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**Via Email ([MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov))**

Michigan Supreme Court  
Clerk's Office  
P.O. Box 30052  
Lansing, MI 48909

**Re: ADM File No. 2012-30**

To the Clerk of the Court:

I oppose the proposed change to MCR 2.622(C)(1), which would require a court to “defer to the petitioner’s nomination of receiver, except for good cause shown.” By placing such great weight on the moving party’s choice of receiver, proposed MCR 2.622(C)(1) would substantially erode the receiver’s role as an independent officer of the court entrusted with the duty of promoting and protecting the rights of all persons interested in the subject matter of the receivership estate. *See State Treasurer v Abbott*, 468 Mich 143, n. 10 (2003). At its worst, litigants seeking the appointment of a receiver could manipulate proposed MCR 2.622(C)(1) to install their *de facto* agents (*i.e.* those persons on the petitioner’s “approved list”) in a position intended for disinterested persons.

Moreover, adopting proposed MCR 2.622(C)(1) will, likely, result in a “race to the courthouse” mindset among potential litigants because the first party to file for the appointment of a receiver obtains the perceived advantage that courts will presumptively approve their selection. This Court should enact rules that encourage parties to resolve their disputes at the earliest possible stage of the proceedings with minimal intervention from the courts.

Proposed MCR 2.622(C)(1) may also result in the unintended consequence of increased litigation, particularly before the Court of Appeals. One can readily envision the numerous petitions for interlocutory review with respect to courts failing to find good cause to deny the appointment of a specific receiver and/or of good cause determinations when courts decline to approve a moving party’s designated receiver. Delays while the Court of Appeals reviews the propriety of the appointment of a specific receiver are particularly detrimental when the property within the receivership estate requires immediate attention. Receivers awaiting appellate review of their appointments may be hesitant to act until a final determination with respect to their status is made.



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Ensuring that all parties are confident in the independence of the receiver is critical to the receiver's ability to participate in the facilitation/mediation of the dispute underlying the creation of the receivership estate. From my experience, receivers are often able to successfully bring the parties together (or assist a third-party facilitator/mediator) to arrive at a negotiated resolution. The receiver's in-depth understanding of the pertinent facts and issues enables the parties and the neutral to work through and address matters efficiently. If, however, the receiver is perceived by one party as biased because the opposing party appointed the receiver, then the potential to utilize the receiver in mediation/facilitation is drastically diminished.

It is critical to keep in mind that proposed MCR 2.622(C)(1) will not simply impact commercial matters, such as those involving lenders and borrowers, but also cases before the family and probate courts. For example, proposed MCR 2.622(C)(1) will negatively affect family court cases by allowing the "first to file" spouse to significantly influence the selection of the receiver over disputed property in a contentious divorce. In the probate court, the "first to file" party in a will contest may have the benefit of naming a receiver over a decedent's estate. These examples only begin to delineate the potential drawbacks associated with shifting the primary power to designate receivers from the courts to the petitioning parties.

Vesting courts with the full authority and discretion to appoint unbiased qualified receivers of their choosing, after receiving input from all interested persons, is the optimal method for preserving the integrity of the process and for protecting the interests of all those involved. Receivers should serve as the neutral "eyes and ears" of the court, free from any concerns that their actions may displease the party nominating them for their fiduciary position.

Thank you for the opportunity to comment on proposed MCR 2.622(C)(1). I look forward to further discussion of the issues raised in this letter during the upcoming public hearing.

Very truly yours,

**SEYBURN KAHN**

A handwritten signature in blue ink, appearing to be 'H. Nirenberg', with a long horizontal line extending to the right.

Henry M. Nirenberg