

**PROPOSED AMENDMENTS TO MICHIGAN COURT RULE 2.002  
REGARDING WAIVER OR SUSPENSION OF FEES AND COSTS FOR  
INDIGENT PERSONS**

Issue

Should Michigan Court Rule 2.002 be revised to provide consistency across jurisdictions in the treatment of fee waiver requests made by indigent persons lacking the ability to pay filing fees in Michigan courts?

RESOLVED, that the State Bar of Michigan recommend amendments to Michigan Court Rule 2.002 to allow indigent persons lacking the ability to pay filing fees to have such fees waived through a process that is expeditious, humane, efficient in terms of litigant and court system administrative time, and consistent in all Michigan courts, and to provide for a statewide uniform standard for Michigan courts to determine indigency.

The following amendments are proposed to MCR 2.002:

**RULE 2.002 WAIVER OR SUSPENSION OF FEES AND COSTS FOR INDIGENT PERSONS  
WITH PROPOSED AMENDMENTS UNDERLINED IN BOLD**

(A) Applicability.

(1) Only a natural person is eligible for the waiver or suspension of fees and costs under this rule.

(2) Except as provided in subrule (H), for the purpose of this rule “fees and costs” applies only to filing fees required by law. **The granting of a fee waiver or suspension in a case waives all filing fees in the case from the date of filing the affidavit through the date of judgment in the case or the adjudication of the post-judgment proceedings, unless there is a finding of a change in circumstances pursuant to subrule (I) of this rule.**

(B) Execution of Affidavits, **Form (MC 20), Filing Date.**

**(1)** An affidavit required by this rule may be signed either:

**(a)** by the party in whose behalf the affidavit is made or

**(b)** by a person having personal knowledge of the facts required to be shown, if the person in whose behalf the affidavit is made is unable to sign it because of minority or other disability. The affidavit must recite the minority or other disability.

**(2) Unless otherwise permitted in this court rule, no court shall require additional information prior to approval of a request to waive or suspend fees other than that information as provided in form MC 20 as approved by Michigan’s State Court Administrative Office. So long as the information in form MC 20 satisfies one of the criteria for a waiver (i.e., the criteria in subrule (C), (D), or (E) of this rule, the fees shall be waived).**

**(3) Consistent with MCR 2.107(G), the filing date for the pleadings accompanied by a request to waive fees shall be the date the pleadings and fee waiver request are presented to the court for review. If the fee waiver is denied, the party requesting the fee waiver has 14 days from the date of denial or the date of hearing on the denial, whichever is later, to pay the fee and preserve the original filing date for purposes of the associated pleadings.**

(C) Persons Receiving Public Assistance. If a party shows by ex parte affidavit or otherwise that he or she is receiving any form of **means-tested** public assistance, the payment of fees and costs as to that party shall be ~~suspended~~ **waived**. **For purposes of this rule, means-tested public assistance includes but is not limited to:**

**(1) Food Assistance Program through the State of Michigan;**

**(2) Medicaid;**

**(3) Financial Independence Program through the State of Michigan;**

**(4) Women, Infants, and Children benefits;**

**(6) Supplemental Security Income through the federal government; or**

**(7) any other federal, state, or locally administered means-tested income or benefit.**

**(D) Representation by a Legal Services Program. If a party is represented by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, the payment of fees and costs as to that party shall be waived.**

**(E) Other Indigent Persons and Financial Hardships.** If a party shows by ex parte affidavit that he or she is unable because of indigency **or financial hardship** to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation. **For purposes of this rule, indigency is defined as living in a household whose gross household income is under 200% of the federal poverty level.**

**(F) Denial of a Request to Waive/Suspend Fees.** If the court denies a request to waive or suspend fees, the court, at the time of denial, must state the reason for the denial in writing and provide the reason for the denial to the requesting party. The requesting party has 14 days from the date of denial to request a hearing on the denial. Any hearing held as a result of a denial must be held by the court within 14 days of receiving the request for a hearing.

**(G) Domestic Relations Cases; Payment of Fees and Costs by Spouse.**

(1) In an action for divorce, separate maintenance, or annulment or affirmation of marriage, the court shall order suspension of payment of fees and costs required to be paid by a party and order that those suspended costs be paid by the spouse, if that party

(a) is qualified for a waiver or suspension of fees and costs under subrule (C),(D), or (E); and

(b) is entitled to an order requiring the spouse to pay attorney fees.

(2) If the spouse is entitled to have the fees and costs waived or suspended under subrule (C), (D), or (E) the fees and costs are waived or suspended for the spouse.

**(H) Payment of Service Fees and Costs of Publication for Indigent Persons.** If payment of fees and costs has been waived or suspended for a party and service of process must be made by an official process server or by publication, the court shall order the service fees or costs of publication paid by the county or funding unit in which the action is pending, if the party submits an ex parte affidavit stating facts showing the necessity for that type of service of process.

**(I) Reinstatement of Requirement for Payment of Fees and Costs.** If the payment of fees or costs has been waived or suspended under this rule, the court may on its own initiative order the person for whom the fees or costs were waived or suspended to pay those fees **if, during the pendency of the action, the court makes a finding of fact that there has been a change in circumstances** and the reason for the waiver or suspension no longer exists. **A person for whom the fees or costs were waived or suspended is required to notify the court if the reason for waiving/suspending the fees and costs no longer exists.**

**If fees or costs are reinstated, the court shall not delay entry of orders or judgments or in any other way delay the progress of the case pending payment of the fees.**

**(J) Review of Fee Waiver Petitions. Only if a court finds that a request for a fee waiver is incomplete or if a court has a reasonable belief that a request is inaccurate, the court may conduct further inquiries reasonably necessary to prove indigency or financial hardship. Any hearing regarding these further inquiries shall be on the record. The notice of hearing shall indicate the specific issues that are subject to further inquiry.**

### **Synopsis**

The lack of a fee waiver process in Michigan that is consistent across jurisdictions has been repeatedly identified as an issue needing resolution for some time. The recent State Bar of Michigan 21st Century Practice Task Force Report emphasized this need in its 2016 report. In 2011, the Judicial Crossroads Task Force Report noted that the lack of a consistently applied standard for determining indigency was a critical challenge to be addressed. Thus, the time for resolving this issue is long overdue.

