

Civil Procedure & Courts Committee
March 2, 2013 - 10 a.m.
Dickinson Wright PLLC Office
Troy, Michigan

MINUTES

Committee Members:

Sean F. Crotty
Pamela C. Dausman
Robert J. Ehrenberg
Lori J. Frank
Maureen H. Kinsella
Judge David M. Lawson
Sean P. McNally
Gary R. Peterson
Daniel D. Quick
Karen H. Safran
George Strander
Alan R. Sullivan
Matthew A. Tarrant
Victoria A. Valentine
Randy J. Wallace
Peter H. Webster

1. Call to Order
2. Minutes from the October 13, 2012 Meeting – The minutes were unanimously approved.
3. Items before Representative Assembly, April 27 meeting

Post-meeting review and revision of proposal regarding MCR 3.602(C)(5). Committee was polled electronically and revised proposal was accepted for submission to the Representative Assembly, as follows:

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections; ~~Conferring~~ Communicating with Deponent.

(5) ~~Conferring~~ Communicating with Deponent.

(a) A person may instruct a deponent not to answer only when necessary to preserve a privilege or other legal protection, to enforce a limitation ordered by the court, or to present a motion under MCR 2.306(D)(1).

(b) A deponent may not ~~confer~~ communicate with another person while a question is pending, except to decide whether to assert a privilege or other legal protection.

Communication includes all contact, including contact by electronic means, between the witness and another person.

4. Old Items

- a. Proposed revision of MCR 2.602(B)(5) (Quick, Lawson, Frank)

Revisions were discussed and made. Final language approved.

- b. ADM File No. 2010-32

The committee takes no position given the specialized nature of the proceedings and the coalition of judges and practitioners involved in this multi-year effort. The Committee previously provided input, and several of those changes were incorporated in to the current version of the rule. The Committee does note that the proponents should consider an accommodation to the concern that 3.210(B)(2)(d) and (e) are ambiguous in reference to one another. The Committee believed that one solution would be to flip the order of the sentences; change the phrase “may appear” in the current first sentence to “appears”, and add a third sentence: An appearance does not grant substantive rights nor operate to set aside the default.

5. New Items

- A. [ADM File No. 2012-27 - Proposed Amendments of Rule 8.110 of the Michigan Court Rules](#)

The proposed amendment of MCR 8.110 is intended to update the rule to reflect today’s emphasis on collaboration and local sharing of resources, and the revisions would also clarify who is required to fulfill the statutory “chief” probate judge obligations.

Issued: January 23, 2013

Comment expiration: May 1, 2013

No position.

- B. [ADM File No. 2012-28 - Proposed Amendment of Rule 7.203 of the Michigan Court Rules](#)

Under 2012 PA 333, an order by a court in which a case is assigned to a business court is not subject to appeal by right or leave in the Court of Appeals. The proposed amendment in this file would codify that prohibition in MCR 7.203(D).

Issued: January 23, 2013

Comment expiration: May 1, 2013

No position, but note that “MCL 600.8301” should be “MCL 600.8031”.

- C. [ADM File No. 2012-35 - Proposed Amendment of Rule 8.111 of the Michigan Court Rules](#)

The proposed amendment of MCR 8.111 would clarify that reassignment under a concurrent jurisdiction plan or family court plan is effective on the date of the reassignment, and the successor judge would handle not only the new cases that are filed in that court, but would also preside over any matters then pending or postjudgment matters that arise. A court would be required to submit a local administrative order to the State Court Administrative Office describing the revised caseload distribution when a reassignment occurs.

Issued: January 23, 2013
Comment expiration: May 1, 2013

No position.

D. [ADM File No. 2012-36 - Proposed Amendment of Rule 2.112 of the Michigan Court Rules](#)

The proposed rule amendments of MCR 2.112 would provide a means to identify business court cases and the placement of those matters on the business court docket.

Issued: February 6, 2013

Comment period expiration: May 1, 2013

The Committee takes no position on the substance of the proposal, but did note a number of drafting issues:

1. Proposed revision of (O)(1) to provide for a simple verification on the face of the pleading, which will be simple, uniform across all counties and would avoid the need for the creation and filing of a separate notice. The verification would be akin to that required by MCR 2.113(C)(2).

(1) If a case involves a business or commercial dispute as defined in MCL 600.8031 and the court maintains a business court docket, a party shall file verify on the face of the initial pleading that the case meets the statutory requirements to be assigned to the business court. If a cross-claim, counterclaim, third-party complaint, amendment, or any other modification of the action includes a business or commercial dispute, a party shall verify on the face of the pleading that the case meets the statutory requirements to be assigned to the business court.

2. Propose revision of subsection (3) to clarify that the matter can be raised either by a party's motion or on the court's own initiative. As currently drafted, the rule suggests a court may raise the issue sua sponte, but does not expressly capture party motions.

(3) On the motion of a party or the court's own initiative, if the court determines that the action meets the statutory requirements of MCL 600.8031, the court shall assign the case to the business court.

