

Bruce A Timmons
November 3, 2015

The Honorable Klint Kesto, Chair, House Committee on Judiciary
Members of the House Committee on Judiciary

Regarding:

SB 531 (Sen. Jones) - Courts; authorize the state court administrative office (SCAO) to establish an electronic filing system.

SB 532 (Sen. Proos) - Courts; establish the judicial electronic filing fund.

SB 533 (Sen. Schuitmaker) - Courts; electronic access to courts; allow court or court funding unit to charge certain fees.

In most respects I support **SBs 531 to 533**, including development of a statewide e-filing system, creation of the restricted fund to pave the way for it, and increasing fees to pay for it. It will take awhile for that to happen. It's going to happen; that train has left the station.

My objection to the package as passed by the Senate concerns the creation of a new set of "filing fees". I understand the rationale for a "legislatively simple" solution that would add a new "filing fee" on top of existing filing fees. But this mechanism will be devilish to implement at the local court level and will cause a lot of unnecessary local court clerk headaches, if not short-term confusion for litigants and attorneys – especially if the new fee kicks in on January 1.

The proposal in current form would result in necessary software changes in about 300 courts, separate bookkeeping entries, a revised receipt for payment of fees, a separate audit trail for these new fees, transmission of money by each court to a separate state fund, and revision of the websites that many (most?) courts have now – 3 different new fees in district court alone. For courts that use printed material, such as for small claims, the instructions will be out of date and people unfamiliar with the court system will come to court to file with a single filing fee – unaware that there is now a second "filing" fee to be paid.

Implementation of a new fee takes time and involves multiple vendors. Based upon what SCAO has previously indicated when the Legislature was considering new or increased fees, assessments, and charges, lead time is necessary to fully implement the changes. It is unlikely this can be done by January 1. I would encourage the Committee to delay the effective date.

Prior to 2003 we had court filing fees in civil cases that were distributed to 8 different funds, civil infraction revenue was distributed by court clerks to 8 separate funds, and the legislature had recently created new charges in criminal cases that went to restricted funds. The Legislature, in collaboration with and at the initiation of SCAO, did away with that nonsense in 2003 and provided in civil cases, criminal cases, and civil infraction actions for a single transmission of money destined for state restricted funds to be distributed by statutory formula. See MCL 600.171 (civil filing fees/civil filing fee fund) and MCL 600.181 (minimum costs in criminal cases and justice system assessments in civil infractions/justice system fund/distribution to 13 funds). Each of those consolidations of a plethora of individual charges, assessments, or distributions removed an onerous burden from local court clerks and administrators – an SCAO goal.

In particular and relevant to SB 531, we consolidated the 7 separate state-fund distributions into a single amount transmitted to the state, namely to the civil filing fee fund, for distribution by formula under MCL 600.171. SB 531's proposed new, separate "electronic filing system fee" – which is substantively indistinguishable from the 'regular' filing fee and is not limited to e-filed cases – runs directly counter to what was achieved in 2003. It is in one sense worse – prior to 2003 there was only ONE filing fee distributed 8 ways; SB 531 creates a totally new "filing" fee, so we now would have two filing fees, not one.

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There is a better way to accomplish the desired result and there are a lot of advantages to doing so. What I would recommend that the Committee consider is to simply raise the respective filing fee in each court (separate ones for summary proceedings and small claims) and amend MCL 600.171 governing the allocation of revenue collected from civil filing fees to accommodate the share intended for the new Judicial Electronic Filing Fund. [Cf. 2003 PA 138, EHB 4748, for the comparable sections; not all of those dealt with filing fees.] The Senate added a sunset and that can be included; we've done that before. This alternative would be simpler for local courts to implement – all they would have to do is change the amount of the filing fee. Most likely that change could be done more quickly for software and websites. We don't need a separate fee.

We had a similar situation 7 years ago in MCL 600.181 and MCL 769.1j (criminal – minimum costs) where additional programs were added to the mix and the minimum costs were increased – without loss to then-current payees. 2008 PAs 545-547.

Returning to separate fees for the same matters is reminiscent of bygone days – maybe not as far back as quill pens but to a not so distant past when courts used paper ledgers with hand entries, mechanical adding machines, and cha-ching cash registers. E-filing looks to the future; it would be ironic if the solution were a return to a dubious past practice.

Three tangential observations:

A trend starts with one exception, and then a second, and soon a precedent marches on – just like Michigan saw prior to 2003 with over a dozen multiple court-generated 'charges'.

SB 532 adds to the list of some 400 state restricted funds – presumably created for worthy purposes but for which the Legislature was unwilling to use GF/GP funding. Court-collected revenue transmitted under MCL 600.171 and 600.181 to the state exceeds \$85 million per HFA.

Filing fees in civil cases used to be split between the county (or district court-funding unit) and the judges' retirement system. Today, almost 80% of filing fees come to the state for state-prescribed programs.

Thank you for allowing me to submit this statement regarding SBs 531 to 533.

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