

I am writing to comment on the proposed amendment to MCR 2.622, specifically the language proposed to be added as new MCR 2.622(A).

Proposed MCR 2.622(A) would provide as follows: *For good cause shown, the court may appoint a receiver in any action or proceeding. A receiver appointed under this section is a fiduciary for the benefit of all persons appearing in the action or proceeding. For purposes of this rule, "receivership estate" means the entity, person, or property subject to the receivership.*

I suggest that the language would be improved were it to instead read: *For good cause shown, the court may appoint a receiver as provided by law. For purposes of this rule, "receivership estate" means the entity or property subject to the receivership.*

My three suggested changes to the proposed rule are the following:

1. **Replace the phrase "in any action or proceeding" with "as provided by law."** The law does not currently provide for the appointment of a receiver in "any action or proceeding." For example, a receiver cannot be appointed in a suit whose sole purpose is the appointment of a receiver. *Detroit Fidelity & Surety Co v King*, 264 Mich 91 (1933). This holding, and other decisions and provisions of law which may limit the appointment of receivers, should not be overturned by the adoption of a court rule.
2. **Deletion of the sentence which states that a receiver is a fiduciary for the benefit of (only) "all persons appearing in the action or proceeding."** My reasons for suggesting this deletion are:
 - a. The adoption of this court rule would (purportedly) change Michigan law by purporting to limit a receiver's fiduciary duty. "[A] receiver has the duty of administering the assets of the receivership for the benefit of all of that estate's creditors. 19 Mich Law & Practice, Receivers, § 53, p. 390." *Bogrette v Young*, 132 Mich App 431, 434 (1984); see also *State Treasurer v Abbott*, 468 Mich 143, 152 n.10 (2003). A receiver appointed pursuant to MCL 600.3510 is the trustee of a corporation's assets "for the benefit of its creditors and stockholders."
 - b. The Supreme Court should not change substantive law by the adoption of a court rule. *McDougall v Schanz*, 461 Mich 15, 27 (1999).
3. **Deletion of the word "Person" from the definition of receivership estate.** My reasons for suggesting this deletion are:
 - a. A receivership estate consists of property, not a "person". The law might in some instances provide for the appointment of a receiver with respect to a legal entity such as a corporation. Provided that the rule is changed as I suggest in item 1 so as to not purport to abrogate the requirement that the appointment of a receiver be provided for by law, the inclusion of the term "entity" would not represent a change in the law. However, the rule should not provide support for the concept that a natural person, as opposed to his or her property, can be the subject of a receivership.
 - b. The Supreme Court should not change substantive law by the adoption of a court rule. *McDougall v Schanz*, 461 Mich 15, 27 (1999).

- c. The deletion of the word “person” would not preclude a litigant from arguing for the appointment of a receiver over a natural person on the theory that a person is an “entity”, but the court rule should not provide support to the questionable and problematic proposition that a receiver can be appointed with respect to a natural person as distinguished from his or her property.

Thank you for the opportunity to comment on the proposed rule. Please feel free to contact me if I can be of assistance.

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