

Order

Michigan Supreme Court
Lansing, Michigan

January 21, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2005-32

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Administrative Order No. 2009-7

Adoption of a Pilot Project in the
46th District Court to Study the
Effects of Proposed Rule 8.119
of the Michigan Court Rules

On August 11, 2009, the 46th District Court submitted a letter to the Court in which the 46th District Court proposed revision of MCR 8.119 to implement a process that would allow a court clerk to return to a litigant a document that the clerk has identified as nonconforming with the Michigan Court Rules, requirements contained in the Michigan statutes, or the Michigan Supreme Court records standards. Upon receipt of the returned document, the litigant would have several options: the litigant could correct the nonconformity identified by the clerk, submit documentation in support of the document, request the clerk to submit the paper as it was initially submitted for immediate review by the court, or withdraw the document. On order of the Court, the 46th District Court is authorized to implement a pilot project in its court to study the effects of proposed Rule 8.119, limited to cases that involve garnishments and consumer debt collections.

The purpose of the pilot project is to determine whether the proposed language represents a feasible and practical procedure for courts to follow in screening documents that are submitted for filing in cases that involve garnishments and consumer debt collections. The Court is interested in learning whether this procedure will increase efficiency within the court (including assessing its effect on the clerk and the judges of the court), and determining what effect the procedure will have on litigants. The 46th District Court will operate under the following rule for the period of the pilot project, which will begin on the date this order enters and continue for ~~one year~~ six months or as otherwise ordered by the Court. The 46th District Court will provide a report to the Court within three months of the conclusion of the pilot project regarding the court's assessment of the feasibility of the procedure described below. ~~In addition, litigants will have an opportunity to provide feedback on the pilot project through a survey to be included when documents are returned by clerks, and through polls conducted of those who participate in the judicial review procedure.~~ The 46th District Court shall keep a list of litigants who request that the submitted document be reviewed by a judge.

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(B)[Unchanged.]

- (C) Filing of Papers. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Papers filed with the clerk of the court must comply with the Michigan Court Rules, requirements contained in the Michigan statutes, and the Michigan Supreme Court records standards. The clerk of the court may reject papers which do not conform to MCR 2.113(C)(1) and MCR 5.113(A)(1) return nonconforming papers related to a garnishment or consumer debt collection case in accordance with (D) below.
- (D) Return of Nonconforming Papers Related to Garnishment or Consumer Debt Collection Case. If the clerk of the court returns a paper related to a garnishment or consumer debt collection case as nonconforming, the clerk must notify the litigant in writing of the reason for the return. The notice shall provide the name and phone number of the deputy clerk returning the papers. The litigant may, with no additional filing or motion fee, (a) submit supporting documentation; (b) submit an amended version of the paper; (c) request the clerk to submit the paper as initially submitted to the court for immediate review; or (d) withdraw the paper. If no judge is assigned to the case, the chief judge or the chief judge's designee shall perform the review. Upon review, the judge shall either allow the filing or issue a written order disallowing the filing. If disallowed, the reason shall be stated in the order. If the litigant withdraws the paper, the court shall not charge a filing fee and any filing fee previously paid shall be returned to the filer.

If a complaint is returned by a clerk as nonconforming, the litigant may file a motion for judicial review. Upon review, if the judge decides that the complaint was conforming as originally filed and should have been accepted, the complaint shall be considered filed on the original filing date.

(D)-(G)[Relettered (E)-(H), but otherwise unchanged.]

KELLY, C.J. (*concurring*). Some of my colleagues object to what they view as a diminution of the opportunity for and obligation of court users and the 46th District Court to provide the Michigan Supreme Court with data and feedback. However, we should remember that the district court did not request this pilot project; instead, the Court adopted it at the request of the Michigan Creditors Bar Association after having sought little input from the very court that would be required to operate under its provisions. Moreover, the minor changes that the Court adopted after reconsideration of this pilot project (shortening the time period from one year to six months and removing the requirement to provide a survey to those whose pleadings are returned to them) do not eliminate public input. We welcome any comment from any individual subject to the procedure implemented in the 46th District Court; we have eliminated only the requirement that the district court perform a survey and provide it to this Court. Finally, the district court will generate and submit to us data regarding how the appeal process in that court works, which is the focus of its proposed procedure.

This pilot project is best viewed in light of the other actions the Court has taken in this matter, including its commitment to continue monitoring it. At the same time as the pilot project is operating in the 46th District Court, a workgroup in the Supreme Court Administrative Office composed of court staff and administrators is meeting to draft a rule that takes a different approach to clerks' return of pleadings. The workgroup is considering a court rule that would explicitly define what types of anomalies in pleadings provide the basis for a clerk to return documents. Thus, the issue of how and under what circumstances a clerk should be entitled to return pleadings is being pursued in different ways, each of which will provide important information to this Court when we ultimately consider the merits of the various approaches. I believe the experience in the 46th District Court will provide important information to this Court as we move forward on this issue, and I appreciate its willingness to participate.

