

**Agenda
Public Policy Committee
March 2020**

Public Policy Committee.....Robert J. Buchanan, Chairperson

A. Opening Statements

(Each member's "good news," whether personal, business, or State Bar of Michigan-related.)

B. Approval of January 24, 2020 Minutes

C. Court Rules

1. ADM File No. 2002-37: Proposed Amendments of E-Filing Rules

The proposed amendments of MCR 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119 are the latest proposed revisions as part of the design and implementation of the statewide electronic-filing system.

Status: 04/01/20 Comment Period Expires.

Referrals: 01/02/20 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section; Family Law Section; Litigation Section; Probate & Estate Planning Section; Real Property Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Family Law Section.

Liaison: Joseph J. Baumann

2. ADM File No. 2019-13: Proposed Amendments of MCR 7.118

This proposal, suggested by the Prisons and Corrections Section of the State Bar of Michigan, would require counsel to be appointed to an indigent prisoner when an application for leave to appeal a grant of parole is filed by the prosecutor or victim. The right to counsel also would be included on the notice to be provided the prisoner.

Status: 04/01/20 Comment Period Expires.

Referrals: 01/02/20 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Criminal Law Section; Prisons & Corrections Section

Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Prisons & Corrections Section.
Comments provided to the Court are included in materials.

Liaison: Valerie R. Newman

**Minutes
Public Policy Committee
January 24, 2020**

Committee Members: Robert J. Buchanan, Kim Warren Eddie, Suzanne C. Larsen, Valerie R. Newman, Thomas G. Sinas, Hon. Cynthia D. Stephens, Mark A. Wisniewski
SBM Staff: Peter Cunningham, Elizabeth Goebel, Kathryn Hennessey, Carrie Sharlow
GCSI Staff: Marcia Hune

A. Opening Statements

B. Reports

1. Approval of November 22, 2019 minutes
The minutes were unanimously approved.

2. Public Policy Report

Marcia Hune with GCSI offered a verbal report.

The Governmental Relations staff offered a written report and Peter Cunningham offered a verbal report.

C. Court Rules

1. ADM File 2018-34: Proposed Amendment of MCR 6.425

The proposed amendment of MCR 6.425 would clarify that criminal defendants whose request for counsel due to indigency are denied are entitled to appeal that denial.

The following groups offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; and Criminal Law Section.

The committee voted unanimously (7) to support the proposed amendment to Rule 6.425. This position is in keeping with the Bar's long history of supporting defendants' rights to counsel and to appellate review.

2. ADM File 2018-35: Proposed Amendment of MCR 8.108

The proposed amendment of MCR 8.108 would clarify the rule regarding preparation and filing of transcripts including that a court reporter or court recorder shall file their transcripts with a court when produced for a party or for the court.

The following groups offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Appellate Practice Section; and Family Law Section.

The committee voted unanimously (6) to support the proposed court rule amendment with the following further amendments highlighted in bold:

~~(E)~~(1) to any party on request. The reporter or recorder is entitled to receive the compensation prescribed in the statute on fees from the person who makes the request **unless the person is granted a fee waiver pursuant to MCR 2.002.**

(F)(1) ~~After preparing a transcript at public expense upon request of a party or interested person to a case or~~ ~~On~~ order of the trial court, the court reporter or recorder shall **promptly file the** make and file in the clerk's office a transcript of ~~the proceedings~~ ~~his or her records,~~ in legible English, of any civil or criminal case (or any part thereof) ~~without expense to either party; the transcript is a part of the records in the case.~~

(F)(2) After an official transcript is filed, copies submitted to a court or used in any court proceeding shall be made only from the official transcript filed with the court or from an unaltered digital or paper copy of the official transcript. After an official transcript is filed, copies shall be made only from the official transcript filed with the court. Except when otherwise provided by contract, the court reporter or recorder shall receive from the appropriate governmental unit the compensation specified in the statute on fees for a transcript ordered by a court.

Order

Michigan Supreme Court
Lansing, Michigan

December 18, 2019

Bridget M. McCormack,
Chief Justice

ADM File No 2002-37

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendments of Rules
1.109, 2.002, 2.302, 2.306, 2.315,
2.603, 3.222, 3.618, 4.201, and
8.119 of the Michigan Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures;
Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1) Form and Captions of Documents.

- (a) All documents prepared for filing in the courts of this state and all documents ~~prepared~~prepared issued by the courts for placement in a case file must be legible and in the English language, comply with standards established by the State Court Administrative Office, and be on good quality 8½ by 11 inch paper or transmitted through an approved electronic means and maintained as a digital image. The font size must be 12 or 13 point for body text and no less than 10 point for footnotes, except with regard to forms approved by the State Court Administrative Office. Transcripts filed with the court must contain only a single transcript page per document page, not multiple pages combined on a single document page.

(b)-(g) [Unchanged.]

(2)-(8) [Unchanged.]

(E) Signatures.

(1)-(3) [Unchanged.]

(4) An electronic signature is acceptable in accordance with this subrule.

(a) [Unchanged.]

(b) If a law or court rule requires a signature to be notarized or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law or court rule, is attached to or logically associated with the signature pursuant to MCL 55.286b.

(~~b~~c) [Relettered but otherwise unchanged.]

(5)-(7) [Unchanged.]

(F) [Unchanged.]

(G) Electronic Filing and Service.

(1) [Unchanged.]

(2) Electronic-Filing and Electronic-Service Standards. Courts shall implement electronic filing and electronic service capabilities in accordance with this rule and shall comply with the standards established by the State Court Administrative Office. Confidential and nonpublic information or documents and sealed documents must be that are electronically filed or electronically served must be filed or served in compliance with these standards to ensure secure transmission of the information.

