Agenda
Public Policy Committee
July 26, 2019 – 8:00 am
State Bar of Michigan, Room 2

For those joining by phone, the conference call number is 1.877.352.9775, passcode 6516204165#.

Public Policy Committee……Dennis M. Barnes, Chairperson

A. Reports
1. Approval June 10, 2019 Minutes
2. Public Policy Report

B. Court Rules

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

The proposed amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of MCR 2.226 and 8.125 would continue the process for design and implementation of the statewide electronic-filing system.

Status:	09/01/19 Comment Period Expires.
Referrals:	05/16/19 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:	Daniel D. Quick

2. ADM File No. 2018-12: Proposed Amendment of MCR 2.612

The proposed amendment of MCR 2.612 would clarify that writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. This language was previously included in the court rules before they were rewritten in 1985.

Status:	08/01/19 Comment Period Expires.
Referrals:	04/19/19 Civil Procedure & Courts Committee; Appellate Practice Section; Litigation Section.
Comments:	Civil Procedure & Courts Committee; Family Law Section.
Liaison:	E. Thomas McCarthy, Jr.

3. ADM File No. 2018-18: Proposed Amendment of MCR 3.106

The proposed amendment of MCR 3.106 would require trial courts to provide a copy of each court officer's bond to SCAO along with the list of court officers.

Status:	09/01/19 Comment Period Expires.
Referrals:	05/16/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Real Property Law Section.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Liaison:	Hon. Shauna L. Dunnings

4. ADM File No. 2018-16: Proposed Amendment of MCR 3.201 and Proposed Addition of MCR 3.230

The proposed amendment of MCR 3.201 and proposed addition of MCR 3.230 would provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, et seq.) to establish a parent's paternity or support obligation through a summary action.

Status: 08/01/19 Comment Period Expires.
Referrals: 04/22/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children's Law Section Family Law Section.
Comments: Access to Justice Policy Committee; Family Law Section.
Liaison: Victoria A. Radke

5. ADM File No. 2018-02: Proposed Amendment of MCR 3.501

The proposed amendment of MCR 3.501 would require 50 percent of unclaimed class action funds be disbursed to the Michigan State Bar Foundation or other distribution as deemed appropriate by the court. This proposal is a slightly modified version of a proposal submitted to the Court by the Michigan State Planning Body and Legal Services Association of Michigan.

Status: 09/01/19 Comment Period Expires.
Referrals: 05/10/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Consumer Law Section; Litigation Section; Negligence Section.
Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee. Comment provided to the Court included in materials.
Liaison: E. Thomas McCarthy, Jr.

6. ADM File No. 2017-02: Proposed Amendment of MCR 6.508

The proposed amendment of MCR 6.508 would enable a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, and it was reasonably likely the defendant and court would have accepted the plea (which would have been less severe than the judgment or sentence issued after trial) but for the improper advice.

Status: 09/01/19 Comment Period Expires.
Referrals: 05/01/19 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Liaison: Valerie R. Newman

7. ADM File No. 2019-03: Proposed Amendment of MCR 8.110

The proposed amendment of MCR 8.110 would provide additional opportunity for input by judges in the process for chief judge selection in courts, would clarify that vacation leave time may be taken by notifying the chief judge, and would make vacation leave policies more uniform from one court to another. Under the proposed amendment, a chief judge could require a judge to forego vacation, judicial, or education, or professional leave to ensure docket coordination and coverage.

Status: 08/01/19 Comment Period Expires.
Referrals: 04/19/19 Civil Procedure & Courts Committee.
Comments: Comments provided to the Court included in materials.
Liaison: Victoria A. Radke

8. ADM File No. 2018-30: Proposed Amendment of MCR 8.115

The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another, and broaden the ability of litigants to use their devices in support of their court cases when possible.

Status: 09/01/19 Comment Period Expires.

Referrals: 05/16/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Consumer Law Section; Family Law Section; Litigation Section; Negligence Section; Probate & Estate Planning Section; Real Property Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Family Law Section; Probate & Estate Planning Section.
Comments provided to the Court included in materials.