YOUNG, J. (*dissenting*). I join fully Justice MARKMAN'S dissent from this order, but write separately to note the 46th District Court's reaction in opposing any restraint on its desire to institutionalize its historical practice of allowing court clerks to exercise judicial powers to review and independently return papers filed with that court.

This matter began when a party successfully sought review of this practice after a clerk in the 46th District Court rejected the party's pleadings. Relying on MCR 8.119(C), the Court of Appeals held that the court rules do "not give court clerks broad discretion to reject pleadings."¹ We summarily affirmed, stating in no uncertain terms that "[t]he court's authority to sanction parties cannot be delegated to the court clerks."²

Notwithstanding our decision, the 46th District Court *disregarded* that decision and continued to direct its clerks to perform adjudicative functions, allowing the clerks to exercise seemingly unlimited discretion in deciding when to return filed papers. Later, when this Court expressed concern that our decision was being ignored, members of the district court requested permission to experiment with using clerk review and rejection of papers in a "pilot project." That initial proposal was so broad, it would have permitted clerks to reject pleadings filed in medical malpractice cases and other complex matters that implicated profound issues such as how these rejections might affect statutes of limitations.

This Court carefully crafted and approved a limited pilot project to avoid inappropriate and broad delegation of judicial powers to non-judicial officers, coupled with a requirement that those affected by the procedures permitted in the pilot project be

¹ *In re Credit Acceptance Corp*, 273 Mich App 594, 600 n 2 (2007).

² *In re Credit Acceptance Corp*, 481 Mich 883, 883 (2008).

allowed to comment on how it actually functioned. Prior to the project's approval, as noted in Justice CORRIGAN'S dissent from the May 20, 2009 order in ADM 2005-32 publishing proposed court rules concerning this topic, I and other members of this Court were hesitant to agree to a program whereby administrative clerks of a court are arguably assigned to exercise inherently judicial functions in the name of judicial expediency. However, I reluctantly agreed to a test run of the program under a set of circumstances that could, in theory, provide sufficient data and robust feedback concerning the program's operation by those individuals who actually had their papers rejected.

Members of the 46th District Court now worry that this feedback will reflect poorly on the court, and its members have expressed concern regarding the additional burdens necessary to provide this data. Unfortunately, these complaints about the pilot project as originally approved have led a majority of this Court to strip the program of the features that would provide this necessary data and shorten the duration of the project.

While I appreciate the administrative burdens under which courts may sometimes be required to operate, our original order was carefully considered and debated. I find it particularly inappropriate to limit the public's ability to comment on how our courts affect them, especially when we are experimenting with new processes and, as here, processes that might cross a line of allowing delegation of judicial power.

For these reasons, I would not make the changes the majority has made and withdraw my approval of the pilot project in its entirety.

CORRIGAN, J., concurs with YOUNG, J.

MARKMAN, J. (*dissenting*). For the reasons set forth in Justice CORRIGAN'S dissenting statement to the May 20, 2009, order in ADM 2005-32 publishing proposed court rule amendments,³ I have considerable reservations about the procedural shortcuts adopted in this pilot project in the 46th District Court, enabling court clerks to return pleadings that fail to conform to Michigan court rules. Now that the final order has been issued, I have further reservations concerning the elimination of language that would have allowed a systematic "opportunity to provide feedback" on the part of attorneys and litigants. Although the district court may have had legitimate concerns about how burdensome the proposed evaluation process might be, rather than attempting to fine-tune this process, this Court has now eliminated it altogether. Thus, we will have a "pilot project" in which there will be no comprehensive feedback from the very class of persons who may be most adversely affected. One might think that if there is value in a

³ Available at <http://courts.michigan.gov/supremecourt/Resources/Administrative/2005-32-05-20-09_form.pdf> (accessed December 17, 2009).

pilot project, that value would most likely arise from the very feedback that this Court has just denied itself.

CORRIGAN and YOUNG, JJ., concur with MARKMAN, J.

Staff Comment: Under this pilot project, the 46th District Court shall test its proposal to allow court clerks to return certain nonconforming papers submitted to the court in garnishment or consumer debt collections actions. If the clerk returns a paper as nonconforming, the litigant may respond by submitting supporting documentation, submitting an amended document, asking that the document be submitted to the court for immediate review, or withdrawing the paper. If, upon review, the judge disallows filing of the document, an order would enter disallowing the filing and would state the reason in the order.

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



I, Corbin R. Davis, 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 21, 2010

Corbin R. Davis

Clerk