Over the past several months, the State Bar of Michigan Consistent Fee Waiver Workgroup (Workgroup), has drafted proposed revisions to MCR 2.002. The Workgroup was created by State Bar President Donald Rockwell, who directed the Workgroup to identify possible

solutions to the problems created by the lack of a statewide indigency standard and a consistent fee waiver process.

In beginning this work, State Bar staff asked Michigan's legal aid programs for information on how fee waiver requests were being handled in their respective jurisdictions. Their anecdotes demonstrated significant inconsistencies across jurisdictions including processes that were burdensome and inefficient, and, in some cases, not contemplated by the rule. Frequently, those requesting waivers were put through inquiries that could only be considered humiliating and invasive.

The Workgroup considered many of the issues indigent litigants encounter across the state when requesting fee waivers, and made thoughtful amendments which are included in the draft rule. The draft rule provides for the uniform and consistent treatment of fee waiver requests in Michigan courts, a statewide standard for indigency for fee waiver requests, and a process that is efficient in terms of litigant and court system administrative time.

### **Background Information**

Fee waivers are essential to ensure adequate due process protections for low-income people. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court found that the Due Process Clause of the Fourteenth Amendment prohibits a state from denying welfare recipients access to its divorce courts solely because of their inability to pay the fees associated with bringing an action. The discussion of consistent fee waivers is not about whether waiving fees for indigent people is good policy. Rather, the discussion is about ensuring the proper implementation of a clear constitutional mandate.

### **Michigan Approach**

In Michigan, indigent litigants lacking the ability to pay court filing fees can request to have those fees waived under MCR 2.002. However, treatment of fee waiver requests is inconsistent, and there is no statewide standard for determining indigency. This results in non-uniform application of the rule in courts across the state, with the fee waiver experience varying widely from court to court.

### **Additional Considerations**

1. This draft rule, like the current rule, calls for the filing of an affidavit (although the current rule also permits attestation in front of a court clerk). The Workgroup understands that the trend in many courts, especially as courts move to e-filing, is to move away from notarization and to attestations or declarations. The Workgroup did not recommend changing the affidavit requirement because the requirement is contemplated both by the current rule and by the current State Court Administrative Office (SCAO)-approved form. However the Workgroup strongly supports the move away from affidavits and toward attestations or declarations as the Court transitions to the e-filing process. If the SCAO e-filing group is eliminating affidavit requirements in other rules, we encourage SCAO to eliminate this requirement in MCR 2.002 and MC 20.

2. The Workgroup discussed at some length whether or not to cite the SCAO-approved form, MC 20, in the rule. The Workgroup decided to do so. An overall goal of the Workgroup was to simplify the fee waiver process; the Workgroup is aware of practices in many courts that utilize locally-created forms and require extensive and detailed financial documentation from litigants before considering their fee waiver requests. The Workgroup felt that citing the specific form was necessary to emphasize the limited financial inquiry contemplated by the rule.

3. The Workgroup discussed at length the amount of personal information currently collected on MC 20, which includes the petitioner's MDHHS case number and other financial information. The Workgroup feels strongly that the information collected should not be accessible by the public, which could potentially be used for illegal and malicious purposes. Further, with courts moving to e-filing, the Workgroup believes that there is an even greater risk that personal information collected on MC 20 could be accessed by unauthorized members of the public. Consequently, the Workgroup encourages the SCAO e-filing group to take steps to ensure that personal information collected on MC 20 is kept confidential.

4. It is the Workgroup's intent that in these circumstances, the determination of eligibility for a fee waiver would be based on the income actually available to the applicant. The Workgroup discussed the situation (for example a divorce filed in a domestic violence situation) where a household might have significant income but that income is not available to the person filing the pleading and seeking the fee waiver. This approach is consistent with the rules for determining income eligibility for most other governmental programs.

### **Opposition**

The Workgroup circulated the draft rule to a group of diverse stakeholders, including judicial and court administrator associations. The Workgroup considered all feedback received and edited the draft rule to respond to the feedback as appropriate. The Workgroup notes a concern expressed by some that, while courts can conduct further inquiries reasonably necessary to prove indigency as provided in paragraph (J) of the draft rule, when the court finds that a request for a fee waiver is incomplete or inaccurate, the draft rule reduces judicial discretion. While most commenters expressed support for the indigency standard set at 200%, one commenter noted that it is not consistent with MCR 1.111(A)(3)(a) regarding interpreters, which defines indigency as a household with income under 125% of the federal poverty level.

### **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 21, 2018**

Should Michigan Court Rule 2.002 be revised to provide more consistency in the treatment of fee waiver requests made by indigent persons lacking the ability to pay filing fees in all Michigan courts?

RESOLVED, that the State Bar of Michigan recommend amendments to Michigan Court Rule 2.002 that will allow indigent persons lacking the ability to pay filing fees to have those fees waived through a process that is expeditious, humane, efficient in terms of litigant and court system administrative time, and consistent in all Michigan courts and to provide for a statewide uniform standard for Michigan courts to determine indigency.

The above Resolution should be adopted.

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