From: "Potts, Wendy" <pottsw@oakgov.com>
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Date: 7/2/2013 11:29 AM
Subject: Re ADM File No. 2012-30

July 2, 2013

Clerk of the Court

Michigan Supreme Court

PO Box 30052

Lansing, MI 48909

Re ADM File No. 2012-30

To the Clerk of the Court:

I write with regard to the above-referenced ADM file addressing proposed changes to MCR 2.621 and 2.622.

Proposed MCR 2.622(C)(1) would require a court to “defer” to the movant’s nomination of a receiver absent “good cause.” Moreover, the court would be required to make findings of fact as to the adequacy of any alternative.

As a circuit court judge who regularly handles matters involving receivers (and now as part of the Oakland County Circuit Court Business Court), I oppose this proposed language. "A receiver is an officer of the court who protects and preserves property on behalf of the parties to a pending lawsuit. 65 Am Jur 2d, Receivers, § 1, p 654." State Treasurer v Abbott, 468 Mich 143, 152 n 10 (2003). As such, the presumption should be with the court, not with the parties. Certainly the court takes into account any party’s specific suggestion of a receiver, but such a suggestion should not presumptively lead to selection as a receiver, and such a process raises the specter of an “officer of the court” in fact being someone beholden to the moving party. A receiver must “subserve the interests of all persons interested in the subject-matter committed to his care,” Abbott, supra, and not serve only the interests of one litigant.

Thank you for the opportunity to comment on this proposal. I would be willing to elaborate on my comments if desired.

Sincerely,

Wendy Potts

Circuit Court Judge

Wendy Potts
Oakland County Circuit Court

Civil-Criminal Division

Business Court