

# Michigan Judges Association

## Founded 1927

June 23, 2009

**PRESIDENT:**  
HON. FRED L. BORCHARD  
10<sup>th</sup> Circuit Court  
111 S. Michigan Ave.  
Saginaw County Courthouse  
Saginaw, MI 48602  
Office: 989/790-5475  
Fax: 989/793-8180  
e-mail: fborchard@saginawcounty.com

**President-Elect:**  
HON. JAMES M. ALEXANDER  
Pontiac, Mi.

**Vice President:**  
HON. ANNETTE BERRY  
Detroit, Mi.

**Secretary:**  
HON. TIMOTHY HICKS  
Muskegon, Mi.

**Treasurer:**  
HON. LITA M. POPKE  
Detroit, Mi.

**Immediate Past President:**  
HON. MICHAEL F. SAPALA  
Detroit, Mi.

**Executive Committee:**  
HON. LAURA L. BAIRD  
HON. SUSAN D. BORMAN  
HON. GEORGE S. BUTH  
HON. ALTON T. DAVIS  
HON. JOSEPH J. FARAH  
HON. KATHLEEN A. FEENEY  
HON. JAMES H. FISHER  
HON. SHEILA ANN GIBSON  
HON. JOHN H. GILLIS, JR.  
HON. STEPHAN D. GORSALITZ  
HON. PAUL E. HAMRE  
HON. JAMES C. KINGSLEY  
HON. M. RICHARD KNOBLOCK  
HON. PETER J. MACERONI  
HON. PAULA J. MANDERFIELD  
HON. COLLEEN A. O'BRIEN  
HON. HENRY W. SAAD  
HON. KENNETH W. SCHMIDT  
HON. VIRGIL C. SMITH, JR.  
HON. THOMAS L. SOLKA  
HON. PAUL STUTESMAN

**Executive Director:**  
TIM WARD

Chief Justice Marilyn J. Kelly  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

RE: ADM file no. 2009-13  
ADM file no. 2005-32

Dear Chief Justice Kelly:

At the June 16, 2009 meeting of the Michigan Judges Association, the Executive Board, Rules Committee, and Family Law Committee considered the above-referenced proposed amendments.

MJA first considered ADM file no. 2009-13, proposed amendment of Rules 2.112 and 2.118 of the Michigan Court Rules, relating to setting a time-limit on the period for raising challenges to affidavits of merit and meritorious defense, and notices of intent in medical malpractice actions. MJA supports the proposed amendment and, particularly, the addition that an amendment of an affidavit of merit or affidavit of meritorious defense relates back to the date of original filing of the affidavit. The changes add clarification and fairness.

MJA also considered ADM file no. 2005-32, proposed amendment of Rules 2.112, 2.113, 3.101, and 8.119 of the Michigan Court Rules, relating to consumer debt cases. MJA is supportive of the addition of MCR 2.112(N), MCR 2.113(H), and MCR 3.101(D)(2) requiring additional information in consumer debt cases. While the majority of such cases are handled in District Court, many Circuit judges with MJA commented on the increased number of these types of cases and abuses that were occurring by debt collection businesses and firms. It was agreed that requiring such additional information would promote compliance with the statute.

MJA, however, opposed the amendment to MCR 8.119(C) and (D) relating to the duties of the clerk of the court. MCR 8.119(C) already requires that papers filed with the clerk of the court must comply with the Michigan Court Rules and Michigan Supreme Court records standards. The amendment would require the court clerk to assure that papers filed must comply with requirements contained in the Michigan statutes. MJA

believes that such a requirement of the clerk of the court would be over-burdensome of an already under-staffed office. Time and expense for training the staff of the clerk of the court would be as problematic as are the differences in how clerks of the court are setup in each county in this state. If these changes were proposed mainly for consumer debt cases as defined in the Michigan Debt Collection Act, MCL 445.251(a) and (d), why does the amendment refer to all Michigan statutes?

MJA also opposes such delegation of authority to the clerk of the court. It appears that the problems that the changes are meant to cure would better be left to local units, focusing on specific problem areas such as disposing of requests for garnishment and using checklists. Clerks are only authorized to do ministerial functions, and caution should be maintained where it appears the function might approach being adjudicative and, therefore, an improper delegation of judicial authority.

We thank the Court for considering our input on these matters. If the Michigan Judges Association may provide any further information or assistance, please do not hesitate to contact us.

Sincerely,

MICHIGAN JUDGES ASSOCIATION



Hon. Fred L. Borchard  
President

CC: Corbin R. Davis, Clerk of the Michigan Supreme Court  
Hon. Stephen D. Gorsalitz, Rules Committee Chairperson  
Hon. Joan E. Young, Family Law Committee Chairperson  
Anne Boomer, Administrative Counsel