Liaison: Daniel D. Quick

9. ADM File No. 2018-28: Proposed Amendment of Court of Claims LCR 2.119

The proposed amendment of LCR 2.119 for the Court of Claims would require a moving party to affirmatively state that he or she has sought concurrence in the relief sought on a specific date, and opposing counsel denied concurrence in the relief sought.

Status: 09/01/19 Comment Period Expires.

Referrals: 05/16/19 Civil Procedure & Courts Committee; Government Law Section; Litigation Section.

Comments: Civil Procedure & Courts Committee.

Liaison: Andrew F. Fink, III

C. Legislation

1. HB 4378 (Pagan) Civil rights; public records; identity of parties proceeding anonymously in civil actions alleging sexual misconduct; exempt from disclosure under freedom of information act. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

Status: 03/14/19 Referred to House Committee on Judiciary.

Referrals: 04/29/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Litigation Section; Negligence Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

Liaison: Hon. Cynthia D. Stephens

2. HB 4535 (Berman) Law enforcement; law enforcement information network (LEIN); access to law enforcement information network (LEIN); allow for defense attorneys under certain circumstances. Amends sec. 4 of 1974 PA 163 (MCL 28.214) & adds sec. 4a.

Status: 04/30/19 Referred to House Committee on Judiciary.

Referrals: 05/07/19: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section

Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

Liaison: Kim Warren Eddie

3. SB 0231 (Runestad) Civil procedure; service of process; proof of service; provide for verification of service. Amends sec. 1910 of 1961 PA 236 (MCL 600.1910).

Status:	03/19/19 Referred to Senate Committee on Judiciary & Public Safety.
Referrals:	04/29/19: Civil Procedure & Courts Committee.
Comments:	Civil Procedure & Courts Committee.
Liaison:	Andrew F. Fink, III

D. Consent Agenda

To support the positions submitted by the Criminal Jurisprudence and Practice Committee and Criminal Law Section (if applicable) on each of the following items:

Model Criminal Jury Instructions

1. M Crim JI 3.8

The Committee proposes amending the language of M Crim JI 3.8 to make it easier to read and understand, and proposes adding a footnote to clarify its use in light of many instructions that contain lesser-included offenses in the instruction itself.

2. M Crim JI 10.10, 10.10a, 10.10b, and 10.10c

The Committee proposes new instructions, M Crim JI 10.10, 10.10a, 10.10b and 10.10c, for use where gang-related crimes found in MCL 750.411u and 750.411v have been charged.

3. M Crim JI 7.15, 7.16, 7.21, and 7.22

The Committee proposes amending components of the self-defense instructions found in M Crim JI 7.15, 7.16, 7.21, and 7.22 to correct and clarify amendments to the instructions adopted by the State Bar of Michigan Standing Committee on Criminal Jury Instructions in response to the enactment of the Self-Defense Act, MCL 780.971 et seq. The self-defense instructions were amended in 2007 pursuant to language in MCL 780.972(1) regarding a person "not engaged in the commission of a crime at the time" when deadly force was used. They direct that self-defense is only available where the defendant was not committing a crime. MCL 780.972(1) actually addresses the duty to retreat before using deadly force. MCL 780.974 states that the common law right to self-defense was not diminished by the Act. *People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974), states that a defendant does not necessarily lose the right to self-defense while committing another offense if that other offense was not likely to lead to the other person's assaultive behavior. The current instructions state that self-defense is barred if the defendant is committing any crime, even one not likely to lead to assaultive behaviors, and would also appear to bar self-defense when the defendant is charged with, *inter alia*, being a felon in possession of a firearm, contrary to holdings in *People v Dupree*, 486 Mich 693 (2010), and *People v Guajardo*, 300 Mich App 26 (2013). The proposal amends the Use Note to M Crim JI 7.15, eliminates language in M Crim JI 7.21 and 7.22 that bars self-defense when the defendant is engaged in a criminal act, and combines acts using deadly and non-deadly force in M Crim JI 7.16.