(3) Scope and Applicability.

(a)-(d) [Unchanged.]

- (e) If a party or attorney in a case is registered as an authorized user in the electronic-filing system, Aa court may~~must~~ electronically servesend to that authorized user any notices, orders, opinions, andor other documents issued by the court in that case by means of either the
- (i) electronic-filing system, or
 - (ii) the court's on-premise electronic document management system, without the need for the e-mail agreement required under MCR 2.107(C)(4).
- (f) For the required case types, attorneys must electronically file documents in courts where electronic filing has been implemented, unless an attorney filing on behalf of a party is exempted from electronic filing under subrule (j) because of a disability. All other filers are required to electronically file documents only in courts that have been granted approval to mandate electronic filing by the State Court Administrative Office under AO 2019-~~XX~~2.
- (g) [Unchanged.]
- (h) Upon request, the following persons are exempt from electronic filing without the need to demonstrate good cause:
- (i) a person who has a disability as defined under the Americans with Disabilities Act that prevents or limits the person's ability to use the electronic filing system;
 - (ii)-(iii) [Unchanged.]
- (i) A request for an exemption under subrule (h)(i) must be requested as a reasonable accommodation in accordance with subrule (j). A request for an exemption under subrules (h)(ii) or (iii) must be filed with the court in paper where the individual's case will be or has been filed as follows: ~~If the individual filed paper documents at the same time as the request for exemption, the clerk shall process the documents for filing. If the documents meet the filing requirements of subrule (D), they will be considered filed on the day they were submitted.~~
- (i) The request for an exemption must be on a form approved by the State Court Administrative Office, must specify the reasons

that prevent the individual from filing electronically, and be verified under MCR 1.109(D)(3). The individual may file supporting documents along with the request for the court's consideration. There is no fee for the request.

~~(ii) The request must specify the reasons that prevent the individual from filing electronically. The individual may file supporting documents along with the request for the court's consideration.~~

(ii) A request made under subrule (h)(ii) or (iii) shall be approved by the clerk of the court on a form approved by the State Court Administrative Office. For all other requests,

~~(iii) A judge must review the request and any supporting documentation and issue an order granting or denying the request within two business days of the date the request was filed.~~

(j) A person with a disability as defined under the Americans with Disabilities Act that prevents or substantially limits the person's ability to use the electronic-filing system may request and shall be granted an exemption from electronic filing as a reasonable accommodation as follows:

(i) A request for exemption under this subrule shall be filed as a request for reasonable accommodation in the court in which the individual's case has or will be filed. When submitted in writing, the request shall be made on the SCAO-approved form "Request for Reasonable Accommodations and Response."

(ii) Whether or not the court determines any other reasonable accommodations are appropriate, the court shall prepare an order exempting the person from electronic filing.

(k) If the individual filed paper documents at the same time as the request for exemption under either subrule (i) or (j), the clerk shall process the documents for filing. If the documents meet the filing requirements of subrule (D), they will be considered filed on the day they were submitted.

~~(l)(iv)~~ The clerk of the court must hand deliver or promptly mail the clerk approval granted or order entered under subrule (i) or (j) to the

individual. The clerk must place the request, any supporting documentation, and the clerk approval or order in the case file. If there is no case file, the documents must be maintained in a group file.

~~(m)(v)~~ An exemption granted under this rule is valid only for the court in which it was filed and for the life of the case unless the individual exempted from filing electronically registers with the electronic-filing system. In that event, the individual waives the exemption and becomes subject to the rules of electronic filing and the requirements of the electronic-filing system. An individual who waives an exemption under this rule may file another request for exemption.

(4)-(5) [Unchanged.]

(6) Electronic-Service Process.

(a) General Provisions.

(i) [Unchanged.]

(ii) Service of process of all other documents electronically filed shall be accomplished electronically among authorized users through the electronic-filing system, ~~unless one or more parties have~~ If a party has been exempted from electronic filing, or a party has not filed a response or answer or has not registered with the electronic-filing system and that party's e-mail address is unknown. ~~In those circumstances,~~ service shall be made on that party by any other method required by Michigan Court Rules.

(iii)-(v) [Unchanged.]

(b)-(c) [Unchanged.]

(7) Transmission Failures.

(a)-(c) [Unchanged.]

(d) In the event the electronic-filing system fails to transmit a document selected for service, if deemed necessary to ensure due process rights are protected, the State Court Administrator shall provide notice to the affected persons in either of the following ways:

- (i) file, as a nonparty, a notice of defective service in each affected case and, as deemed appropriate, serve the notice, or
- (ii) send notice of a system-wide transmission failure to each affected system user.
- (e) If notice is provided under subrule (d), the clerk of the court where the affected case is filed must enter the event in the case history in accordance with MCR 8.119(D)(1)(a).
- (f) A fee shall not be assessed on a motion filed claiming that rights in the case were adversely affected by transmission failure of a document selected for service.

Rule 2.002 Waiver of Fees for Indigent Persons

(A) Applicability and Scope.

(1)-(3) [Unchanged.]

- (4) If fees are waived under this rule before judgment, the waiver continues through the date of judgment unless ordered otherwise under subrule (J). If fees are waived under this rule postjudgment, the waiver continues through the date of adjudication of the postjudgment proceedings. In probate proceedings, “postjudgment” means any proceeding in the case after the original petition is adjudicated. If jurisdiction of the case is transferred to another court, the waiver continues in the receiving court according to this rule unless ordered otherwise by the receiving court under subrule (J). If an interlocutory appeal is filed in another court, the waiver continues in the appellate court.

