

**STATE BAR OF MICHIGAN  
2013-2014 COMMITTEE ANNUAL REPORT**

***Article VI §6, Bylaws of the State Bar of Michigan***

*No later than May 1 of each year, the chair of each committee and subentity of the Bar, with the assistance of the staff liaison, shall report to the Executive Director on a form provided by the State Bar on the activities and accomplishments of the committee or subentity.*

**Committee Name:**

Civil Procedure & Courts Committee

**Jurisdiction:**

Review proposed court rules and statutes related to civil practice in the courts and make recommendations concerning improvements in the administration, organization, and operation of Michigan state courts.

**Chair(s) and Committee Members:**

Officer	Name	Address	Telephone	Email
Chair	Daniel D. Quick	Dickinson Wright PLLC; 2600 W. Big Beaver Rd Ste 300; Troy, MI 48084-3323	248.433.7242	<a href="mailto:dquick@dickinsonwright.com">dquick@dickinsonwright.com</a>
Staff Liaison	Peter Cunningham	State Bar of Michigan; 306 Townsend St.; Lansing, MI 48933-2012	517.346.6325	<a href="mailto:pcunningham@mail.michbar.org">pcunningham@mail.michbar.org</a>

Member/Advisor/Other	Member/Advisor/Other
Thomas H. Bannigan, Member	Joey Scott Niskar, Member
Richard D. Bisio, Member	Gary R. Peterson, Member
Hon. Rae Lee Chabot, Member	Karen H. Safran, Member
Sean F. Crotty, Member	Thomas Daniel Siver, Member
Pamela C. Dausman, Member	George M. Strander, Member
Michael J. Distel, Member	Alan R. Sullivan, Member
Robert J. Ehrenberg, Member	Matthew Arthur Tarrant, Member
Lori J. Frank, Member	Victoria A. Valentine, Member
Elisa M. Gomez, Member	Randy J. Wallace, Member
Maureen Hannon Kinsella, Member	Peter H. Webster, Member
Hon. David M. Lawson, Member	
Sean P. McNally, Member	

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**Committee Meeting Schedule:**

Please attach any additional information needed regarding Committee meetings as an addendum.

Meeting Type	Date	Location
Committee Meeting	May 18, 2013	Dickinson Wright Offices, Troy, Michigan
Committee Meeting	July 18, 2013	Dickinson Wright Offices, Troy, Michigan
Committee Meeting	November 4, 2013	Teleconference Only
Committee Meeting	November 16, 2013	Dickinson Wright Offices, Troy, Michigan
Committee Meeting	March 1, 2014	Dickinson Wright Offices, Troy, Michigan

**Resources provided by the State Bar of Michigan in support of committee work:**

The committee receives staff support from Peter Cunningham and Carrie Sharlow. The State Bar coordinates meeting times, invites to the members, prepares and circulates (via hard copy, email, and portal access) the agenda and related materials included in a meeting book, provides meeting refreshments, and prepares minutes for review. Arrangements are made by the Bar staff for conference call participation for those that cannot attend in person. Bar staff provides information regarding actions by the Board of Commissioners and the Representative Assembly and the status of pending legislation and proposals before the Supreme Court.

**Committee Activities:**

Over the course of five meetings, the committee took the following positions:

1. [2011-26 - Proposed Amendment of Rule 2.403 of the Michigan Court Rules](#)

**Support with modification.**

- **Insert “denying a timely motion:” to (O)(8) after “order” so it modifies all subparts, and delete that language from (O)(8)(1).**
- **The Committee proposes the deletion of subparagraph (iv). The concern is that a party could file a very belated or frivolous post-judgment motion simply in order to resurrect an otherwise time-barred motion for case evaluation sanctions. Given subparagraphs (i)-(iii), the Committee could not come up with a scenario where this sort of provision would be necessary. It is recognized that MCR 2.625(F) on taxation of costs includes such language, but the dollar value between costs and fees suggests less likelihood of manipulation of the cost rule.**
- **Similar changes should be made to the offer of judgment rule and MCR 2.625(F) should have rehearing/reconsideration added.**

2. [2011-31 - Proposed Amendment of Rules 7.105, 7.111 and 7.205 of the Michigan Court Rules](#)  
**Support.**

3. [2012-06 - Proposed Amendment of Rule 9.221 of the Michigan Court Rules](#)

**No position, although the Committee believed that simply having the Commission both notify the chief judge and send the written notice of disposition was more efficient than the proposed, bifurcated procedure.**

