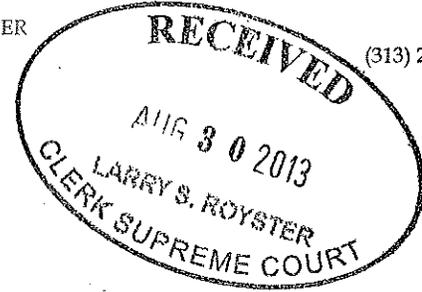




THIRD JUDICIAL CIRCUIT
OF MICHIGAN

JEANNE STEMPIEN
PRESIDING JUDGE
CIVIL DIVISION

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413



August 27, 2013

Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2012-30 Proposed Changes to MCR 2.621 and MCR 2.622

To the Clerk of the Court:

On behalf of the Civil Division of the Third Circuit Court, I write to oppose the adoption of the proposed amendments to MCR 2.621 and 2.622 regarding the appointment of receivers; in particular, proposed MCR 2.622(C)(1).

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.

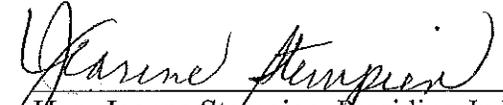
Preliminarily, the proposed changes run contrary to existing case law concerning the appointment of receivers. Traditionally, receivers have been appointed by courts as officers of the court. Indeed it has been held that a circuit judge may not delegate the responsibility of choosing a receiver to one of the parties. *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 528; 730 NW2d 481, 503, *app gtd in part, cause remanded on other grounds*, 480 Mich 910 (2007) ("The power to appoint a receiver belongs exclusively to the circuit court. Therefore, to the extent that the trial court delegated to Ypsilanti the power to nominate, retain, and supervise a receiver of its own choosing, it acted improperly and exceeded its authority"). The proposed court rule turns this principle on its head in so far as the Court would need to defer to the nomination of a receiver by a party.

Moreover, the proposed changes are contrary to the sound administration of justice because their implementation will create real or apparent conflicts of interest. As an officer of the court, a receiver has a duty to manage or dispose of receivership property for the best interests of all concerned. Thus, "as an officer of the court, a receiver should remain unbiased and impartial ... The position of receiver requires the 'exercise of [the] soundest judgment, and

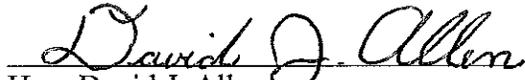
always the strictest impartiality..." *Ypsilanti Fire Marshal, supra*. Yet, receivers who owe their appointment to a particular party in a case, and in future cases, may not remain impartial when they are called to take actions adverse to the appointing party. Instead, their present and future economic interest may cause them to act in accord with the interests of the appointing party – not in the best interest of all concerned. In any event, given their economic interests, the impartiality of their judgment necessarily will always be open to question.

For these reasons and those previously submitted by others, most notably the Family Division of the Third Circuit Court, the Supreme Court should decline to adopt the amendments to MCR 2.622(C)(1).

Respectively Submitted,



Hon. Jeanne Stempien, Presiding Judge,
Civil Division



Hon. David J. Allen



Hon. Susan D. Borman



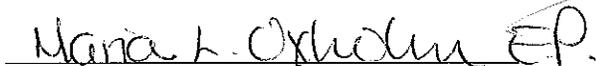
Hon. Daphne Means Curtis



Hon. John H. Gillis, Jr.



Hon. Kathleen Macdonald



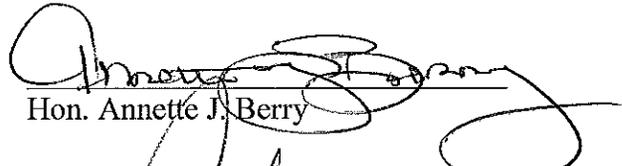
Hon. Maria L. Oxholm



Hon. Brian R. Sullivan



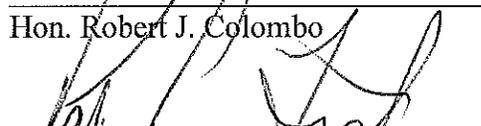
Hon. Lita Popke, Chief Judge Pro Tem



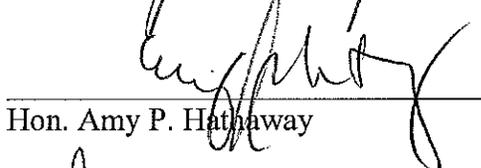
Hon. Annette J. Berry



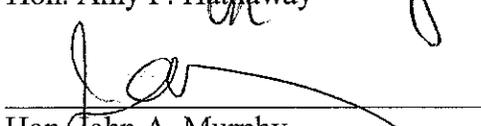
Hon. Robert J. Colombo



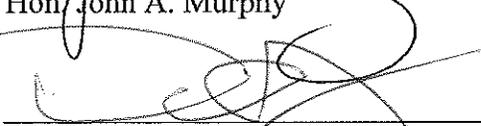
Hon. Patricia S. Fresard



Hon. Amy P. Hathaway



Hon. John A. Murphy



Hon. Daniel P. Ryan