(5) [Unchanged.]

(B)-(K) [Unchanged.]

Rule 2.302 Duty to Disclose; General Rules Governing Discovery

(A)-(G) [Unchanged.]

(H) Filing and Service of Disclosure and Discovery Materials.

- (1) Unless required by a particular rule, disclosures, requests, responses, depositions, and other discovery materials may not be filed with the court

except as follows:

- (a) If the materials are to be used in connection with a motion, they must ~~either be filed separately or~~ be attached to the motion, response, or an accompanying affidavit;
- (b) If the materials are to be used at trial, they shall not be filed with the court, but must be submitted to the judge and made an exhibit under MCR 2.518 or MCR 3.930;
- (c) [Unchanged.]

(2)-(4) [Unchanged.]

Rule 2.306 Depositions on Oral Examination of a Party

(A)-(E) [Unchanged.]

(F) Certification and Transcription; Filing; Copies.

(1)-(2) [Unchanged.]

(3) Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall promptly file the certified transcript with the court in which the action is pending in accordance with MCR 2.105(A), after transcription and certification; and shall give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.

- (a) ~~If the transcript is personally delivered to the court, securely seal the transcript~~ it must be securely sealed in an envelope endorsed with the title and file number of the action and marked “Deposition of [*name of witness*],²” ~~and promptly file it with the court in which the action is pending as prescribed in accordance with MCR 2.105(A) or send it by registered or certified mail to the clerk of that court for filing;~~
- (b) ~~give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.~~

(G) [Unchanged.]

Rule 2.315 Video Depositions

(A)-(D) [Unchanged.]

(E) Filing; Notice of Filing. If a party requests that the deposition be filed, the person who made the recording shall

(1)-(3) [Unchanged.]

A video deposition cannot be electronically filed with the court.

(F)-(I) [Unchanged.]

Rule 2.603 Default and Default Judgment

(A) Entry of Default; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the clerk must enter the default of that party if that fact is:

(a) known to the clerk of the court, or

(b) and that fact is verified in the manner prescribed by MCR 1.109(D)(3) and filed with the court in the request for default, ~~the clerk must enter the default of that party.~~

(2)-(3) [Unchanged.]

(B)-(E) [Unchanged.]

Rule 3.101 Garnishment After Judgment

(A)-(B) [Unchanged.]

(C) Forms. ~~The state court administrator~~State Court Administrative Office shall publish approved forms for use in garnishment proceedings. The verified request and writ forms approved by the State Court Administrative Office must be used. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and~~The~~ disclosure filed in garnishment proceedings must be substantially in the form approved by the ~~state court administrator~~State Court Administrative Office.

- (D) Request for and Issuance of Writ. The clerk of the court that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement verified in the manner provided in MCR 1.109(D)(3) stating:

(1)-(3) [Unchanged.]

- (4) whether the garnishee is to make all payments directly to the plaintiff or the plaintiff's attorney or to send the funds to the court.

- (E) Writ of Garnishment.

- (1) The writ of garnishment ~~must have attached or must include a copy of the~~ and the verified statement requesting for issuance of the writ must be included on the same form., and The writ must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.

(2) [Unchanged.]

- (3) The writ shall direct the garnishee to:

(a)-(d) [Unchanged.]

- (e) ~~in the discretion of the court and~~ in accordance with subrule (J), ~~order the garnishee either to~~

(i) make all payments directly to the plaintiff or the plaintiff's attorney or

(ii) send the funds to the court, ~~in the manner as~~ specified by the plaintiff in the writ request under subrule (D)(4).

(4) [Unchanged.]

- (5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant or as otherwise provided under MCL 600.4012,

(a) without further notice the property or debt held ~~pursuant to~~ under the

garnishment may be applied to the satisfaction of the plaintiff's judgment, and

- (b) periodic payments due to the defendant may be withheld and paid according to subrule (3)(e) until the judgment is satisfied ~~and in the discretion of the court paid directly to the plaintiff.~~

(6) [Unchanged.]

(F)-(I) [Unchanged.]

(J) Payment.

- (1) After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff, plaintiff's attorney, or the court as directed by the court pursuant to subrule (E)(3)(e) unless notified that objections have been filed.

(2)-(7) [Unchanged,]

(K)-(T) [Unchanged.]

Rule 3.222 Uniform Collaborative Act Process and Agreements

(A)-(B) [Unchanged.]

- (C) Establishing Jurisdiction and Starting the Statutory Waiting Period. At any time after a collaborative law participation agreement is signed, if the parties are not already under the court's jurisdiction, the parties may commence an action to submit to the court's jurisdiction.

(1) [Unchanged.]

- (2) To commence an action at any time before the conclusion of the collaborative law process, the parties shall file a petition for court jurisdiction and declaration of intent to file a proposed final judgment or proposed final order on a form approved by the State Court Administrative Office.

- (a) The petition shall be brought "In the Matter of" the names of Party A and Party B and shall state the type of action corresponding to the assigned case type code in ~~under~~ MCR 8.117 ~~(listed under Case File Management Standard [A][6])~~. The petition shall:

(i)-(v) [Unchanged.]

The petition may also contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(b)-(e) [Unchanged.]

(D)-(F) [Unchanged.]

Rule 3.618 Emancipation of Minor

(A)-(F) [Unchanged.]

(G) Order. To fulfill requirements of the Social Security Administration, the court must provide the minor with a copy of the order of emancipation that includes the minor's full social security number, if the minor has one. The court shall not include the minor's social security number on the order maintained in the court's file.

