

STATE OF MICHIGAN
IN THE SUPREME COURT

CREDIT ACCEPTANCE CORPORATION,

Plaintiff-Appellee,

Supreme Court No: 133292

vs.

Court of Appeals No: 262404

46th DISTRICT COURT

Oakland County Circuit Court
Case No. 05-063349 AS

Defendant- Appellant

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133292
MISC.

**MICHIGAN CREDITORS BAR ASSOCIATION'S RESPONSE TO THE MICHIGAN
SUPREME COURT'S INVITATION TO FILE AN AMICUS CURIAE BRIEF**

Amicus Curiae Michigan Creditors Bar Association (MCBA) states as follows:

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CLERK
MICHIGAN SUPREME COURT

1. On November 13, 2007, the Michigan Creditors Bar Association received a letter from the Michigan Supreme Court and a copy of an Order from the Michigan Supreme Court, both dated October 26, 2007. The Order invited the Michigan Creditors Bar Association to file an Amicus Curiae Brief in the above captioned matter.
2. Due to the holiday season, the Board of Directors of the Michigan Creditors Bar Association has been unable to meet to fully prepare a thorough brief with citations and authority. However, in order to place on the record the position of the Michigan Creditors Bar Association, MCBA submits this response to the Michigan Supreme Court.
3. The Michigan Creditors Bar Association agrees that all documents filed with the courts should be in full compliance with MCR 2.114. Further, that mathematical calculations on garnishments should be accurate. However, the Michigan Creditors Bar Association also agrees with the opinion and ruling of the Michigan Court of Appeals of the above captioned case, namely:
 - a. "...MCR 3.101 (D) does not allow a trial court to require that the judgment creditor provide information or documentation in addition to the verified statement required by the rule before issuing a writ of garnishment." In re

CREDIT ACCEPTANCE CORPORATION, 273 Mich. App. 594, 733 N.W.
2d 65 (2007) at P. 595, P. 67.

- b. Courts are not allowed "...to refuse to take an action mandated by the Court Rules or to impose requirements not included in those rules before doing so."

CREDIT ACCEPTANCE CORPORATION at P. 601, P. 70

- c. "An additional safeguard is found in MCR 2.114, which provides sanctions against persons filing applications for writs of garnishments that are not based on properly verified statements." CREDIT ACCEPTANCE CORPORATION at P. 602, P.70.

- d. The 46th District Court could "... more appropriately advance its argument by seeking some amendment to the rules by our Supreme Court." CREDIT ACCEPTANCE CORPORATION at P. 602, P.70.

- 4. The Michigan Creditors Bar Association does not agree with paragraph 7 of the CREDIT ACCEPTANCE CORPORATION'S CONCURRENCE WITH THE 46TH DISTRICT COURT'S APPLICATION FOR LEAVE TO APPEAL which states "Credit Acceptance Corporation does not object to uniform judicial scrutiny that identifies errors related to the filing for writs of garnishment, even if this

uniform judicial scrutiny to identify errors is not expressly stated in the Michigan Court Rules.” (Emphasis added)

5. The rejection of garnishments filed with the 46th District Court in the Credit Acceptance Corporation case amounted to analysis and decision making by a court clerk, not a judge. The guidelines for the clerk were created by an “inter-office memo”, apparently issued by the Judges of the 46th District Court.
6. MCBA maintains that the process used by the 46th District Court for clerks to review and reject documents filed by an attorney was procedurally incorrect for the following reasons:
 - a. The “inter-office memo” was a de facto local court rule and was not approved by the Michigan Supreme Court pursuant to MCR 8.112 (A) (2).
 - b. The guidelines contained in the “inter-office memo” were subject to change at the discretion of the Judges of the 46th District Court without notice to attorneys and litigants, and without the required oversight of the Supreme Court. (MCR 8.112 (A) (2).)
 - c. The de facto local court rule was not consistent with other courts, thereby creating a lack of uniformity among other courts in the State of Michigan.

7. The need for uniformity within a particular court and among the many courts in the State of Michigan is necessary in order to truly achieve “one court of justice” throughout Michigan.

8. It should be noted that since 2005, the Michigan Creditors Bar Association has spent significant time and energy working with the 46th District Court to create a court rule to regulate the filing of consumer collection cases. Moreover, MCBA has submitted its suggestions to the State Court Administrative Office and to the Michigan Supreme Court. MCBA is willing to meet and discuss court rules that are uniform throughout all the courts in the State of Michigan.

9. The Michigan Creditors Bar Association also notes that many attorneys, including collection attorneys, have voluntarily complied with the 46th District Court’s request for calculations regarding interest and costs for garnishments, however, the Michigan Creditors Bar Association takes the position that the civil clerk cannot, and should not, reject garnishments filed by attorneys given the mandate of MCR 3.101 (D).


10. The Michigan Creditors Bar Association will work cooperatively with the Supreme Court of the State of Michigan to develop court rules for all Michigan courts regarding collection actions.

11. The Michigan Creditors Bar Association stands by the principle that any court rule needs to be uniform throughout the State of Michigan so that all attorneys are fully apprised of the requirements prior to filing documents. Moreover, court rules should not be subject to amendment at the discretion of the Chief Judge for the simple reason that unilateral changes would undermine the goal of “one court of justice.”

THEREFORE, the Michigan Creditors Bar Association respectfully requests the Michigan Supreme Court deny the application for leave to appeal submitted by the 46th District Court and to allow the decision of the Court of Appeals to stand.

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November 21, 2007

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