seems that the proposal was meant to have the chief judge concluded that the mediation is not working and that commencement of an action is required after mediation. If this is the case, perhaps the proposal should be made clear that the chief judge of the court re-state that a civil action is necessary.**

- **Para 2 addresses the commencement of an action by the chief judge. This highlights the discrepancy between the statute 2013 PA 172 which addresses county and county funded courts (as opposed to a non-county funded district court) and which specifically provides standing to the chief judge of the court (as opposed to standing in the name of the court itself which it seems without the statutory standing would not be in the name of the chief judge, but rather in the name of the court). This may be a minor consistency issue but could be important.**
- **Para 2 a wording suggestion is that instead of saying that the "State Court Administrator must assign a disinterested judge to preside over the action" the language should be that the SCA is authorized to assign (or make sure that) a disinterested judge to preside over the action. This provision only applies to non-county funded courts. So, a non-county funded district court would file in circuit court, and the normal process would be a circuit court judge would be assigned and presumably be disinterested. Instead of mandating the SCA assigning a judge in all cases (as it now reads), the SCA would only be required to be involved if there is an interested (conflicted) judge.**
- **Para 3 "representatives of funding units" should be clarified. Perhaps it should be "authorized representatives of funding units." Here, funding units are local cities, villages, and townships and who is a representative of such unit(s) can be unclear at times.**
- **Para 3 It is unclear if a request pursuant to this paragraph is "mediation" under the meaning of the statutes as mentioned above in item 2.**
- **The staff comments state that the proposed rule changes only change how county funded courts pursue disputes over court funding, but the proposal seems to also change how non-county funded courts pursue disputes as well. The notes should reflect that.**

d. MCR 2.003(D)(3)(a) proposal.

    The committee voted unanimously to support the proposal.

e. MCR 2.305(A)(1) proposal.

    The committee voted unanimously to support the proposal with one further amendment:

> **(1) <u>Subpoenas shall not be issued except in compliance with MCR 2.306(A)(1).</u> After serving the notice provided for in MCR 2.303(A)(2), 2.306(B), or 2.307(A)(2), a party may have a subpoena issued in the manner provided by MCR 2.506 for the person named or described in the notice. Service on a party or a party's attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer, or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued.**

5. Meeting adjournment