(1) The minor must show his or her social security card to the judge at the hearing and the judge shall enter the number on the minor's copy of the order. If the minor does not bring his or her social security card to the hearing or does not have a social security card, the minor can present his or her social security card to the clerk of the court at a later date, and after verifying the identity of the minor, the clerk of the court shall enter the social security number on a copy of the order to be given to the minor.

(2) The order must be entered on a form approved by the State Court Administrative Office, consisting of two parts. The first part is placed in the case file and shall not contain the minor's social security number. The second part shall contain the minor's social security number and a statement that the order is a certified copy of the order on file with the court except that the social security number appears only on the minor's copy of the order. The minor's copy of the order shall be signed by the clerk of the court. There is no fee for the certified copy.

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(C) [Unchanged.]

(D) Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by first-class mail. ~~Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service.~~ Where e-Filing is implemented, the plaintiff must

serve the defendant by first-class mail and file proof of service with the court. In addition to mailing, the defendant must be served in one of the following ways:

(1)-(3) [Unchanged.]

(E)-(O) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(B) [Unchanged.]

- (C) **Filing of Documents and Other Materials.** The clerk of the court shall process and maintain documents filed with the court as prescribed by Michigan Court Rules and the Michigan Trial Court Records Management Standards and all filed documents must be file stamped in accordance with these standards. The clerk of the court may only reject documents submitted for filing that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver, unless already waived or suspended by court order. Documents prepared or issued by the court for placement in the case file are not subject to rejection by the clerk of the court and shall not be stamped filed but shall be recorded in the case history as required in subrule (D)(1)(a) and placed in the case file.
- (D) **Records Kept by the Clerk of the Court.** The clerk of the court shall maintain the following case records in accordance with the Michigan Trial Court Records Management Standards. Documents and other materials made nonpublic or confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated accordingly and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court under subrule (I) that makes a document or other materials in that case nonpublic or confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.
- (1) [Unchanged.]
- (a) **Case History.** The clerk shall create and maintain a case history of each case, known as a register of actions, in the court's automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case and shall also be capable of searching a case by number or party name (previously known as numerical and alphabetical indices) and

displaying the case number, date of filing, names of parties, and names of any attorneys of record. The case history shall contain both pre- and post-judgment information and shall, at a minimum, consist of the data elements prescribed in the Michigan Trial Court Records Management Standards. Each entry shall be brief, but shall show the nature of each item filed, each ~~order or judgment of item~~ entry issued by the court, and the returns showing execution. ~~Each entry~~ The case history entry of each item filed shall be dated with not only the date of filing (if relevant), but with and the date and initials of the person recording the action, except where the entry is recorded by the electronic filing system. In that instance, the entry shall indicate that the electronic filing system recorded the action. The case history entry of each order, judgment, opinion, notice, or other item issued by the court shall be dated with the date of entry issuance and the initials of and shall indicate the person recording the action.

(b) [Unchanged.]

(2)-(4) [Unchanged.]

(E)-(L) [Unchanged.]

Staff comment: The proposed amendments of MCR 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119 are the latest proposed revisions as part of the design and implementation of the statewide electronic-filing system.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-37. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 18, 2019

Clerk

Public Policy Position
ADM File No. 2002-37

SUPPORT WITH AMENDMENTS

Explanation

The committee supports the proposed changes to help implement a statewide e-filing system with the following amendments:

Rule 1.109(G)(2) – The process for establishing e-Filing and e-Service standards should not be delegated to the State Court Administrative Office (SCAO). Deferring to SCAO will result in a process that lacks transparency and fails to provide the public and the bar with the opportunity to publicly comment on the effect of such standards. Instead, the rule should be amended so that these standards are created through the open court rule amendment process.

Position Vote on Rule 1.109(G)(2):

Voted for position: 17

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 9

Rule 1.109(G)(3)(i) – As proposed, the subrule would require that any request for a disability-related exemption to be made on the reasonable accommodation form. The committee opposes this limitation; the rule should be **amended** to allow a person to request a disability-related exemption on either the exemption form or the reasonable accommodation form.

Position Vote on Rule 1.109(G)(3)(i):

Voted for position: 17

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 9

Rule 1.109(G)(3)(i)(ii) – This subrule should be amended to address clerk denials of requests for exemptions. The rule provides that a request for an exemption under (h) (ii) or (iii) (limited English Proficiency or confinement) shall be approved by the court clerk. However, because the committee anticipates that some clerks may deny the request, the rule should specify the process for what will happen if a clerk denies exemption request (committee’s recommended changes to the proposed rule shown in bold underline or strikethrough:

(ii) A request made under subrule (h)(ii) or (iii) shall be approved by the clerk of the court on a form approved by the State Court Administrative Office. **If the clerk of the court does not grant an exemption, the clerk shall immediately submit the request for judicial review. For all other requests,** A judge must review **requests that are not granted by a clerk, requests made under subrule (h)(i), and requests**

made under subrule (g). The judge shall issue an order granting or denying the request within two business days of the date the request was filed.

Position Vote on Rule 1.109(G)(3)(i)(ii):

Voted for position: 18

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 8

Rule 1.109(G)(7)(d) – The committee recommends amending this subrule to strike the clause “if deemed necessary to ensure due process rights are protected.” The committee noted that anytime there is a transmission failure, due process rights are necessarily implicated.

