

State of Michigan



Probate Court County of Oakland

Probate Judges

Linda S. Hallmark
Daniel A. O'Brien
Elizabeth Pezzetti
Kathleen A. Ryan

Probate Administrator

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August 21, 2013

Clerk of the Court
Hall of Justice, 4th Floor
925 W. Ottawa Street
Lansing, Michigan 48915

Via electronic mail to MSC_clerk@courts.mi.gov.

Re ADM File No. 2013-30
Proposed amendment to MCR 2.621 and 2.622
Regarding Court Appointed Receivers

To the Clerk of the Court:

We are writing to express our concerns regarding the above referenced ADM File, which addresses proposed amendments to MCR 2.621 and MCR 2.622 regarding court appointed receivers. As probate court judges who often deal with cases involving receivers, we oppose the proposed language and amendments. The proposed amendments appear too expansive and have potential constitutional implications that must be considered.

Historically, receiverships trace their roots to the equitable powers of the court to achieve complete justice. In Michigan, the Legislature has established some equitable relief by statute, such as MCL 600.6104, while still reserving to the courts the equitable powers and jurisdiction "...possessed by courts and judges in chancery in England on March 1, 1847....". (MCL 600.601) The Michigan Legislature has respected and carefully balanced these statutory rights with the reserved right of the courts to exercise equity. The proposed amendments to MCR 2.621 and MCR 2.622, if adopted, would alter the balance of rights, and favor the movant/creditor by essentially allowing the movant/creditor to appoint it's own "officer of the Court", thereby creating a situation whereby the receiver feels indebted to the creditor or at the very least creating the appearance of bias.

Equity, at its core, relies upon the exercise of the judgment of the judge. Infringement upon the longstanding discretionary authority of the court runs contrary to the expectations of the voters, who have exercised their constitutional right to elect their judges. The proposed amendments would curtail the independent judgment of the court. As reflected in proposed amendment 2.622 (C) (1), the court "...shall defer to the petitioner's nomination of receiver...." The result is the "court officer" being appointed without meaningful deliberation by the judge as to the

appropriate appointment for the particular circumstances. Such an abdication of the court's duty would be tantamount to a breach of trust with the voters. Under the current system, there is nothing preventing the judge from adopting the parties' recommendation of a receiver. However, if the judge must defer to the creditor's nomination and sign the appointment order, the burden of having that so-called decision/order of the judge reviewed is placed entirely on the debtor, and the judge's involvement is merely ministerial. Similarly, the burden of challenging decisions of the receiver will be placed entirely on the debtor who likely doesn't have the financial ability to do so. The proposed rule appears to lose sight of the fact that the debtor is also entitled to justice. The responsibility for seeing that justice is done for all persons affected by court action is properly placed in the court/judge by the constitution, legislation and voters.

Moreover, under the existing court rules and case law, the court is required to authorize the payment of any funds collected by the receiver. (MCR 2.622 (A) (8)). The proposed 2.622(E) (3) permits the receiver to pay without a court order "...the ordinary expenses of the receivership....". Further, such ordinary expenses would include receiver fees, unless written objections are filed within seven (7) days, or upon the court's own motion, the court reviews such individual fee requests and sets the same for hearing. (See proposed 2.622 (F) (4) and (5)). Similar to challenging the appointment of a receiver, the burden of challenging the fees of a receiver will be placed entirely on the debtor, or alternatively, it shifts the burden on the court to monitor filings for receiver's fee request. This reallocation of burdens is likely to prove inefficient for the court and the parties, while allowing large gaps available for potential abuse by the receivers as "chosen" by the creditor.

The identified concerns are only a cursory overview of the constitutional and pragmatic implications of the proposed amendments to MCR 2.621 and 2.622. We therefore respectfully urge the court to decline adopting the proposed amendments identified in ADM File No. 2012-30.

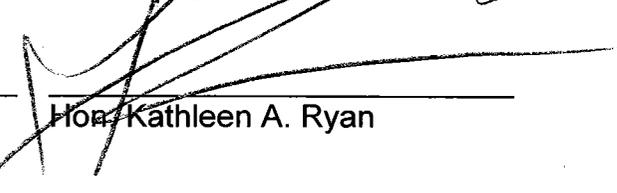
Thank you for the opportunity to comment on this proposal and for your careful attention to our concerns. We would be happy to discuss this matter in more detail upon request.

Very truly yours,


Hon. Linda S. Hallmark


Hon. Elizabeth Pezzetti


Hon. Daniel A. O'Brien


Hon. Kathleen A. Ryan