

President Grieco called the teleconference meeting of the Board to order at 4:05 p.m. on, Friday, March 8, 2019

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Dennis M. Barnes, President-Elect
Aaron V. Burrell
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Josephine A. DeLorenzo
Jennifer M. Grieco, President
Lisa J. Hamameh
Kara R. Hart-Negrich

Edward L. Haroutunian
Thomas H. Howlett
E. Thomas McCarthy Jr.
Joseph P. McGill
Barry R. Powers
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington

Commissioners absent and excused:

Joseph J. Baumann
Robert J. Buchanan, Vice President
Syeda F. Davidson
Shauna L. Dunnings
Andrew F. Fink III

James W. Heath, Treasurer
Michael S. Hohausen
Hon. David A. Perkins
Daniel D. Quick
Ryan Zemke

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Kathryn Hennessey, Public Policy Counsel

Court Rules

ADM File No. 2017-28 - Proposed Amendments of MCR 1.109, MCR 8.119, and Administrative Order 1999-41

The proposed amendments would make certain personal identifying information nonpublic and clarify the process regarding redaction.

A motion was offered and seconded to support the Court's efforts to address the protection of personal identifying information, oppose the current amendments as drafted, provide to the Court all the comments received from sections and committees, and request that the Court publish for comment revised amendments before adopting them. The motion carried.

ADM File No. 2018-06: Proposed Amendments of MCR 1.111 and 8.127

These two proposals, which would promote greater confidence that a qualified foreign language interpreter is proficient in the language and would reduce the possibility that renewals are delayed, were recommended to the Court by the Foreign Language Board of Review.

A motion was offered and seconded to support this amendment. The motion carried.

ADM File No. 2018-13 - Proposed New Rule 3.22X

This proposal was developed by a workgroup facilitated by SCAO's Friend of the Court division to make more uniform the ADR processes used by Friend of the Court offices.

A motion was offered and seconded to support this amendment in principle, but oppose the rule as drafted and request that the rules be revised to address the following concerns: (1) attorneys should be allowed to be present at any meeting in which an order may be generated; (2) the rules should provide for adequate domestic violence screening, protocols, and training; (3) confidentiality provisions should be consistent with other confidentiality mandates in the rule; (4) the language regarding automatic orders being generated should be stricken; (5) the language regarding protective orders in subsection (D)(1) should be clarified whether it applies to all parties that have been subject to any PPO, persons who have been subject to a PPO involving another party, persons who have been subject to a PPO concerning domestic abuse or abuse or neglect of any child; and (6) subsection (D)(1) should be amended as follows:

Parties who are, **or have been**, subject to a personal protection order or other protective order or who are involved in a **past or** present child abuse and neglect proceeding may not be referred to friend of the court ADR without a hearing to determine whether friend of the court ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing.

The motion carried.

ADM File No. 2017-17: Proposed Amendments of MCR 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and Proposed New MCR 6.430

The proposed amendments would more explicitly require restitution to be ordered at the time of sentencing as required by statute, and would establish a procedure for modifying restitution amounts. This published version was based on an original submission from the State Appellate Defenders Office, but includes additional revisions and alternative language as well.

A motion was offered and seconded to support the rule with the following amendments: (1) to address the issue of restitution not being known at the time of sentencing, support the Michigan District Judges Association's rule language for MCR 6.427(11) and 6.425(E); (2) support the Court of Appeals' recommendations that appeals of orders amending restitution be by leave, rather than by right; and (3) remove the reference of the trial court's authority over motions to amend restitution, as it is unnecessary for the reasons stated by the Court of Appeals. The motion carried.

ADM File No. 2018-23: Proposed Amendment of MCR 6.001

The proposed amendment of MCR 6.001 would allow for discovery in criminal cases heard in district court to the same extent that it is available for criminal cases heard in circuit court. The proposal was submitted by the Michigan District Judges Association. The MDJA noted that although many prosecutors provide discovery, there is no rule mandating it. The MDJA also noted that if the general discovery rule (MCR 6.201) is made applicable to district court criminal cases, subsection (I) could be used to limit its application where full-blown discovery may not be appropriate.

A motion was offered and seconded to support the rule proposal in principle, but encourage the Court to revise the rule in light of the numerous concerns that have been raised in the comments submitted to the Court and note that implementation of electronic discovery may lessen the impact of requiring discovery in misdemeanor cases. The motion carried.

The meeting was adjourned at 4:40 p.m.