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4. [2012-30 - Proposed Amendments of Rule 2.621 and Rule 2.622 of the Michigan Court Rules](#)  
Support the following recommendations:
  - Delete the first sentence of MCR 2.622(A); as written it is confusing whether it is granting a substantive right (the drafters state this is not the intent). The Receivership Committee supported this change.
  - The Committee opposes the 2<sup>nd</sup> sentence of MCR 2.622(A) as stating a substantive rule of law which the Committee did not believe was universally true and in any event would provide a platform for confusion of the proceedings and perhaps even claims against the receiver. With the sentence deleted, existing law would continue to define the scope of the receiver's duties.
  - Insert instead the following: "The provisions of this rule apply unless other provisions of statute or rule specifically apply to the subject receivership." The drafters noted that there are numerous types of receivers, some of which have specific statutory guidance. There was perceived to be a risk of confusion between those subject-specific statutes or rules and this rule of general application, absent this clarifying statement. The Receivership Committee supported this change.
  - Change "petitioner's" to "movant's" in (C)(1). The Receivership Committee supported this change.
  - (C)(2) would prohibit a moving party or its counsel from "assisting" the receiver. In certain scenarios, such assistance may permit the most efficient manner for the receiver to carry out certain duties. This seems to be the spirit behind (C)(3), but the carve-out of the general prohibition of (C)(2) seems too narrow. The Committee suggests deletion of "or in any other professional capacity representing or assisting the receiver" and instead rely upon normal rules and the court's oversight regarding conflicts of interest.
  - Subrule (D) should be prefaced with "Unless the Court otherwise orders:" or words to that affect. Some receiverships will not require all of the types of reports listed in this subrule, but the rule is mandatory. The Receivership Committee supported this change.
  - Existing subrule (A)(3) has been deleted. The Committee believes that a general right of receiver to continue the business of the estate, including entering in to leases as deemed necessary, should be expressly stated. The Receiver Committee thought the power was implied.
  - The Committee supports the preservation of existing subrules (C) and (D).
5. [2013-02 - Amendments of Rules 3.002, 3.800, 3.802, 3.807, 3.903, 3.905, 3.920, 3.921, 3.935, 3.961, 3.963, 3.965, 3.967, 3.974, 3.977, and 5.402 of the Michigan Court Rules](#)  
No position, although as a general drafting point, the Committee notes that the proposal repeats definitions from the statute. This creates potential confusion or unnecessary revision when the statutory definitions change and is generally redundant. The

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Committee prefers simply incorporating the statutory changes by reference, although perhaps there is some unique consideration as applied to a child protection statute that calls for not following this general suggestion.

6. [2013-12 - Proposed Amendment of Rule 7.313 of the Michigan Court Rules](#)  
Support.

7. [2013-18 - Proposed New Rules 2E.001 \*et seq.\* of the Michigan Court Rules](#)  
[2013-18 - Proposed Administrative Order No. 2013-](#)  
[2013-18 - Draft Standards for E-filing](#)

- Generally there is opposition to a system which permits a review of filings before they are accepted. The Federal PACER system permits all filings; if there are problems, the clerk issue the notice the next day and gives a time for it to be corrected. This avoids the problem created by the proposed rule, where something is filed but then rejected for some inadequacy. The filing would now be late or time-barred absent a nunc pro tunc order of the court, an extra step which simply represents unnecessary motion practice.
- The Committee was advised of the significant debates regarding the assessment of fees by the courts and pending legislation. The Committee thus notes only that the transaction fees should be defined as taxable costs.
- Rule 2E.006(B): delete “them” and insert “copies and make originals available for inspection”
- If Rule 2E.008 is to stay, it should permit discretion of the court with consideration of the listed factors. As written, it suggests satisfaction of each factor is mandatory.
- A major advantage of electronic filing is 24/7 access. As such, the Committee does not favor a 5:00 p.m. deadline in 2E.101(A). Assuming service is accomplished automatically and simultaneously with filing, as in PACER, this should not present a problem for courts or practitioners.

[2013-18 - Proposed Amendments of Rules 3.210, 3.215, and 6.104 of the Michigan Court Rules and Proposed New Rule 8.124 of the Michigan Court Rules](#)  
[2013-18 – Proposed Administrative Order No. 2013-](#)

Oppose absent revision.

- The Committee is mindful of widespread debate among academics, jurists and attorneys as to the tradeoffs inherent in widespread use of videoconferencing.
- The Committee defers to the Criminal Law Section and other subject-matter specialists for considerations unique to those arenas.
- For civil litigation, the Committee unanimously favors application of the “extraordinary circumstances” standard for either telephonic or videoconferencing, thus requiring revision of proposed MCR 3.210(A)(4). “Testimony must be taken in person, except that the court may in extraordinary circumstances allow testimony to be taken by telephone or under MCR 8.124.” With that change, most of the proposed 8.124 is acceptable.

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- **The Committee could not determine the purpose of exempting videoconferencing motions from normal motion fees, per proposed MCR 8.124(D)(3).**
  
- 8. [HB 4570](#)(Cotter) Courts, juries; Higher education, students. Courts; juries; eligibility to postpone jury service of students; expand to include full-time higher education students under certain circumstances. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335).  
**Support.**
  
- 9. [HB 4704](#) (Pettalia) Counties; financing; challenging an approved budget; clarify. Amends secs. 16 & 18 of [1968 PA 2](#) (MCL [141.436](#) & [141.438](#)).  
**Oppose.**
  
- 10. [HB 4083](#) (Lori) Law enforcement; other; Michigan crime stoppers act; create, and provide for criminal assessments to fund crime stopper activities. Creates new act.  
**No position other than oppose as to proposed mechanism for fee collection and disbursement.**  
**The proposal would impose significant burden upon the courts to collect and disburse funds, as noted in the letter from the SCAO. The Committee deems it inadvisable to turn the clerk in to a tax collector and fund disburser.**
  
