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December 4, 2015

Timothy M. Sutherland  
President  
Michigan Court Officers and Deputy Sheriffs' Association  
8092 E. 14 Mile Road  
Warren, MI 48093

Dear Mr. Sutherland:

Re: MC 01 Notary Requirement

The Board of Directors of the Michigan Court Officers and Deputy Sheriffs' Association ("MCODSA") requested an opinion with regard to the notary requirement for the Affidavit of Process Server, as currently appears on MC 01 (Summons and Complaint). Specifically, MCODSA questioned whether a proof of service, completed by a court officer must be notarized. I have reviewed the language of MC 01 and Michigan Court Rules, to include MCR 2.104.

In pertinent part, MCR 2.104(A) provides that proof of service may be made by:

- (2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by
  - (a) a sheriff,
  - (b) a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing the process is held,
  - (c) an appointed court officer,
  - (d) an attorney for a party; or
- (3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.

Timothy M. Sutherland

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Notably, subsection (A)(2)(b) addresses a “deputy sheriff or bailiff, *if that officer holds office in the county in which the court issuing the process is held,*” while subsection (2)(c) addresses “an appointed court officer” without reference to the county or court where the court officer is appointed. MCR 2.104 (emphasis added). Accordingly, the rule permits an appointed court officer, without regard to the county or court where the officer is appointed, to make proof of service in accord with subsection (2).

Based on the foregoing and subject to the qualifications and exceptions herein contained, we are of the opinion that: There is no basis for requiring an appointed court officer to comply with the alternative, notarized proof of service provisions of (A)(3), even if the court officer is serving process in a county other than the county where the court officer has been appointed. Pursuant to MCR 2.104(A)(2)(c), an appointed court officer, without regard to what court has appointed them, should be permitted to use the “Officer Certificate” section of MC 01, which does not require notarization, when the court officer serves process anywhere in Michigan.

Our above-expressed opinion is subject to the following qualifications:

We have not made any investigation of and do not express an opinion as to any case law that may address this matter, where Michigan Court Rule directly addresses the subject matter pertinent to this opinion. Further, in rendering the above opinion, we have assumed that any member who wishes to rely on this opinion is a duly appointed to serve as a court officer, in accord with MCR 3.106(C), when completing the Officer Certificate section of MC 01.

Further, this opinion is rendered as of the date set forth above, and we express no opinion as to circumstances or events which may occur subsequent to such date. We disclaim any undertaking or obligation to advise of changes that hereafter may be brought to our attention.

The foregoing opinions may be relied upon by MCODSA and its members, but may not be relied upon by any other person or entity.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC

Deanna Swisher

DS:jrp