

CIVIL PROCEDURE & COURTS COMMITTEE  
Respectfully submits the following position on:

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ADM File No. 2013-41

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The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Civil Procedure & Courts Committee. The State Bar of Michigan has authorized the Civil Procedure & Courts Committee to advocate its position.

The State Bar's position on this matter is support the amendments and authorize the Civil Procedure & Courts Committee to submit its own comments.

The total membership of the Civil Procedure & Courts Committee is 22.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 22. The number who voted in favor to this position was 15. The number who voted against it was 0.

**CIVIL PROCEDURE & COURTS COMMITTEE**

OFFICERS

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April 30, 2014

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

**RE: ADM File No. 2013-41 – Amendments to Administrative Order  
No. 1998-5**

Dear Clerk Royster,

At its April 25, 2014, the Board of Commissioners of the State Bar of Michigan authorized the Civil Procedure & Courts Committee to submit its comments on ADM File No. 2013-41.

The committee took no position on the amendments but raises the following drafting issues:

- Para 1. The phrase “With notice, the court ...” should be “With notice, the chief judge of the court...”
- Para 1. The proposal requires that a request for SCAO appointment must be made by both the court and the local funding unit. It should be made clear for purposes of this Order whether such a request is “mediation” as it is used in the statute MCL 141.438(6) and (8) and MCL 141.436(9). It seems to be, but it is suggested that it should be expressly stated.
- Where there is a requirement that the mediator certify in writing that the parties are unable to resolve the issue by mediation before an action can be filed [see MCL 141.438(6) and 141.436(9)] it seems that the mediator can preclude the filing of an action and put in jeopardy the requirement for a county funded court to file funding disputes within certain number of days (either 60 or 90) after the adoption of a general appropriations act or amendment thereto. See MCL 141.438(7) and (8). If that is the case, the proposal should be amended to not allow a mediator to preclude a court from filing an action.
- Para 2 “If the court concludes...” should be “If the chief judge of the court concludes...”
- Para 2 the added requirement that the chief judge of the court conclude that a civil action is necessary to compel funding does not seem to make sense because in Para 1 the chief judge of the court has already provided written notice that the chief judge has approved commencement of legal proceedings. It seems that the proposal was meant to have the chief judge concluded that the mediation is not working and that commencement of an action is required after mediation. If this is the case, perhaps the proposal should be made clear that the chief judge of the court re-state that a civil action is necessary.

Larry S. Royster

April 30, 2014

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- Para 2 addresses the commencement of an action by the chief judge. This highlights the discrepancy between the statute 2013 PA 172 which addresses county and county funded courts (as opposed to a non-county funded district court) and which specifically provides standing to the chief judge of the court (as opposed to standing in the name of the court itself which it seems without the statutory standing would not be in the name of the chief judge, but rather in the name of the court). This may be a minor consistency issue but could be important.
- Para 2 a wording suggestion is that instead of saying that the “State Court Administrator must assign a disinterested judge to preside over the action” the language should be that the SCA is authorized to assign (or make sure that) a disinterested judge to preside over the action. This provision only applies to non-county funded courts. So, a non-county funded district court would file in circuit court, and the normal process would be a circuit court judge would be assigned and presumably be disinterested. Instead of mandating the SCA assigning a judge in all cases (as it now reads), the SCA would only be required to be involved if there is an interested (conflicted) judge.
- Para 3 “representatives of funding units” should be clarified. Perhaps it should be “authorized representatives of funding units.” Here, funding units are local cities, villages, and townships and who is a representative of such unit(s) can be unclear at times.
- Para 3 It is unclear if a request pursuant to this paragraph is “mediation” under the meaning of the statutes as mentioned above in item 2.
- The staff comments state that the proposed rule changes only change how county funded courts pursue disputes over court funding, but the proposal seems to also change how non-county funded courts pursue disputes as well. The notes should reflect that.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Quick', written in a cursive style.

Daniel D. Quick

Chair, Civil Procedure & Courts Committee