- 11. [2013-20 – Proposed Amendment of Rule 2.305 of the Michigan Court Rules](#)  
**Support with amendments.**
  
- 12. [2013-10 – Proposed Amendments of Rules 2.107 and 2.117 of the Michigan Court Rules](#)  
**Support.**
  
- 13. Mental Health Courts  
**Support.**
  
- 14. [HB 4763](#) (Schmidt) Traffic control, traffic regulation. Traffic control; traffic regulation; use of automated traffic enforcement safety devices at certain intersections; allow. Amends secs. 727c & 741 of 1949 PA 300 (MCL 257.727c & 257.741) & adds div. heading & adds secs. 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761 & 762.  
**Oppose.**
  
- 15. [HB 4830](#)(Lyons) Civil procedure, evictions; Businesses, limited liability companies; Businesses, business corporations; Businesses, partnerships; Occupations, attorneys. Civil procedure; evictions; legal representation; allow corporation, partnership, or limited liability company to appear without an attorney. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.  
**Oppose as it encourages the unauthorized practice of law.**
  
- 16. [SB 0652](#) (Jones) Courts; judges; court of claims; provide for certain number of court of appeals judges to serve as court of claims judges, and expand jurisdiction. Amends secs. 308, 841, 6404, 6407, 6410, 6413, 6419, 6421 & 8304 of [1961 PA 236](#) (MCL [600.308](#) et seq.) & repeals sec. 6419a of 1961 PA 236 (MCL [600.6419a](#)).  
**Oppose.**

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17. [2013-28 - Proposed Amendment of Rule 2.510 of the Michigan Court Rules](#)  
The committee voted unanimously to support the proposed amendment. The committee supports the proposed amendment as a modernization of the courts, but notes that a uniform practice across the state is preferred. Further, the committee suggests that “completed” in (c)(3) be “returned” in order to match the language of (c)(1).
18. [ADM File No. 2013-03 - Proposed Amendment of MCR 2.302](#)  
The committee voted unanimously to take no position, but express a concern that unregulated discovery after a judgment could lead to abuses. It might be more advisable to require a status conference and something akin to a scheduling order so that runaway discovery does not become a problem.
19. [ADM File No. 2013-19 - Proposed Amendment of MCR 3.602](#)  
**Support.**
20. [HB 4913](#) (McMillin) Civil procedure; civil actions; strategic lawsuits against public participation; limit. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2978.  
**Oppose.**
21. [HB 5153](#) (Walsh) Courts; judges; salary formula for judges; modify. Amends secs. 304, 555 & 821 of [1961 PA 236](#) (MCL [600.304](#) et seq.).  
**Support.**
22. [HB 5156](#) (Shirkey) Courts; judges; court of claims exceptions to trial by court without jury; provide for under certain circumstances.  
**Support.**
23. [SB 0518](#) (Proos) Traffic control, traffic regulation; Courts, other. Traffic control; traffic regulation; use of vehicle boots for failure to satisfy certain court obligations; allow. Amends sec. 4803 of 1961 PA 236 (MCL 600.4803).  
**Oppose.**
24. [SB 0519](#) (Proos) Civil procedure, other; Courts, other; Crime victims, compensation; Criminal procedure, other; Family law, child support. Civil procedure; other; fines, costs, and other indebtedness to courts; require SCAO to establish a database, and require civil litigants to check database before paying or collecting on a judgment. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1477.  
**Oppose.**
25. [SB 0520](#) (Emmons) Crime victims, restitution; Crime victims, notices; Family law, child support. Crime victims; restitution; restitution orders for crime of nonpayment of support; clarify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).  
**Oppose.**
26. [SB 0521](#) (Emmons) Family law, child support; Family law, parenting time; Courts, subpoenas; Courts, contempt. Family law; child support; authority of friend of the court to issue subpoenas for show cause and notice to appear; allow, and provide for other general amendments. Amends secs. 31, 32, 33, 37, 44 & 45 of 1982 PA 295 (MCL 552.631 et seq.) & adds sec. 36.

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The Committee takes no position but raises 3 issues for consideration: (1) There is no such thing as “Supreme Court Rules.” This should be replaced with a reference to the Michigan Court Rules. (2) 32(8) should clarify that the defendant is released from custody pending the hearing if the bond is posted. It is implicit now but should be made explicit. (3) The Committee opposes 44(9) as unproductive. The vehicle may be co-titled to someone else, thus depriving an innocent party of the use of the vehicle. Moreover, the defendant may need the vehicle to get to work which in turn is necessary for order compliance. The statute also ignores potential priority claims of secured creditors of the vehicle.

The committee also presented several proposed amendments before the Representative Assembly:

- Proposal to Revised MRPC 7.1
- MCR 2.203 & MCR 2.306
- MCR 2.003
- MCR 2.305
- MCR 2.403

**Future Goals and Activities:**

The Committee expects to continue to review proposed court rule amendments and legislation and to both initiate and further develop its own proposals.