

## Report on Public Policy Position

**Name of committee:**

Civil Procedure and Courts Committee

**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:**

June 7, 2010

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

Position adopted after an electronic discussion and vote

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

18

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

11 Voted for position

0 Voted against position

7 Did not vote

**Position:**

Oppose

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

The Committee opposes the proposed amendments. They would vest significant authority in clerks to make decisions about the validity of filings that should be left to a judge. Clerks are not judicial officers. They have not been elected as such, and the state constitution does not invest them with the power to make judicial decisions. The decision whether or not to accept a paper for filing transcends the ministerial and on occasion requires considerations of substance. Cf. FR Civ P 5 (d)(4): "The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

Specific problems with these proposals include the following:

1. Proposed MCR 2.102(B)(2)(b) would insert a new requirement to plead venue and allow a clerk to reject a noncomplying complaint. MCR 2.102(A), MCR 8.119(C)(2). But venue is not required to be pled as an element of a claim and is waivable. MCR 2.221(C). The RJA permits cases to be tried where venue is not proper and makes judgments valid despite venue defects. MCL 600.1645, 600.1651.
2. The proposals would require the clerk to determine jurisdiction [MCR 8.119(C)(1)(f)] and to reject a noncomplying complaint. MCR 8.119(C)(2). In cases of questionable jurisdiction (i.e., is a contested amount in controversy enough to get into circuit court or too much to be in district court; is a claim for equitable relief sufficient to confer circuit court jurisdiction), the clerk should not be making the first call on jurisdiction and rejecting documents on that basis.
3. The proposal includes a rule that when there is more than one filing date stamped on a document, the filing date is the latest date. MCR 8.119(C)(3). Thus, although a document is timely filed as shown by an initial date stamping, if for some reason a later date gets stamped on it, it could be deemed untimely.
4. A clerk could automatically reject reply briefs on motions, since the court rules do not provide for them and the clerk could view that as noncompliance with the court rules. MCR 8.119 (C).
5. A clerk must reject a filing that the clerk determines is untimely. MCR 8.119(D)(1)(c). This would remove the discretion of a judge to consider an untimely filing. See MCR 2.108(E), 2.116(D)(4); *Arrington v Detroit Osteopathic Hospital*, 196 Mich App 1992).
6. The proposal does not clearly address the effect on the statute of limitations of a clerk's reject of a filing.
7. The proposal allows judicial review of a clerk's decision regarding defaults and garnishments. MCR 8.119(D)(3). But there is no provision for any review of a clerk's decision to reject other categories of filings. MCR 8.119(C)(2).

The Committee's understanding is that the proposal was developed after adoption of an Administrative Order establishing a pilot project in the 46th District Court (Southfield) regarding garnishment and consumer debt collection cases. File 2005-32, order entered January 21, 2010. That pilot project will run through July 21, 2010, and the 46th District Court is to submit a report thereafter. The issue arose there as a result of appellate court decisions rejecting that court's use of clerk review of filings. *In re Credit Acceptance Corp*, 273 Mich App 594 (2007), *affd* 481 Mich 883 (2008). It may be that unique features of that category of cases justify some special provisions regarding review of filings. Presumably that can be addressed after receiving the 46th District Court's report on the pilot project. But the present proposal goes far beyond that. It delegates decision-making power to clerks in areas involving legal questions that should be decided by a judge. And, based on the genesis of this whole proposal, it appears to go well beyond fixing a perceived problem to address matters on which there is no problem that needs fixing.

**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>