Minutes
Public Policy Committee
June 10, 2019

Committee Members: Dennis M. Barnes, Joseph J. Baumann, Hon. Shauna L. Dunnings, Kim Warren Eddie, E. Thomas McCarthy, Jr., Richard D. McLellan, Valerie R. Newman, Daniel D. Quick, Victoria A. Radke
SBM Staff: Janet Welch, Peter Cunningham, Kathryn Hennessey, Carrie Sharlow
GCSI Staff: Marcia Hune

A. Reports

1. Approval of April 12, 2019 Minutes

The minutes were unanimously approved with E. Thomas McCarthy, Jr. and Valerie R. Newman abstaining.

B. Court Rules

1. ADM File 2018-27: Proposed Rescission of MCR 8.123

Because counsel appointment plan review and data collection regarding payments for appointed counsel is now, by statute, a requirement of the Michigan Indigent Defense Commission under MCL 780.989 and MCL 780.993, this proposed amendment would rescind MCR 8.123, which requires certain data be collected from courts and plans for appointment be approved by SCAO.

The following committees offered recommendations: Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee.

The committee voted unanimously (9) to support the rescission of MCR 8.123.

2. ADM File No. 2018-27: Proposed Rescission of Administrative Order No. 1997-5

The proposed rescission of Administrative Order No. 1997-5 is consistent with the current practice of appointment of counsel, which is now governed by statute and regulated through the Michigan Indigent Defense Commission.

The following committees offered recommendations: Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee.

The committee voted unanimously (9) to support the rescission of Administrative Order No. 1997-5.

C. Legislation

1. HB 4407 (Guerra) Courts; district court; authority of district court magistrate; expand. Amends sec. 8512 of 1961 PA 236 (MCL 600.8512).

The following committees offered recommendations: Criminal Jurisprudence & Practice Committee.

The committee voted unanimously (9) that the legislation is *Keller* permissible in improving the functioning of the courts.

The committee voted unanimously (9) to support HB 4407.

2. HB 4509 (VanSingel) Civil procedure; evictions; limited liability companies; allow members and others with personal knowledge to represent in certain situations. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

The following committees and sections offered recommendations: Access to Justice Policy Committee, Civil Procedure & Courts Committee, and Real Property Law Section.

The committee voted unanimously (9) that the legislation is *Keller* permissible in improving the functioning of the courts and affecting the regulation and discipline of attorneys.
The committee voted unanimously (9) to oppose the legislation for the following reasons:

- **Individuals may choose to form a limited liability corporation (LLC) to obtain the benefits of that business structure. However, if an individual chooses to create a LLC, then that distinct corporate entity must be represented by an attorney in landlord-tenant summary proceedings. If litigants want to avoid employing an attorney, they have the choice not to incorporate.**
- **The bill would create a significant exception to Michigan's long-standing rule in eviction proceedings requiring corporations to be represented by a licensed attorney.**
- **Sanctioning non-attorneys to represent corporate entities in litigation would result in a general lowering of expertise in both substantive and procedural aspects of landlord-tenant law, with less accountability for unethical practices.**
- **The proposed language in the bill is vague in several of the key considerations and would be prone to cause confusion or misinterpretation. Specifically:**
    - **Subsection (1) provides that in order for a member to represent the LLC in a summary proceedings action, the member must have "direct and personal knowledge of the facts alleged in the complaint." It is unclear who makes the determination that the member has met the requirements of the statute.**
    - **Under subsection (3), "an individual may not represent the party in a hearing in the summary proceedings unless, before the hearing, a designated employee of the court reviews the file and determines that the verified statement required by subsection (2) (B) has been filed with the court." This requirement is confusing because the designated employee does not verify that the required statement is accurate, only that the statement is present.**
    - **Pursuant to subsection (4), "a party seeking to proceed under this section has the burden of proving that it qualifies to do so." Again, it is unclear to whom must the party prove that they qualify? A court clerk at the time of filing? The Court at the commencement of the initial hearing? Or, only when the issue is raised by the opposing party or counsel?**

D. <u>Other</u>

1. Trial Court Funding Commission Interim Report

The following committees offered recommendations: Access to Justice Policy Committee and Civil Procedure & Courts Committee.

