



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Spring, 2014

NEW LEADERSHIP

New President Elected

By James Pahl, Editor

At the 40th Annual Conference of the Michigan Association of District Court Magistrates, the following were elected to be the officers for 2014:

President Kevin McKay
63rd District Court

Vice President Charity Mason
96th District Court

Secretary Millicent Sherman
36th District Court

Treasurer James Pahl was elected, but retired as a magistrate and therefore, resigned from office.

Immediate Past President Norene Kastys
86th District Court

Board of Directors

(Two year terms - expiring 12/31 of the year listed)

Liz Stankewitz
89th District Court
Term Expires: 2015

Sidney Barthwell, Jr.
36th District Court
Term Expires: 2015

A. Thomas Truesdell
14-A District Court
Term Expires: 2015

Susan Wilson
96th District Court
Term Expires: 2015

Dena Altheide
Genesee County Courts
Term Expires: 2014

Robert Clark
Berrien County Trial Court (5th District)
Term Expires: 2014

Jessica Testolin
73B District Court
Term Expires: 2014

Michael J Greer
80th District Court
Term Expires: 2014

New Docket Editor

James Pahl has been named as Editor of the Docket by President Kevin McKay. He is a long time member of the board of directors, having served as President, Vice President and four terms as Secretary. He received the association's Distinguished Service Award in 2005. He was elected Treasurer of the Association at the September member meeting. However a new opportunity became available, so he retired as of October 19, 2013 as the magistrate of the 55th District Court in Mason after serving almost 22 years. Jim is now serving as the Deputy Court Administrator for the Eaton County Trial Courts in Charlotte.

Jim edited the Docket for some 10 years in the 1990's and has agreed to again take on those duties. Articles and items of interest can be submitted to him at: jpahl@eatoncounty.org. He is most interested in humorous letters received by magistrates.

Editor of The Docket

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New Legislation Highlights

By James Pahl, based upon materials provided by SCAO

2013 PA 128

Effective Date: October 9, 2013

Statute Cite: MCL 762.8

What it Does: Allows a felony, consisting of two or more acts, to be prosecuted in the county here it was committed **or** where the defendant intended the crime to have an effect.

2013 PA 199

Effective Date: 12/31/2013

Statute Cite: MCL 600.2137, MCL 600.8344, and repeals MCL 780.221 - 780.225

What it Does: Amends as follows:

- Require the State Court Administrative Office (SCAO) to establish and maintain record management policies and procedures for the courts, including a records retention and disposal schedule.
- Require the records retention and disposal schedule to be developed in accordance with Supreme Court rules, and developed and maintained according to the Michigan Historical Commission law.
- Allow a court to dispose of a record as prescribed above, subject to the Records Retention Act.
- Provide that a record, regardless of its medium, could not be disposed of unless it had been in the court's custody for the established retention period.
- Define "record" as information of any kind that is recorded in any manner and that has been created by a court or filed with a court in accordance with Supreme Court rules.

2013 PA 201

Effective Date: 12/18/2013

Statute Cite: MCL 600.83, MCL 600.859, and MCL 600.1427

What it Does: Amends as follows:

- Require all writs, process, proceedings, and records in any court to be made out in the manner and on any medium authorized by Supreme Court rules.
- Allow an electronic signature on any document filed with or created by a court, subject to Supreme Court rules.
- Place responsibility with a probate court clerk for probate court record retention.
- Require probate courts to keep testimony index and notes as prescribed by Supreme Court rules.

2013 PA 218

Effective Date: January 1, 2014

Statute Cite: MCL 257.1-257.923

What it Does: Amends the Michigan Vehicle Code to limit access to a motor vehicle accident report for purposes of solicitation, for 30 days after the report was filed, and prescribe a misdemeanor penalty punishable by a maximum fine of \$30,000 for a first violation and \$60,000 and/or jail for a subsequent violation.

2013 PA 219

Effective Date: January 1, 2014

Statute Cite: MCL 750.1-750.568

What it Does: Amends the Michigan Penal Code to prohibit a person from contacting a motor vehicle accident victim, or a member of his or her family, with a solicitation to provide a service, for 30 days after the accident, and prescribe a misdemeanor penalty punishable by a maximum fine of \$30,000 for a first violation and \$60,000 and/or jail for a subsequent violation.

2013 PA 225

Effective Date: January 1, 2014

Statute Cite: MCL 600.1209 (Veteran's Treatment Court)

What They Do: Amends the statute to make all records of the proceedings regarding an individual's participation in a veteran's treatment court nonpublic unless the court enters a judgment of guilt.