3. Propose revision of subsection (4) to clarify that the chief judge reviews all determinations (in or out) regarding the business court docket, not simply reviews of determinations that a case should be removed. This mirrors the provision of MCL 600.8035(7).

(4) A party may file a motion requesting the chief judge to review an assignment of a case under this rule.

E. [ADM File No. 2012-36 - Proposed Administrative Order No. 2013-X](#)

The proposed administrative order would establish procedures for courts that are required to or choose to implement a business court.

Issued: February 6, 2013
Comment period expiration: May 1, 2013

No position, although the Committee notes that the issue raised by Judge Phillips (email of 2/8/13) is addressed by MCR 600.8039(3).

F. [HB 4010](#)(Heise) **Civil Procedure**

Civil procedure, civil actions; State agencies (existing), attorney general. Civil procedure; civil actions; false claims act; enact. Creates new act.

Status: 01/22/13 Referred to House Judiciary

No position.

G. [HB 4025](#)(Heise) **Civil Procedure**

Civil procedure, evictions; Civil procedure, service of process; Civil procedure, other; Housing, landlord and tenants. Civil procedure; evictions; court procedures; make miscellaneous revisions. Amends secs. 5732 & 5739 of 1961 PA 236 (MCL 600.5732 & 600.5739) & adds sec. 5736.

Status: 01/22/13 Referred to House Judiciary

The Committee re-adopts its prior position. In addition, the Committee notes that the proposed language in Section 4 would vitiate the defenses of mitigation of damages (for example, if the property is re-leased), and could result in a windfall for the landlord.

H. [HB 4033](#)(Geiss) **Legal Notices**

Cities, home rule; Communications, newspapers and magazines; Communications, internet; Communications, broadcasting. Cities; home rule; posting of legal notices as alternative to publishing; provide for. Amends 1909 PA 279 (MCL 117.1 - 117.38) by adding sec. 4t.

Status: 01/22/13 Referred to House Committee on Local Government

The Committee takes no position given that the proposed statute does not directly relate to the administration of the courts. However, to the extent that the proposal would impact proceedings in the courts, and to some extent touches upon due process rights, the Committee opposes the proposal and notes the following:

- The notice methods of section 1(c)-(e) are too transient to serve a proper due process function, and are not able to be readily memorialized to verify compliance. The Committee would support their use in addition to the methods set forth in sections (a)-(b).
- Section 3 would impose a considerable burden on cities; they would have to send notices out first class mail to anyone so requesting, and would have to maintain a permanent email roster, despite the fact that emails regularly change.
- The provision of section 4 seems to conflict with the flexibility granted to cities under section 1. Moreover, this requirement would impose a significant burden upon cities with no clear benefits. The same may be said for section 5.

I. [HB 4064](#)(Heise) **Court Records**

Courts, records; Courts, other; Civil rights, public records. Courts; records; digital court records and electronically filing court papers; allow. Amends secs. 832, 859, 1427, 2137 & 8344 of 1961 PA 236 (MCL 600.832 et seq.); adds secs. 1426 & 1428 & repeals 1949 PA 66 (MCL 780.221 - 780.225).

Status: 01/22/13 Referred to House Judiciary

The Committee re-adopts its prior position.

J. Juror Compensation

[HB 4090](#)(Kowall) **Courts**

Courts, funding; Courts, juries. Courts; funding; juror compensation; allow reimbursement if funding unit pays increased mileage. Amend sec. 151e of 1961 PA 236 (MCL 600.151e).

Status: 01/23/13 Referred to House Judiciary

[HB 4091](#)(Kowall) **Courts**

Courts, funding; Courts, juries. Courts; funding; mileage reimbursement rate for juror; increase. Amends sec. 1344 of 1961 PA 236 (MCL 600.1344).

Status: 01/23/13 Referred to House Judiciary

Support.

K. [SB 0038](#)(Jones) **Civil Procedure**

Civil procedure, garnishment; Cities, home rule. Civil procedure; garnishment; garnishment for failure to pay fines or costs ordered under the home rule cities act; provide for. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 4027.

Status: 01/16/13 Referred to Senate Judiciary

The Committee opposes the proposal absent a method for judicial involvement in the process. As written, a hearing officer essentially has the right to issue judgments, which then compels the courts to issue garnishments related thereto, just as any other judgment in Michigan. To the Committee's knowledge, this is a novel device; other statutory regimes (including a number of civil fines issued by municipalities) directly utilize the court procedures, and thus benefit from its due process protections. Absent such protections, the Committee cannot support the proposal.

L. Proposed revision of MCR 3.602 to conform dates to those provided in SB903

The Committee supports revision of the Court Rule to conform to the new act.

M. [SJR F](#)(Bieda) **Judicial Office**

Courts, judges; Constitutional amendments, state. Courts; judges; election of or appointment to a judicial office of person who has reached 70 years of age; remove prohibition. Amends sec. 19, art. VI of the state constitution.

Status: 01/31/13 Referred to the Senate Committee of the Whole

No position.

6. Good of the Order

7. Adjournment