

VACATION & SECURED LEAVE COURT RULE

Issue

Should the Representative Assembly request that the Michigan Supreme Court adopt a court rule providing a mechanism for members of the Bar to secure periods of leave for vacation or other purposes?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to provide a mechanism for attorneys to secure periods of personal leave from the demands of the profession by providing advance notice to the courts in which the lawyers have matters pending.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment to Chapter 8 of the Michigan Court Rules by adding MCR 8.128 as follows:

RULE 8.128 SECURED LEAVE PERIOD

(A) Purpose and authorization. In order to secure for the parties to actions and proceedings pending in the Circuit, District, and Probate Courts, and to the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy one or more secure leave periods each year as provided in this rule.

(B) Length and number. A secure leave period shall consist of one or more complete calendar weeks. During any calendar year, an attorney's secure leave periods pursuant to this rule shall not exceed, in the aggregate, three calendar weeks. A calendar week begins on a Monday and ends on the following Friday.

(C) Designation and effect. To designate a secure leave period, an attorney shall file a written designation, containing the information required by subsection (D), with the official specified in subsection (E) and within the time provided in subsection (F). Upon such filing, the secure leave period so designated shall be deemed allowed without further action of the court, and the attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding in the Circuit, District, or Probate Courts during that secure leave period.

(D) Content of designation. The designation shall contain the following information:

- (1) the attorney's name, address, telephone number, and State Bar number;
- (2) the date of the Monday on which the secure leave period is to begin and of the Friday on which it is to end;
- (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this rule;

(4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding; and

(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.

(E) Where to file designation. The designation shall be filed with the clerk of each court in which the attorney has filed an appearance relating to a pending matter and shall be served upon all attorneys of record and *pro se* litigants.

(F) When to file designation. To be effective, the designation shall be filed:

(1) no later than 90 days before the beginning of the secure leave period; and

(2) before any trial, hearing, deposition, or other matter has been regularly scheduled for a time during the designated secure leave period.

(G) Procedure when court proceeding scheduled despite designation. If, after a designation of a secure leave period has been filed pursuant to this rule, any trial, hearing, in-court deposition or other in-court proceeding is scheduled for a time during the secure leave period, the attorney shall file with the clerk of the court in which the proceeding was scheduled, and serve on all parties a copy of the designation and a certificate of service. Any party may, within ten days after service of the copy of the designation and certificate of service, file a written objection with the clerk of the court and serve a copy on all parties. The only ground for objection shall be that the designation was not in fact filed in compliance with this rule. If no objection is filed, that court shall reschedule the matter for a time that is not within the attorney's secure leave period. If an objection is filed, the court shall determine whether the designation was filed in compliance with this rule. If the court finds that the designation was filed as provided in this rule, it shall reschedule the matter for a time that is not within the attorney's secure leave period. If the court finds the designation was not so filed, it shall enter any scheduling, calendaring, or other order that it finds to be in the interests of justice.

(H) Procedure when deposition scheduled despite designation. If, after a designation of a secure leave period has been filed pursuant to this rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the designation with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period. If the party that noticed the deposition does not reschedule the deposition, the noticing party must promptly file a motion with the court seeking a determination of whether the notice was properly filed and served. If the court finds that the designation was filed as provided in this rule, it shall reschedule the deposition for a time that is not within the attorney's secure leave period. If the court finds the designation was not so filed, it shall enter any scheduling, calendaring, or other order that it finds to be in the interests of justice.

(I) Other leave. Nothing in this rule shall limit the inherent power of the courts to reschedule a case to allow an attorney to enjoy a leave during a period that has not been designated pursuant to this rule, but there shall be no entitlement to any such leave.

Synopsis

The proposed addition to the Michigan Court Rules provides a mechanism for lawyers to secure personal time away from the demands of the profession by providing advance notice to the courts and other parties. After providing the proper notice, neither opposing counsel nor the court may schedule matters during the lawyer's secure leave period.

Background

The proposed court rule has been supported by the State Bar of Michigan Criminal Law Section and the Criminal Defense Attorneys of Michigan. The rule is modeled on a comparable rule in the state of North Carolina. Some administrative regions of Texas also provide a similar court rule.

Adopting a rule such as the one proposed will enhance the quality of life for practitioners. It is well known that rates of substance abuse and other self-harming behavior are reduced when professionals are able to balance the demands of work with other areas of one's life. Adopting a rule that provides for an easy way to secure leave will encourage lawyers, especially solo practitioners, to take much needed time away from work. Having the ability to secure periods of time away from professional demands will enhance lawyers' ability to provide services to clients.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on April 13, 2019

Should the Representative Assembly request that the Michigan Supreme Court adopt a court rule providing a mechanism for members of the Bar to secure periods of leave for vacation or other purposes?

- (a) Yes
- or
- (b) No