2013 PA 230

Effective Date: December 26, 2013

Statute Cite: MCL 750.552

What it Does: Amends the Michigan Penal Code to specify that the trespassing prohibition and penalties would not apply to a process server who is on the land or premises of another while in the process of attempting, by the most direct route, to serve process upon an owner or occupant, an agent of the owner or occupant, or a lessee of the land or premises.

2013 PA 249

Effective Date: December 26, 2013

Statute Cite: MCL 324.81101 et seq

What it Does: Amends the statute regarding Off-Road Recreation Vehicles to increase the maximum width of off-road recreation vehicles that are allowed to operate on state forest by eliminating the provision that prohibits an ORV from being wider than 50 inches on a forest trail.

Court Rules & Administrative Orders**ADM File No.: 2011-19**

Effective Date: January 1, 2014

MCR Cite: 6.302 – Pleas of Guilty and Nolo Contendere and 6.310 – Withdrawal or Vacation of Plea

Comment: Eliminates the ability of a defendant to withdraw a plea if the defendant and prosecutor agree that the prosecutor will recommend a particular sentence, but the court chooses to impose a sentence greater than that recommended by the prosecutor. It also clarifies that a defendant's misconduct that occurs between the time the plea is accepted and the defendant's sentencing may result in a forfeiture of the defendant's right to withdraw a plea in either a *Cobbs* or *Killebrew* case. It requires that a plea agreement (which may include a sentence agreement) must be stated on the record or reduced to writing.

ADM File No.: 2012-06

Effective Date: January 1, 2014

MCR Cite: 9.221 – Confidentiality; Disclosure

Comment: Adds a new subrule (I) that requires the Judicial Tenure Commission to notify a court's chief judge if a referee or magistrate is subject to a corrective action that does not rise to the level of a formal complaint, including a letter of caution, a conditional dismissal, an admonishment, or a recommendation for private censure. The new requirement does not apply to a dismissal with explanation.

Soon to be Introduced

by James Pahl, Editor

Association President Kevin McKay, Magistrate Ken Knowlton of the 56A District Court Charlotte and retired Magistrate James Pahl, held a meeting late last year with Senator Rick Jones, the chair of the Judiciary committee of the Michigan Senate. We discussed several concerns about magistrate authority. Senator Jones pledged himself to support these issues. This includes District Court Magistrates being able to authorize arrest warrants by electronic means and allowing a District Court Magistrate to process a search warrant, even if he/she is not physically within the boundaries of his/her district.

SB 845 has been introduced into the Senate to amend to MCL 764.1, to allow District Court Magistrates to authorize arrest warrants by electronic means. This is still in committee and there has not been recent movement. The other issues are still in the hands of senate staff and being prepared for introduction later this year.

President's Message

by Kevin McKay, Magistrate, 63rd District Court and President of MADCM

Kevin is really swamped right now, but promises a letter for the next issue.

I was Stopped Because I Drive a Red Car

by James B. Pahl, Editor

How many times have we heard this? Wondering if there was any truth to the statement, I conducted a survey during August. I looked at the color of the car for every speeding ticket that passed across my desk. The color of car most often stopped for speeding is: White.

More motorists driving White cars were cited for speeding than any other color (28). Following is Black (24), then Red (23), Blue (22), Silver (14), Green (13), Brown/Tan (9), Grey (6), Burgundy (4), Yellow (2), Orange (1) and Gold (1). Color was not recorded on eight of the citations.

I believe this shows that color of the vehicle does not matter, or whether it is a bright or subdued color. My conclusion is the main factor that draws an officer's attention to a speeding vehicle is excessive speed.

New Magistrate's Complete MJI Training

by James Pahl, Editor

The following successfully completed a three day new magistrate school in March. Welcome aboard!

Mr. John L. Bennett
30th District Court

Mr. Mark E. Blumer
55th District Court

Ms. Susan M. Borovich
72nd District Court

Ms. Jessica D. Chaffin
1st District Court

Ms. Emily A. DeSalvo
94th District Court

Ms. Adriana V. Facundo
78th District Court

Mr. Kenneth Knowlton
56A District Court

Ms. Collette Kulik
89th District Court

Mr. David L. Maddox
93rd District Court

Ms. Rhoda Marie McVittie
73A District Court

Mr. Jonathan J. Morse
78th District Court

Ms. Lori L. Rebh
82nd District Court

Mr. Daniel J. M. Schouman
52-2 District Court

Ms. Tammi S. Shaw
64B District Court

Mr. Mark E. Smathers
84th District Court

Ms. Tanya Todd
61st District Court

Mr. Francis (Frank) J. Wren
35th District Court

Ms. Heather Ann Zang
73A District Court

Magistrates may award a trial fee in small claims actions

by Sheldon G. Larky, Magistrate, 45th District Court

In a recent edition of *The Docket*, an article attributed to the Trial Court Services said it is not appropriate for a magistrate to assess a trial fee in a small claims case for two reasons: The statutes do not permit it and a small claims action is not a trial. I believe the article and the trial court services are incorrect.