The committee voted unanimously (9) that the legislation is *Keller* permissible in affecting the availability of legal services to society and improving the functioning of the court.
The committee voted unanimously (9) to support the recommendations presented in the Trial Court Funding Commission Interim Report.

SBM STATE BAR OF MICHIGAN

p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

June 21, 2019

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

RE: ADM File No. 2018-27: Proposed Rescission of Rule 8.123 of the Michigan Court Rules and Administrative Order No. 1997-5 (Defenders – Third Circuit Court)

Dear Clerk Royster:

At its June 14, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed court rule and administrative order rescission. As part of its review, the Board considered recommendations from the Access to Justice Policy and Criminal Jurisprudence & Practice committees.

After this review, the Board voted unanimously to support the proposed rescission of Rule 8.123 of the Michigan Court Rules (MCR) and Administrative Order (AO) 1997-5, both of which concern court processes for the appointment of counsel in criminal cases. With the passage of the Michigan Indigent Defense Commission (MIDC) Act, the MIDC is now responsible for regulating the process for appointment of counsel. Therefore, MCR 8.123 and AO 1997-5 should be deleted to reflect that the MIDC, rather than the court, is responsible for assignment of counsel for indigent defendants.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Jennifer M. Grieco, President, State Bar of Michigan

STATE BAR OF MICHIGAN

PUBLIC POLICY POSITION

Bill Number:
HB 4509 (VanSingel) Civil procedure; evictions; limited liability companies; allow members and others with personal knowledge to represent in certain situations. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

Date position was adopted:
June 14, 2019

Board of Commissioners Vote:
Unanimous

Explanation of the position, including any recommended amendments:
The State Bar of Michigan opposes HB 4509.

- Individuals may choose to form a limited liability corporation (LLC) to obtain the benefits of that business structure. However, if an individual chooses to create a LLC, then that distinct corporate entity must be represented by an attorney in landlord-tenant summary proceedings. If litigants want to avoid employing an attorney, they have the choice not to incorporate.
- The bill would create a significant exception to Michigan's long-standing rule in eviction proceedings requiring corporations to be represented by a licensed attorney.
- Sanctioning non-attorneys to represent corporate entities in litigation would result in a general lowering of expertise in both substantive and procedural aspects of landlord-tenant law, with less accountability for unethical practices.
- The proposed language in the bill is vague in several of the key considerations and would be prone to cause confusion or misinterpretation. Specifically:
    - Subsection (1) provides that in order for a member to represent the LLC in a summary proceedings action, the member must have "direct and personal knowledge of the facts alleged in the complaint." It is unclear who makes the determination that the member has met the requirements of the statute.
    - Under subsection (3), "an individual may not represent the party in a hearing in the summary proceedings unless, before the hearing, a designated employee of the court reviews the file and determines that the verified statement required by subsection (2) (B) has been filed with the court." This requirement is confusing because the designated employee does not verify that the required statement is accurate, only that the statement is present.

STATE BAR OF MICHIGAN

PUBLIC POLICY POSITION

- Pursuant to subsection (4), "a party seeking to proceed under this section has the burden of proving that it qualifies to do so." Again, it is unclear to whom must the party prove that they qualify? A court clerk at the time of filing? The Court at the commencement of the initial hearing? Or, only when the issue is raised by the opposing party or counsel?

SBM STATE BAR OF MICHIGAN

To: Board of Commissioners

From: Governmental Relations Division Staff

Date: July 17, 2019

Re: Governmental Relations Update

This memo includes updates on court rules, legislation, and other public policy items on which the State Bar has taken positions.

Trial Court Funding Commission Interim Report

In its interim report, the Trial Court Funding Commission noted that Michigan's trial courts were facing the possibility of a financial emergency due to a case pending in the Michigan Supreme Court (Court), *People v Cameron*, MSC No. 155849, in which the defendant directly challenged the constitutionality of the assessment of court operational costs as part of his sentence. The interim report was issued months ahead of the legislative deadline in part due to the possibility that the Court could find Michigan's current court funding system to be unconstitutional.

