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www.micounties.org  
Timothy K. McGuire, Executive Director

To: Anne Boomer

April 30, 2014

Pursuant to the request by the State Court Administrative Office, attached are the comments which we are submitting on behalf of the Michigan Association of Counties.

Please be advised MAC supports the amendments submitted by Wayne County (see attached).

We trust that the recommended changes will be considered during the review of suggested revisions.

Should you have any questions, please give me a call, and I look forward to seeing you at the hearing at the end of May.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy K. McGuire", written in a cursive style.

Timothy K. McGuire



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The Michigan Association of Counties requests changes to the January 29, 2014, Administrative Order 1998-5 revision as follows:

1. Under Section III, Funding disputes; Mediation and Legal Action, add: "Attorney fees shall not be awarded to court's counsel if the court does not prevail. Should attorney fees be awarded, they shall be based on a local survey in the court's location of the average fees charged."
2. Section III, Funding disputes; Mediation and Legal Action, subsection 1. Change last sentence to read "If requested by the court or the local funding unit, the State Court Administrator must appoint a person or entity to serve as mediator within five business days. In the event only the local funding unit requests mediation, then the State Court Administrator will appoint a mediator."
3. We are unclear, whereby there would be any reason MCL 141.436 and MCL 141.438 would not be deemed applicable. However, if the suggested Wayne County amendment under current section III, is not adopted (see attached) then we respectfully request under section III subsection 2; "funding disputes assigning a retired judge rather than a disinterested judge" language be adopted, because every active judge has some interest in the outcome and has the appearance of bias.



**ROBERT A. FICANO**  
County Executive

**Zenna Elhasan**  
Corporation Counsel

**Harnetha W. Jarrett**  
Deputy Corporation Counsel

April 15, 2014

Larry Royster, Clerk and Chief of Staff  
Michigan Supreme Court  
P.O Box 30052  
Lansing, Michigan 48909

Dear Mr. Royster:

We are writing to comment on the January 29, 2014 Order adopting amendments to Administrative Order No. 1998-5, regarding court funding disputes (ADM File No. 2013-41).

We respectfully request that the Court revise re-numbered paragraph 2 by striking the language following "MCL 141.436 and MCL 141.438." That language states that a circuit court chief judge may commence an action in accordance with those statutes "if applicable," and provides the procedure to be followed if those statutes are "not applicable." We have enclosed a proposed marked-up copy of the Order for your review.

Both referenced statutes provide that "the chief judge of a court funded by a county has standing" to bring suit against the legislative body of the county with respect to a general appropriations act (MCL 141.436(9)), or against the chief administrative officer of the county with respect to the enforcement of a general appropriations act (MCL 141.438(6)). There is no reasonable inference in either statute that they might not be applicable to a funding dispute between the court and the county.

Our concern is that the current phrasing in the order suggests there may be some question as to the comprehensive applicability of the statutes to intra-government funding disputes. The counties of this state have been striving mightily in recent years to balance their budgets, with much hardship and few successes. The legislation that is the subject of the present Order has been one

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of the few bright spots in that process. Accordingly, we respectfully request that the Supreme Court change the phrasing of this Order to remove any such suggestion.

With respect,



ZENNA ELHASAN

Wayne County Corporation Counsel

Enclosure: Marked Up Administrative Order

# Order

Michigan Supreme Court  
Lansing, Michigan

January 29, 2014

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-41

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

Adoption of Amendments of  
Administrative Order No. 1998-5  
(Regarding Court Funding Disputes)

On order of the Court, the need for immediate action having been found, the following amendments of Administrative Order No. 1998-5 are adopted, effective immediately and pending public comment. This notice is given to afford interested persons the opportunity to comment on the form or the merits of the amendment or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

[Additions to the text of Administrative Order No. 1998-5  
are indicated in underlining and deleted text  
is shown by strikeover.]

Chief Judge Responsibilities; Local Intergovernmental Relations

~~On order of the Court, the following order is effective immediately. This order replaces Administrative Order No. 1997-6, which is rescinded.~~

I.-II. [Unchanged.]

III. FUNDING DISPUTES; MEDIATION AND LEGAL ACTION

If, after the local funding unit has made its appropriations (including for purposes of this section, amendments of existing appropriations or enforcement of existing appropriations), a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in this order must be followed.

1. ~~Legal action may be commenced 30 days after the court has notified. The chief judge of the court shall notify~~ the State Court Administrator that a dispute exists regarding court funding that the court and the local funding unit have been unable to resolve, ~~unless mediation of the dispute is in progress, in which case legal action may not be commenced within 60 days of the commencement of the mediation.~~ The notice must be accompanied by a written communication indicating that the chief judge of the court has approved the commencement of legal proceedings. With the notice, the court must supply the State Court Administrator with all facts relevant to the funding dispute. The State Court Administrator must attempt to aid the court and the local funding unit to resolve

the dispute. If requested by the court and the local funding unit, the State Court Administrator must appoint a person or entity to serve as mediator within five business days. The State Court Administrator may extend this period for an additional 30 days.

2. ~~During the waiting period provided in paragraph 1, the State Court Administrator must attempt to aid the court and the involved local funding unit to resolve the dispute.~~
32. ~~If, after the procedure provided in paragraph 2 has been followed, the court concludes that a civil action to compel funding is necessary, the State Court Administrator must assign a disinterested judge to preside over the action. A civil action may be commenced by the chief judge, consistent with MCL 141.436 and MCL 141.438, if applicable. If not applicable, a civil action may be commenced by the chief judge, and the State Court Administrator must assign a disinterested judge to preside over the action.~~
43. Chief judges or representatives of funding units may request the assistance of the State Court Administrative Office to mediate situations involving potential disputes at any time, before differences escalate to the level of a formal funding dispute.

#### IV.-X. [Unchanged.]

*Staff Comment:* The amendments of Administrative Order No. 1998-5 modify the way county-funded courts pursue disputes over court funding. These modifications are adopted with immediate effect, but pending public comment and a future public hearing, in light of the recent enactment of 2013 PA 172.

The staff comment is not an authoritative construction by the Court.

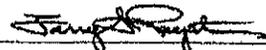
A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2014, at P.O. Box 30052, Lansing, MI 48909, or

ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-41. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 29, 2014

  
Clerk