It is my position a magistrate may assess a trial fee in a small claims action. Here is my reasoning. Michigan district courts have the same authority as circuit courts to award costs. MCL 600.8375 provides, in part, “The district court may assess the same costs as permitted in the circuit court.”

The additional costs statute states a circuit court [and a district court through MCL 800.8375] may do the following, “In all civil actions or special proceedings . . ., whether heard as an original proceeding or on appeal, the following amounts shall be allowed as costs in addition to other costs unless the court otherwise directs:

- For proceedings before trial, \$20;
 - For motions that result in dismissal or judgment, \$20;
 - For trial of the action or proceeding, \$150;
 - In actions in which a confession of judgment is entered, \$15;
 - In actions in which a default judgment or consent judgment is entered, \$75.”
- MCL 600.2441(2)(a)-(e).

Please note the statute reads *in all civil actions*. There is no exception for a small claims matter.

As the law applies to small claims actions, MCL 600.8421 states, “The prevailing party in any action in the small claims division is entitled to costs of the action and also costs of execution upon a judgment rendered therein. The costs shall include cost of service of the notice for the appearance of the defendant.”

If a magistrate is empowered by his or her district court chief judge, pursuant to MCL 600.8427, to adjudicate small claims cases, then the magistrate is obligated to comply with the following mandates found at MCL 600.8411: (1) Before the commencement of a *trial* in the small claims division, the district court judge or magistrate shall inform both parties, orally or in writing, of the right to removal before *trial* to the

general civil division and of all rights waived if they choose to remain in the small claims division.

(2) In *hearings* before the small claims division, witnesses shall be sworn. The judge shall conduct the *trial* in an informal manner so as to do substantial justice between the parties according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications, the sole object of such *trials* is to dispense expeditious justice between the parties. There shall be no jury nor shall a verbatim record of such proceedings be made. [Emphasis supplied.]

The small claims statute interchangeably uses the words “hearing” and “trial.” Therefore, a hearing is a trial and a trial is a hearing. Since a contested small claims action heard by either a magistrate or district court judge is a trial, then the magistrate and judge are permitted to award a \$150 trial cost.

This position is further bolstered by the requirements of the affidavit when a small claims action is commenced. As stated in MCL 600.8402(3), “The affidavit, in bold face, shall inform both parties, of the right to removal *before trial from magistrate jurisdiction*, if applicable, and removal before trial to the general civil division. The affidavit shall inform the parties of rights waived if they choose to remain in the small claims division.” [Emphasis supplied.]

Furthermore, when one looks at the packet for filing a small claims action entitled *How To Get a Money Judgment in Small Claims Court [Form DC 84]*, it is clear that there is a trial in a small claims case by either a magistrate or judge.

1. In the portion entitled *Filing a claim*, section 7 states:

7. Prepare for the *trial*.

To prepare for the *trial*, gather the evidence you need to prove your case. A letter or affidavit from a witness will be accepted as evidence by the court without the witness being physically present at the *trial*, but it is better if you have the witness come to court. If a witness is unwilling to appear, you can ask the clerk of the court to issue an order to appear (subpoena), requiring the witness to appear at the *trial*. The order to appear must be served on the witness (along with any witness fee) no later than two days before the *trial*. You can pay the clerk of the court to make arrangements for service of this order.

[Emphasis supplied.]

2. In the portion entitled *Information about attending the hearing*, it states, “The *trial* will usually take place at the location stated in the notice to appear.” [Emphasis supplied.]

3. On the last page of the small claims packet under *Additional notice and instructions to both the plaintiff and the defendant*, the document states, in part:

- Before the *trial* (hearing), you have the right to:
 1. **remove the case to the general civil division of the district court**, or
 2. have the case heard by a district court judge (if the hearing is scheduled before an attorney magistrate). If the case is heard by an attorney magistrate, you may appeal to the district court judge within 7 days after the *trial*.
- If the case is *tried* in the small claims division, you give up the right to an attorney, to a jury trial, and to appeal the judge’s decision.

[Emphasis supplied.]

CONCLUSION

Because the additional costs statute allows \$150 for trial costs in all civil actions, then

a district court magistrate is permitted to assess the \$150.

This is your Newsletter

By James Pahl, Editor

This is your newsletter – I can only publish what each of you provides. Items like Sheldon’s letter will generate discussion in the association about court processes and

Reserve These Dates

MJI Magistrate Specialty Seminar – July 30

MADCM Annual Training Conference, this year in Traverse City, September 10, 11 & 12