



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Spring 2012

SMALL CLAIMS JURISDICTION INCREASED

On May 22, 2012 Governor Snyder signed P.A. 142 of 2012 [SB 0269], which raises small claims jurisdiction to \$7,000 incrementally over the next 12 years. The amounts will increase as follows:

- Beginning 9/1/12, \$5,000.00.
- Beginning 1/1/15, \$5,500.00.
- Beginning 1/1/18, \$6,000.00.
- Beginning 1/1/21, \$6,500.00.
- Beginning 1/1/24, \$7,000.00.

At a Senate hearing on the Bill, representatives from credit unions stated that the current small claims jurisdictional amount needed to be raised in order to save them money in legal fees necessary to collect their accounts receivable. Instead of creating a firestorm with the State Bar by trying to get legislation through that would allow non-attorneys to represent business entities in all court cases, proponents decided that the easier task would be to increase the jurisdictional amount of small claims court.

Michigan small claims legislation [MCL 600.8408] specifically prohibits attorneys from representing parties, and allows employees of a business entity to "represent" their company. Small claims are the only type of case where non-attorneys can specifically represent business entities. In all other civil cases, business entities must hire an attorney to represent them in court. Therefore, raising the jurisdictional limit of small claims court would save them attorney fees, because they would not have to hire as many attorneys to represent them in court.

Some things the proponents of the bill may not have realized are: (1) Michigan small claims judgments may be unenforceable in other states, because small claims court is not a "court of record"; (2) if they proceed with the case and lose at a hearing, they cannot later hire an attorney to fix the errors; and (3) they waive their right to appeal the case to the Circuit Court, so they only get one appeal to a district judge if the case was heard by a district court magistrate. If the case is originally heard by a district court judge, then they get no appeal at all.

The legislature pushed this Bill through despite opposition from the State Bar of Michigan, the Michigan District Judges Association, the Michigan Court Administrator's Association, and our association [MADCM]. The only compromise from the original language is having the increase be incremental over a period of 12 years and the final amount stop at \$7,000, instead of \$10,000.

The \$5,000 limit goes into effect September 1, 2012. **However, does the \$5,000 limit apply only on those cases "filed" after September 1st or any cases "heard" after September 1st?** The statute appears to be a "limit on the damages" awarded, which should be interpreted as a procedural change applicable at the hearing. We may have to wait for clarification from SCAO as to when this higher limit should be applied to small claims cases. It will be interesting to see how these new limits affect district court small claims and general civil caseloads.

Magistrate Susan Wilson In The Classroom

Uppermichigansource.com [powered by TV 6 FOX UP] recently ran a story on one of our own members. District Court Magistrate Susan Wilson [former MADCM Treasurer] was featured on the website with video clips for speaking to Marquette High School freshmen about the consequences and financial cost of driving while impaired. Sue explained some of the inner workings of the judicial system.

Sue told the freshmen to be careful about what they post on Facebook, especially when it comes to underage drinking, and she pointed out to the students how costly it can be to ignore driving citations.

Sue's presentations are part of a weeklong lesson plan aimed at preventing driving while impaired, ahead of prom weekend.

Check out the video of the story at:
http://www.uppermichiganssource.com/news/story.aspx?id=743367#.T57WDdkrK_8.aolmail

Supreme Court Decision Clarifies Some Medical Marijuana Issues?

In a unanimous decision, the Michigan Supreme Court released its Opinion in ***People v. Larry King; People v. Alexander Kolanek*** on May 31, 2012.

The Appendix at the end of the Opinion sets forth the holdings of the decision.

1. Section 4 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26424, provides qualified registered patients broad immunity from "arrest, prosecution, or penalty in any manner" and protection from the denial of "any right or privilege, including but not limited to civil penalty or disciplinary action by a business or

occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act"

2. To be entitled to the broad immunity of § 4, a qualifying patient with a registry identification card who has not specified a primary caregiver must possess no more than 2.5 ounces of usable marijuana and 12 marijuana plants, which must be kept in "an enclosed, locked facility."

3. Registered patients who do not qualify for immunity under § 4, as well as unregistered persons, are entitled to assert in a criminal prosecution the affirmative defense of medical use of marijuana under § 8 of the MMMA, MCL 333.26428.

4. Section 8 of the MMMA provides a limited protection for the use of medical marijuana in criminal prosecutions, which requires dismissal of the charges if all the elements of the defense are established.

5. A defendant need not establish the elements of § 4 to have a valid affirmative defense under § 8.

6. A defendant who moves for the dismissal of criminal charges under § 8 must raise the defense in a pretrial motion to dismiss and for an evidentiary hearing.