Position Vote on Rule 1.109(G)(7)(d):

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

Rule 2.306(F)(3) – This subrule should be amended to clarify the appropriate method of service. The subrule refers to MCR 2.105(A), which is the rule on service on an individual, but MCR 2.306 is about filing transcripts with the court. As a result, the procedure for serving a transcript is unclear. It seems as though the intent of the rule is not to require personal or certified mail/restricted to the address for service on parties. Rather, service by first class mail should be sufficient; it is the primary method of service after process is served. The committee recommends the following amendment (the committee’s recommended changes to the proposed rule shown in bold underline and strikethrough):

Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall promptly file the certified transcript with the court in which the action is pending ~~in accordance with MCR 2.105(A)~~ and shall give prompt notice of its filing to all other parties **in accordance with MCR 2.107**, unless the parties agree otherwise by stipulation in writing or on the record.

Position Vote on Rule 2.306(F)(3):

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

Rule 2.603(A) – The committee opposed this subrule because it would automate entry of defaults by authorizing clerks to automatically enter a default without action by a party.

Once a default is entered, complicated steps are required to set it aside, even where good cause exists. For self-represented parties, it may be impossible to navigate the process. In addition, in family law

cases, a party may decide not to file a default if the parties are working toward a settlement or if notice of default to the defendant could trigger retaliation in a case involving domestic violence.

The committee is concerned that steps towards automation of bulk filings and default judgments will increase the risk that Michigan residents will face improper debt collections suits, or worse, have default judgment entered against them in a debt collection suit that never should have been filed.

Position Vote on Rule 2.603(A):

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

Rule 4.201(D) – The committee supports amending the rule to change “mail” to “first-class mail,” but oppose the rest of the changes. E-Filing does not create any new circumstances that warrant reducing protections for people facing a loss of housing.

As written, the rule appears to remove the requirement of filing a proof of service in paper filed cases but requires it in e-Filed cases. The general rule on service of process of case initiating documents, MCR 1.109(G)(6)(a)(i), says that “service...shall be made in accordance with the rules and laws required for the particular case type.” With this in mind, we suggest keeping only the “first-class mail” clarification and specifying regular first-class mail since certified mail is a type of first-class mail. The committee discussed whether registered or certified mail should be substituted for first class mail. The committee determined that because a defendant must be served in other ways (e.g., by personal service), service by first class mail is sufficient. Moreover, the committee’s primary concern is that there is not a variance in service requirements between paper and e-filed cases. Therefore, the committee recommends the following amended language (committee’s recommended changes to the proposed language shown in bold underline and strikethrough):

Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by regular first-class mail. **Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service.** ~~Where e-Filing is implemented, the plaintiff must serve the defendant by first-class mail and file proof of service with the court.~~ In addition to mailing, the defendant must be served in one of the following ways:

Position Vote on Rule 4.201(D):

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

Contact Persons:

Lorray S.C. Brown lorrayb@mplp.org

Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2002-37

Explanation

The committee voted unanimously (14) to support the proposed amendments as drafted.

Position Vote:

Voted For position: 14

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org

**Public Policy Position
ADM File No. 2002-37**

SUPPORT WITH AMENDMENTS

Explanation

The committee supports the proposed changes to help implement a statewide e-filing system with the following amendments:

Rule 1.109(E)(4)(3) – The committee opposes changes to this subrule and recommends that the rule remain as currently written. The committee believes that the proposed language is confusing and lacks adequate precision particularly with the use of “logically associated,” which may lead to questions in the future, and possibly litigation, over the meaning and requirements of the subsection. In addition, the specific reference to MCL 55.286b is redundant. The prior version of this subrule referred to “other applicable law” which would include MCL 55.286b as well as any other laws governing the electronic submission of notarized signatures.

Position Vote on Rule 1.109(E)(4)(3):

Voted For position: 19

Voted against position: 1

Abstained from vote: 0

Did not vote (due to absence): 7

Rule 1.109(G)(3)(i) – The committee recommends supporting the amendments proposed by the Access to Justice (ATJ) Committee. The ATJ committee noted that, as proposed, the subrule would require any request for a disability-related exemption to be made on the reasonable accommodation form. The ATJ committee opposed this limitation; the rule should be **amended** to allow a person to request a disability-related exemption on either the exemption form or the reasonable accommodation form.

Position Vote on Rule 1.109(G)(3)(i):

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 7

Rule 2.603(A) – The committee opposes changes to this subrule and recommends keeping the rule as it currently exists. First, this proposed change appears to be a policy change and not necessary for the implementation of a statewide e-filing system; therefore, this rule proposal is not the right vehicle to make such a policy change. The committee is also concerned about the policy presented in the proposed rule. There are circumstances under which a plaintiff may not want a default entered, such as when parties have agreed to extend the time to answer. If a default were automatically entered, as contemplated by this subrule, a client might conclude that his or her attorney had not filed an answer or obtained an agreement to extend the time to answer, thereby potentially damaging the attorney client relationship.

Position Vote on Rule 2.603(A):

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 7

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com

**Public Policy Position
ADM File No. 2002-37**

Support with Amendments

Explanation

A motion was made to support ADM File No. 2002-37 with:

A) a friendly amendment of Rule 1.109(D)(1)(a) to include the phrase “Excluding exhibits” before “[t]he font size must be 12 or 13 point for body text and no less than 10 point for footnotes, except with regard to forms approved by the State Court Administrative Office”; and

B) the following question posed: “Regarding Rule 1.109(G)(3)(e), does that mandate include the FOC or not?”

