



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Fall, 2014

PENDING LEGISLATION

Magistrate Authority May be Expanded

By James Pahl, Editor

Last issue had an article about the impact of HB 5154 and HB 5155. While this legislation does allow District Court Magistrates the authority to conduct a pre-trial conference and all matters allowed at such conference, there is nothing specific in the legislation that would allow a District Court Magistrate to actually hear/decide motions to waive exam, adjourn exam or modify bond. Some debate has arisen as to what actual authority a District Court Magistrate will have in this new scheme.

Your board of directors is keeping a close watch on this.

Other Pending Legislation

By James Pahl, Editor

SB 845, 931 and 932 are still pending in the House as of this writing. This would allow district court magistrates to electronically issue arrest warrants, to be able to process search warrants so long as the magistrate is located within the State of Michigan and to set aside default judgments.

An additional item is also being discussed to modify and/or eliminate the residency requirement for a district court magistrate.

Keep tuned to this channel for updates as they occur.

This is your Newsletter

By James Pahl, Editor

This is your newsletter – I can only publish what each of you provides. PLEASE send me your interesting stories or other items that may be of interest to your fellow magistrates! I have had promises of articles, but nothing has been received. HELP!

Reserve These Dates!

MADCM Annual Training Conference, this year at the West Bay Beach, a Holiday Inn Resort in Traverse City, September 10, 11 & 12. The educational component promises to be excellent and the sharing and fellowship enjoyed by fellow magistrates is always well worth the trip.

New Public Act

By James Pahl, Editor

2014 PA 120 (HB 4781) – limits the number of temporary instruction permits for motorcyclists.

Search & Seizure

Reprinted from Michigan State Police Legal Update #109.

Police officers are generally required to obtain a search warrant to search digital information on a cell phone seized from a person incident to arrest.

In [Riley v. California](#), the United States Supreme Court considered two cases, *Riley v. California* and *United States v. Wurie*, which raised a common question: whether the police may, without a warrant, search digital information on a cell phone from an individual who has been arrested.

In *Riley v. California*, Riley was arrested for carrying a concealed firearm. During a search incident to arrest, the defendant's cell phone, a "smart phone," was seized and searched by officers incident to arrest. Officers found evidence of gang involvement and photographs that tied the defendant to an earlier shooting. Riley was charged in connection with the earlier shooting.

In *United States v. Wurie*, Wurie was arrested after police witnessed him engaged in an apparent drug deal. At the police station, officers seized two cell phones from Wurie, one of which was a "flip phone." This phone was repeatedly receiving calls. Officers opened the phone and, by pressing two buttons, accessed the phone's call log and obtained the phone number associated with the "my house" label on Wurie's cell phone. Officers used this information to assist in determining where Wurie lived. Officers responded to Wurie's apartment, gathered

additional information, and obtained a search warrant for the apartment. Wurie was charged with drug and weapon violations.

The Court held that police officers are generally required to obtain a search warrant before conducting a search of digital information on a cell phone seized incident to arrest.

In reaching this holding, the Court examined the traditional justifications for allowing warrantless searches incident to arrest: to remove weapons from the arrestee's person and to prevent concealment or destruction of evidence from the arrestee's person. The Court found these justifications did not apply to a search of the digital information on a cell phone.

The Court stressed that cell phones are different than other physical objects that might be kept on an arrestee's person. The Court noted that a person's entire private life can be reconstructed due to a cell phone's immense capacity to store many different types of highly personal information.

The Court noted that police officers may examine the physical aspects of a cell phone to ensure it will not be used as a weapon (e.g., to determine whether there is a razor blade hidden between the phone and its case), but once the officer has secured the phone and eliminated potential physical threats, the data on the phone cannot endanger anyone.

In addressing the prosecution's argument that evidence could be destroyed or hidden by remote wiping or data encryption, the Court noted that the problem did not appear to be prevalent and could be prevented by other means (e.g., turn the phone off, remove the battery, place the phone in an enclosure that isolates the phone from radio waves (e.g., Faraday bags)).

SOS COURT LIAISON

The Secretary of State has three staff members devoted to providing communication and liaison with the courts. Please contact them with any questions you may have. They are:

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Those Pesky Speed Limits

By James Pahl, Editor

This may have been reported on previously, but became a topic of conversation at the most recent board of directors meeting.

Occasionally, a defendant in a speeding ticket hearing will raise the defense of a speed limit improperly posted and therefore, the motorist need not comply with it. A recent Court of Appeals decision has set that argument to rest. In *Wolfbauer v City of Berkley*, (Unpublished, March 19, 2013), the court clearly stated: Whether or not he believes the posted speed limit

was validly established, he is required to abide by it.

This editor has maintained for years, the place to challenge an improperly posted speed limit is not in the District Court while defending against a speeding ticket. The proper place is an action in the Circuit Court filed against the authority posting the sign, which gives that authority notice and an opportunity to be heard.

New Member of Board of Directors

Yvonna Abraham of the 20th District Court in Dearborn Hts was appointed to the board of director's, due to a vacancy created by the retirement of 36th District Court magistrate and long time board member Sidney Barthwell, Jr. Yvonna will complete the term, expiring in 2015. We all wish Sid the best of luck in his new adventures.

Mopeds

by James Pahl, Editor

As the price of fuel continues to be high, many people have resorted to mopeds for transportation.

Many "mopeds" on the road today are actually motorcycles. MCL 257.32b defines a moped as a 2 or 3 wheel vehicle, equipped with a motor that does not exceed 50 cubic centimeters piston displacement, producing 2.0 brake horsepower or less, cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface and the operator is not required to shift gears.(emphasis supplied)

Most forget about the maximum speed of 30 miles an hour to qualify as a moped. Many models on the road today are capable of much higher speeds, but are still being sold and

licensed as mopeds. So as you conduct hearings involving these vehicles, take a moment to consider whether you are really dealing with a moped or a motorcycle in disguise.

OPPS