Google Group

We now have 87 participants on our MADCM Google Group but we have 114 members, so there are still some Magistrates who are missing out.

It is easy to be added to the group. Just email kevin.mckay@kentcountymi.gov and we will send you the application form. It is open to all MADCM members who have a valid email address.

Mini Tort Maximum Increased to \$1,000

On June 12, 2012 Governor Rick Snyder signed P.A. 158 of 2012 which increased the mini-tort amount from \$500 to \$1,000. It appears that this limited liability protection is still only available to those who have valid insurance, so those at-fault drivers who don't have insurance are not afforded the protection of the mini-tort law and may still be sued for damages in excess of the \$1,000 limit.

However, the new law adds a subsection that prohibits persons without valid insurance coverage from being awarded any damages under the mini-tort legislation. MCL 500.3135(4)(e) now reads:

(e) Damages shall not be assessed if the damaged motor vehicle was being operated at the time of the damage without the security required by section 3101.

Gearing Up For The Annual Conference

Your MADCM Conference Committee is working hard on the details of the 39th Annual Conference being held at Treetops Resort in Gaylord from September 12-14, 2012. Registration materials will be sent out via the Google Group and posted to the website by the end of June. If you are not in the Google Group and do not have internet, please call Kevin McKay [616-632-7795] to be mailed a hard copy of the Conference Packet.

Magistrate Specialty Seminar is July 25th

The Michigan Judicial Institute (MJl) is pleased to announce a seminar for new and experienced district court magistrates. The seminar will be held July 25 from 9 a.m. to 4 p.m. at the Michigan Hall of Justice in Lansing. Seminar topics will include:

- Statutory, Court Rule, Caselaw Update
- Street Drug Update
- Veteran's Over-Representation in Civil Infractions
- Breakout: Small Claims Issues*
- Breakout: Commercial Motor Vehicle Issues
- Dealing with Difficult Personalities

For more information, and to register on-line by June 22, go to:

<http://courts.mi.gov/mji/seminars/pa/11-12/072512/Magistrate-Seminar.pdf>

Marriage Bills Pass – Await Governor's Action

SB 698 would allow district court judges, district court magistrates and probate judges to perform marriages anywhere in the state. **Passed House & Senate.**

SB 700 was introduced to authorize SCAO to set fee charged for marriages performed by district judges and magistrates, and requires fee to be paid to district court in the district where the wedding is performed. The original language was changed to keep the fee at \$10.00. **Passed House & Senate.**

New Technologies Require Law Changes

Magistrates using fax machines may soon be a distant memory!! More magistrates are cutting their land lines, and turning in their fax machines for smart phones. It is about time the legislature clean up some of the statutes that prevent full use of the technology that is available to the courts.

District Judges are allowed to issue arrest warrants by electronic means, but MCL 764.1 does not allow District Court Magistrates to do the same.

Other statutes that need clarifying are MCL 600.8513, 600.8541 & 780.651 which have been interpreted to mean that magistrates must be “physically present within their district” in order to perform their duties.

With today’s technology, these restrictions need to be eliminated. This month SCAO’s Technology Implementation Committee took action to recommend to the Supreme Court that these statutes be updated. However, we may have to push for changes ourselves and find legislative sponsors.

Here are some ways MADCM members can help: (1) give us suggestions of other statutes that need updating; (2) make contact with your State legislators to see if they might support statutory changes; and (3) send us real life stories of situations where justice was delayed in order to comply with outdated requirements. Send your comments, stories & suggestions to Kevin McKay at:

kevin.mckay@kentcountymi.gov.

Other Bills to Watch

HB 5275 (McMillin & Irwin) would require MCOLES to train police officers on situations involving civilians video-taping police activities.

HB 5424 (Passed House & Senate) would create a new class of vehicle – “modified agricultural vehicle” and allow a 10% overweight variance for hauling farm products **and** would make only the “owner or lessee of the vehicle” [not driver] responsible for overweight tickets with these vehicles.

HB 5598 (Zorn) would allow counties to adopt portions of the uniform traffic code.

HB 5616 (Knollenberg) would allow MSP and district courts with a post in their jurisdiction to agree [upon approval of SCAO] to be the appropriate venue for all their citations written under the MVC.

SB 977 (Jones) would prohibit the use of use of medical marihuana for treatment of glaucoma.

SB 1014 (Nofs) would expand jurisdiction for prosecution of felonies to any county where consequences were intended.