Position Vote:

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 0

Contact Person: Jennifer Johnsen

Email: jenjohnsen@westmichigandivorce.com

Order

**Michigan Supreme Court
Lansing, Michigan**

December 27, 2019

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-13

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendment of
Rule 7.118 of the Michigan
Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.118 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 7.118 Appeals from the Michigan Parole Board

(A)-(C) [Unchanged.]

(D) Application for Leave to Appeal.

(1)-(2) [Unchanged.]

(3) Manner of Filing. An application for leave must comply with MCR 7.105, must include statements of jurisdiction and venue, and must be served on the parole board and the prisoner. If the victim seeks leave, the prosecutor must be served. If the prosecutor seeks leave, the victim must be served if the victim requested notification under MCL 780.771.

(a) [Unchanged.]

- (b) Service on a prisoner incarcerated in a state correctional facility must be accomplished by serving the application for leave on the warden or administrator, along with the form approved by the State Court Administrative Office for personal service on a prisoner. Otherwise, service must be accomplished by certified mail, return receipt requested, as described in MCR 2.103(C) and MCR 2.104(A)(2) or in compliance with MCR 2.105(A)(2). In addition to the pleadings, service on the prisoner must also include a notice in a form approved by the State Court Administrative Office advising the prisoner that:
 - (i) the prisoner may respond to the application for leave to appeal through ~~retained~~ counsel or in propria persona, although no response is required, and that an indigent prisoner is entitled to appointment of counsel, and
 - (ii) [Unchanged.]
- (c) [Unchanged.]
- (d) If a prosecutor or victim files an application for leave to appeal, the circuit court shall appoint counsel for a prisoner who is indigent.
- (4) [Unchanged.]

(E)-(J) [Unchanged.]

Staff Comment: This proposal, suggested by the Prisons and Corrections Section of the State Bar of Michigan, would require counsel to be appointed to an indigent prisoner when an application for leave to appeal a grant of parole is filed by the prosecutor or victim. The right to counsel also would be included on the notice to be provided the prisoner.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or

ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-13. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 27, 2019

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

**Public Policy Position
ADM File No. 2019-13**

Support

Explanation

The proposed amendments to MCR 7.118 would (1) provide a prisoner with the right to have counsel appointed when a prosecutor or victim files an application for leave to appeal the prisoner's parole decision and (2) require the notice provided to the prisoner of the application for leave to inform the prisoner of the right to appointed counsel.

The committee voted unanimously to support the proposed amendments to Rule 7.118.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 13

Contact Person:

Lorray S.C. Brown lorryb@mplp.org

Public Policy Position
ADM File No. 2019-13: Proposed Amendment of MCR 7.118

SUPPORT

Explanation

The SBM Prisons and Corrections Section originally submitted proposed amendment to MCR 7.118, which governs appeals of parole board decisions. The proposed rule provides that when victim or prosecutor files a leave to appeal a grant of parole: 1) the prisoner will be notified that he or she is entitled to counsel, and 2) the circuit court will appoint counsel for the indigent prisoner.

The committee voted unanimously (15) to support the proposed amendments. Prisoners are unlikely to be able to obtain counsel. While the Attorney General represents the parole board, prisoners are still in need of counsel because the interests of the parole board and prisoners are often not aligned. Further, without counsel, prisoners may be more inclined to engage in behaviors – such as writing to victims – that hurt, instead of support, their cases during the parole appeal process.

Position Vote:

Voted For position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 6

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

**Public Policy Position
ADM File No. 2019-13**

Support

Explanation

After a discussion at its regular meeting on January 17, 2020, the Appellate Practice Section Council voted unanimously to support the proposed amendments to MCR 7.118.

Position Vote:

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 6

Contact Person: Bradley R. Hall

Email: bhall@sado.org

**Public Policy Position
ADM File No. 2019-13**

Support

Explanation

The Section supports amending MCR 7.118 to require the appointment of counsel to incarcerated individuals who have been granted a parole when the Parole Board's decision is appealed by the prosecutor or a victim.

The Section has submitted a letter in support of the proposal to the Michigan Supreme Court, which contains an appendix with estimated numbers of affected cases. The letter is attached.

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 2

Contact Person: Marilena David-Martin

Email: mdavid@sado.org

PRISONS & CORRECTIONS SECTION

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February 11, 2020

Anne M. Boomer
Administrative Counsel
Michigan Supreme Court
P. O. Box 30052
Lansing, Michigan 48909

Re: Support for ADM File No. 2019-13

Dear Ms. Boomer:

I write on behalf of the Prisons and Corrections Section of the State Bar of Michigan. The Section supports amending MCR 7.118 to require the appointment of counsel to incarcerated individuals who have been granted a parole when the Parole Board's decision is appealed by the prosecutor or a victim.

MCL 791.234 (11) states:

The action of the parole board in granting a parole is appealable by the prosecutor of the county from which the prisoner was committed or the victim of the crime for which the prisoner was convicted. The appeal shall be to the circuit court in the county from which the prisoner was committed, by leave of the court.

Prisoners do not have the same right to appeal when their parole is denied.

MCR 7.118 establishes the procedure for prosecutor/victim appeals. It states that the prisoner "shall be the appellee" and that the Parole Board "may move to intervene as an appellee." Subsection (D)(3)(b) further states:

(i) the prisoner may respond to the application for leave to appeal through retained counsel or in propria persona, although no response is required, and

(ii) if an order of parole is issued under MCL 791.236 before the completion of appellate proceedings, a stay may be granted in the manner provided by MCR 7.108, except that no bond is required.

