

February 26, 2021

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2020-17 – Proposed Addition of Rule 3.906 to the Michigan Court Rules

Dear Clerk Royster:

At its February 23, 2021 meeting, the Executive Committee of the State Bar of Michigan (the Committee) considered ADM File No. 2020-17.¹ In its review, the Committee considered recommendations from the Access to Justice Policy and Criminal Jurisprudence & Practice Committees.

The Committee voted unanimously to support the addition of Rule 3.906 with amendments to protect the rights of juvenile offenders from the significant harms associated with the use of restraint. To that end, the Committee recommends several revisions to strengthen the presumption against the use of juvenile restraints by adding language that supports the following principles:

- the use of restraints on juveniles in court must be limited to a narrowly circumscribed set of reasons;
- the use of restraints on juveniles must be subject to a strong evidentiary standard;
- the explicit consideration of less restrictive means is necessary to protect juveniles from the risk of significant physical and psychological harm resulting from the use of restraints; and
- the court should weigh specific, enumerated factors when it determines the risk a juvenile offender poses.

Based on these principles, the Committee recommends the following revisions to Rule 3.906:

[NEW] Rule 3.906 Use of Restraints on a Juvenile

(SBM-proposed amendments are in bold, underlined, and strike-through)

(A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, ~~may~~**shall** not be used on a juvenile during a court proceeding and must be removed prior to the juvenile being brought into the courtroom ~~and/or~~ appearing before the court, unless the court finds **by clear and convincing evidence that**~~that the use of restraints is necessary due to one of the following factors:~~

¹ Under Article III, §9 of the State Bar of Michigan Bylaws, “[t]he Executive Committee may take a position on a proposed Court Rule if the deadline for a response does not allow for consideration by the Board, provided the position is not inconsistent with policies adopted by the Board or Representative Assembly.”

(1) The use of restraints is necessary for the following reasons:

- ~~(a)(1) Instruments of restraint are necessary to prevent~~ **The prevention of physical harm to the juvenile or another person;**
~~(b)(2) The juvenile's has a recent history of disruptive courtroom behavior that has either placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or~~
~~(c)(3) There is a founded belief that the~~ **The juvenile's recent behavior presents a substantial risk of flight from the courtroom;**

and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, participation by video or other electronic means, the presence of court personnel, law enforcement officers, or bailiffs, or the use of a support person or support animal. In determining alternatives to restraints, the court shall consider the juvenile's present mental health.

(3) When making a determination under subsection (1), the court shall consider the following factors:

- (a) Any past escapes or attempted escapes by the juvenile;**
(b) Evidence of a present plan of escape by the juvenile;
(c) Any believable threats by the juvenile to harm others during court;
(d) Any believable threats by the juvenile to harm himself or herself during court;
(e) Evidence of any self-injurious behavior on the part of the juvenile;
(f) The possibility of rescue attempts by other offenders still at large.

(B) The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall **make written** ~~state on the record or in writing its findings of fact in support of the order.~~

(C) Any restraints shall allow the juvenile limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a juvenile be restrained using fixed restraints to a wall, floor, or furniture.

(D) If the only risk found by the court is that listed in (A)(1)(c), the court shall only authorize the use of leg restraints.

We thank the Court for the opportunity to comment on the proposed addition.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Robert J. Buchanan, President