

MICHIGAN PROBATE JUDGES ASSOCIATION

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Secretary Re: ADM File No. 2013-30
Proposed amendments to MCR 2.621 and 2.622
Court Appointed Receivers

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AT LARGE MEMBERS

Hon. THOMAS E. NELSON
Hon. MONTE BURMEISTER The Board of Directors of the Michigan Probate Judges Association met for the purpose of considering the above referenced proposal to amend MCR 2.621 and 2.622 and has taken a position in opposition to the proposed amendment.

Hon. DARLENE A. O'BRIEN
Hon. THOMAS SLAGLE The proposed amendment would essentially create a presumption in favor of one party to a litigated case (the creditor) and place a burden upon the other party (the debtor) to show that good cause exists not to appoint the receiver chosen by the creditor. In many

REGIONAL ASSN. PRESIDENTS cases the debtor does not have the financial ability to effectively contest the issue and many are unrepresented. If the debtor is unable (through lack of knowledge or resources) to present evidence to establish good cause, then the court has no discretion except to defer to the moving parties choice. This essentially removes the ability of the court to determine the appropriate person or entity in a given case to take on the responsibility of a court appointed receiver and place that decision in the hands of one of the interested parties. This would create a fundamentally unfair court order of appointment. Likewise the proposed amendment removes the discretion of the court in making a decision that has an impact on the progress and outcome of the case before it.

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The proposed amendments, if adopted, infringe upon the court's ability to decide independently, the appropriate person or entity to act as a receiver in a particular case. To the contrary the amendment would place the decision on this issue solely in the control of the moving party unless the responding party has the ability or the means to challenge it. This creates the possibility of an impression of unfairness or bias in the judicial process.

We recognize that there are many circumstances wherein there exists a legally created presumption that then requires the other party to rebut or overcome, however those involve matters that are created because of certain facts or circumstances that exist or

existed prior to the litigation. This presumption would be created during the litigation and at the discretion of a single party to the litigation.

Under the current rule there is nothing that prevents the court from, as part of the court's discretion, appointing a receiver suggested by either party or to reject such a recommendation and appoint a receiver the Judge feels more suited to the facts of the particular case. This maintains the integrity of the judicial process by creating a sense of fairness to both sides. The proposed amendment would, in our view, do just the opposite.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elwood L. Brown". The signature is written in black ink and is positioned above the printed name.

Elwood L. Brown
MPJA President