PRISONS & CORRECTIONS SECTION

The Parole Board routinely intervenes, represented by the Office of the Attorney General. Few incarcerated individuals have the resources to retain counsel. The individual's release is routinely stayed, requiring him or her to remain in prison throughout the pendency of the appeal. Although in the past some counties assigned the State Appellate Defender Officer (SADO) to represent individuals, from 2016-2018, none of the 45 prisoners who faced parole appeals in 21 different counties had counsel appointed. Eight of them faced two appeals during that time.¹

The Assistant Attorney General (AG) focuses on defending the board's authority to exercise its discretion and the propriety of its procedures. The Assistant AG does not communicate with the incarcerated individual, provide the individual with any assistance in navigating the appeal process, or argue the facts that make the individual a good candidate for release.

Appointed counsel would meet with the individual to provide information about the process and assurance that his or her interests will be represented. These attorney/client meetings can be invaluable to the case. The individual knows his or her file better than anyone and can often identify weaknesses in the prosecutor's appeal. Sometimes the individual has relevant information of which the Assistant AG is unaware.

Counsel for the individual is also very helpful during oral argument in the Circuit Court. In addition to making the legal arguments to the Court, the attorney can encourage the frustrated individual to abstain from making unwise statements in court or writing to the judge. Counsel can also advise their clients about the lengthy process, the challenges involved, how to conduct themselves during the interim and how to handle any subsequent meetings with the Board.

Counsel is also critical to making the determination whether to appeal the Circuit Court decision revoking parole to the Court of Appeals. Sometimes it is in the individual's best interest to wait for the Board to grant another parole. Sometimes it is not. Appointed counsel could consult with the Assistant AG in developing the most effective strategy for ultimately ensuring the grant of parole is honored. If pursuing an appeal of the Circuit Court's decision is in the individual's best interest, a lawyer who understands the factual and legal arguments would handle the case instead of forcing unprepared incarcerated individuals who lack the resources and ability, to proceed on their own.

¹ These numbers were obtained from cross-references of data from the Michigan Department of Corrections, the Court of Appeals, Circuit Court dockets, and the State Appellate Defender Office. See also Appendices A and B.

PRISONS & CORRECTIONS SECTION

Although there are not a great many of these parole appeals, the consequences to the affected individuals are substantial. Providing appointed counsel would be relatively inexpensive for those counties that choose to file appeals, although associating a cost with the choice to appeal may encourage some prosecutors to be more selective. In the alternative, the courts could appoint SADO at no cost.

Where a county prosecutor appears or a victim has representation, an unrepresented incarcerated individual is no match in litigating complex legal issues. The inequity is plain. The Prisons and Corrections Section believes it is essential, as a matter of fairness, that prisoners who are unable to hire counsel to defend these appeals have counsel appointed to represent them.

While there is no right to have a parole granted in Michigan and therefore no right to counsel in the parole decision-making process, once a person has been released, a liberty interest attaches. Michigan already recognizes the right to counsel in the context of parole revocation proceedings and appoints counsel in such proceedings where the parolee is indigent.

The cases where a decision to grant parole has been made but the prisoner's release has been stayed by a prosecutor's or victim's appeal fall in something of a gray area. The situation, however, is most similar to revocation proceedings. The Parole Board's decision-making process has ended with an outcome favorable to the incarcerated individual. The person has a scheduled release date and is simply waiting to walk through the gates. The prosecutor or victim is trying to prevent the Board's decision to grant release from taking effect. At that point, but for the intervention of a third party, the incarcerated individual would be at liberty in the community, at which point he or she would have an undisputed right to the appointment of counsel to defend against his or her return to prison.

We urge the Court to recognize the right to counsel in the context of these appeals and to amend the court rule to require that counsel is appointed for indigent individuals.

We note that several members of the Section Council would urge you to also require the appointment of counsel for victims who choose to appeal a parole grant but cannot afford retained counsel. The rationale is that allowing prisoners a right to an attorney while victims must hire their own or represent themselves would place victims at a disadvantage relative to the person who victimized them.

Attached are two appendices. Appendix A summarizes facts about the 53 parole appeals filed by victims and prosecutors from Jan. 2016 – Dec. 2018. Appendix B

PRISONS & CORRECTIONS SECTION

briefly describes some cases that illustrate the consequences of these appeals for prisoners.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,



Marilena David-Martin (P73175)
Chair

Deputy Director
State Appellate Defender Office
645 Griswold, Suite 3300
Detroit, MI 48226
mdavid@sado.org
313-256-9833 x 2926

Appendix A: Facts about parole appeals by prosecutors/victims (2016-2018)

Note: This data was compiled by hand and may be incomplete. Many trial courts have little or no information online. If there was no appeal to the Court of Appeals, it was often impossible to confirm that no counsel was appointed or to see what happened in the trial court. On some points the numbers are more suggestive than exact.

Number and Frequency of Appeals

- For the entire period there were 53 appeals filed. For eight people, there were two appeals each, so the 53 cases involved 45 prisoners.
- The appeals came from 21 different counties:
 - 16 from Monroe (12 people)
 - 9 from Macomb (8 people)
 - 6 from Wayne (4 people)
 - 3 from Genesee
 - 2 from Ingham
 - 2 from Oceana (1 person)
 - 1 each from 15 other counties.
 - Notably, none were from Oakland County, which appealed routinely until appellate decisions set a standard that generally supported the Parole Board's exercise of discretion.
- Of the 45 prisoners, 20 were convicted of sex offenses and 11 were convicted of murder, manslaughter or solicitation to murder. Among the other offenses were assault, home invasion and aggravated stalking.
- 16 appeals (involving 14 people) were initiated by victims, not prosecutors.
 - All the appeals from Wayne and Ingham Counties were by victims, as were two of three from Genesee.
 - Victim appeals run the risk of being dismissed on procedural grounds or denied for lack of merit. We know that at least five failed in the trial court.
 - In one case the victim appealed twice, i.e. two different Parole Board decisions, and in another the victim initiated the appeal of the first Parole Board decision and the prosecutor appealed the second.
- It appears that counsel was not appointed to represent the prisoner in any cases.
 - Retained counsel appeared in seven cases.
 - SADO, which used to be appointed by some counties to represent the prisoners, has not received an appointment for several years.
- Fourteen circuit court decisions (involving 13 prisoners) that reversed parole grants were appealed to the Court of Appeals with the following outcomes:

- Five were reversed by the Court of Appeals
- In seven, the Court of Appeals denied leave
 - The Supreme Court remanded for full consideration in three; leave applications to the Supreme Court are pending in two
 - In one, reconsideration was recently denied by the Court of Appeals
 - In one, denial occurred in early April
- In one, the Court of Appeals affirmed the circuit court and the Supreme Court denied leave
- In one, the Court of Appeals affirmed, and it does not appear there was an appeal to the Supreme Court
- Of the 45 people who had one or two parole grants appealed:
 - 27 have been paroled
 - 2 have been discharged from custody (we don't know if they were paroled or served their whole sentence)
 - 16 are still in prison.

Timeline of Appeals

- The timeline of the appeal ranged from a few months (for appeals that were filed recently or were quickly dismissed by the trial court) to 33 months and counting.
- The median extra time prisoners served as a result of appeals was 12 months.
- *Note:* The date the appeal was served was subtracted from either the date the person was paroled or March 3, 2019 (the date this appendix was compiled) for people who are still incarcerated in an attempt to measure the consequences of these appeals to prisoners.

Appendix B: Sample Cases

- **Richard McBrayer** was convicted in Macomb County of CSC1 and sentenced to serve 20-40 years. He first became eligible for parole in 2010. He was first granted parole in 2016 but the victim appealed. The trial court reversed the Parole Board's decision. The trial court was upheld on appeal. The Parole Board subsequently granted parole again and Mr. McBrayer was released. However, the victim saw him in the community and persuaded the prosecutor to appeal. The trial court reversed the Parole Board's decision and Mr. McBrayer was returned to prison. The Court of Appeals recently affirmed the trial court's decision.
- **Ronald Spears** was serving 7.6-30 years for malicious destruction of property as a fourth offender in Monroe County. The prosecutor appealed the first decision to grant parole in 2014. The Parole Board responded by rescinding its decision. The prosecutor appealed the second parole grant in February 2016. The trial court reversed the Parole Board. There was no appeal to the Court of Appeals. The prosecutor appealed the third parole grant in May 2017. The trial court reversed the Parole Board again. This time there was an appeal and the Court of Appeals reversed the trial court in May 2018. Spears was finally paroled on November 28, 2018, 21 months after the second appeal was filed and four years after the board's initial decision to release him.
- **Antonio Evans** was serving 10-20 years for murder plus two for felony firearm from Wayne County. The victim appealed the Parole Board's first decision to grant release in August 2016. Although the trial court reversed the Parole Board, there was no appeal to the Court of Appeals. The Parole Board shortly granted parole a second time. The victim appealed that decision in February 2017. The trial court again reversed the Parole Board. That time the Court of Appeals reversed the trial court in an order dated September 14, 2017 that was given immediate effect. The appeal was dismissed by the trial court on November 29, 2017. Evans was paroled on January 30, 2018. The victim's appeals cost him an additional 18 months in prison.
- **Robert Stumpmier** was convicted by a Monroe County jury of six counts of using a computer to commit a crime. He was sentenced to 1.5-7 years. The Parole Board was apparently prepared to release him on his earliest release date (ERD) of December 5, 2016. The prosecutor served an appeal on October 6, 2016. The trial court reversed the Parole Board and there was no further appeal. The Board granted parole again and the prosecutor served another appeal on November 17, 2017. The trial court again reversed the Parole

Board. This time the Court of Appeals denied leave to appeal. The Michigan Supreme Court remanded the case to the Court of Appeals for consideration on the merits on January 23, 2019. On July 25, 2019, the Court of Appeals reversed the trial court and reinstated his parole.

- **Rex Layman** was sentenced in Monroe County to 8-30 years for CSC1. His ERD was in 2004 but the Parole Board repeatedly denied parole. It decided to grant release in 2009 and 2011, but rescinded its decision both times at the request of the prosecution. In 2013, the Board granted parole again but the prosecutor appealed and the trial court reversed the Board's decision. There was no further appeal. In 2015 the Board denied parole.

The Parole Board granted parole again in 2017. The prosecutor appealed in May 2017 and the trial court reversed the Board's decision. This time, Mr. Layman retained counsel and appealed to the Court of Appeals. The Court of Appeals denied leave in December 2017. The Michigan Supreme Court remanded to the Court of Appeals in April 2018. The Court of Appeals reversed the trial court's decision on September 20, 2018. Mr. Layman was finally paroled on January 3, 2019, 19 months after the prosecution filed its last appeal and roughly nine years after the prosecution began its campaign to keep him in prison.

- **David Albers** was sentenced in Macomb County to 9-30 years for solicitation of murder. His ERD was July 27, 2017. The Parole Board granted parole. The prosecutor served a parole appeal on August 4, 2017. The trial court reversed the Parole Board's decision on January 4, 2018. The Court of Appeals granted leave to appeal on June 13, 2018 and reversed the trial court on January 29, 2019.