On July 10, 2019, after hearing a mini-oral argument on the application, the Court denied the application for leave to appeal in *People v Cameron*. In a concurring opinion, Chief Justice McCormack agreed that leave should be denied but indicated that it was unclear that MCL 769.1k(1)(b)(iii) "does not prevent the judicial branch from accomplishing its constitutionally assigned functions," based on concerns raised in the Michigan District Judges Association amicus brief. (Citation and internal quotations omitted). Chief Justice McCormack noted that the Trial Court Funding Commission Interim Report – which the State Bar supports – "shows a potential way forward that promises to address" the concerns with the current system, and the Chief Justice "urge[s] the Legislature to take seriously the recommendations of the Commission, before the pressure placed on local courts causes the system to boil over."

Court Rules

State Bar Civil Discovery Rules

ADM File 2018-19

On June 19, 2019, the Court adopted comprehensive amendments to civil discovery process that were recommended by the State Bar. The rules are effective January 1, 2020. The rules were developed by the State Bar Civil Discovery Court Rule Review Committee, chaired by Daniel Quick, and were approved with minor amendments by the Representative Assembly. Throughout the drafting and revision process, the committee and its five subcommittees received valuable input from State Bar committees, sections, and members; Representative Assembly committees and members; and local and affinity bars. On May 22, 2019, the Court held a public administrative hearing on the civil discovery rules, and Daniel Quick, Judge Christopher Yates, David Christensen, Mathew Kobliska, George Strander, and S. Joy Gaines provided comments on behalf of the State Bar.

On June 19, 2019, the State Bar issued a press release informing members of the upcoming rule change. The State Bar is now focused on educational outreach, working with various partners to ensure that our members have access to materials and are aware of events to learn more about the rule changes and their impact on civil practice. In August, the State Bar will be launching a webpage dedicated to civil discovery educational resources and a social media campaign to promote these opportunities to our members. In addition, the Michigan Bar Journal will be publishing four articles discussing the rule changes, starting in its September issue.

Judicial Tenure Commission Rules

ADM 2015-14: Subchapter 9.200

On April 11, 2019, the Court adopted comprehensive changes to the rules governing the Judicial Tenure Commission (JTC), adopting many State Bar recommendations, including:

- Retaining the current language of MCR 9.202(B)(2) to allow the JTC to consider allegations of misconduct that occurred while a judge was previously engaged in the practice of law;
- Removing the presumptive three-year statute of limitations for filing a formal complaint against a judge;
- Allowing the JTC to recommend an interim suspension of a judge whenever the judge poses a substantial threat of serious harm to the public or to the administration of justice, instead of limiting interim suspensions only to circumstances where the judge is alleged to have misappropriated public funds as was originally proposed;
- Limiting the Supreme Court's authority to intervene in a disciplinary proceeding only with the respondent's and JTC's consent, rather than allowing the Court unlimited authority to intervene as was originally proposed;
- Leaving in place the regular lawyer disciplinary process after a judge has been removed from office by the JTC; and
- Removing the provision that would make the complaint publicly available only after the response has been filed; under the adopted version of the rules, the complaint is publicly available when it is filed.

The new JTC rules will be effective on September 1, 2019.

E-Filing Exemptions

ADM File 2002-37: Amendment of MCR 1.109

On June 5, 2019, the Court adopted e-filing rule amendments concerning exemptions to e-filing that incorporate the State Bar's recommendations. Based on the recommendation of the Access to Justice Policy Committee, the State Bar recommended a number of factors that courts should consider in determining whether a litigant has established good cause to be excused from e-filing, including (a) lack of reliable access to an electronic device on which a party can regularly check email; (2) distance of travel to access a public computer; (3) lack of transportation or other limitations on the ability to travel; (4) safety concerns; (5) limited English proficiency; (6) age or disability limitations; and (7) lack of capability to use the e-filing system. In addition, the State Bar recommended that deadlines be tolled while the court considers the e-filing exemption request.

Under the rules adopted by the Court, where electronic filing is mandate, a party may be excused from e-filing upon a showing of good cause. MCR 1.109(g)-(h) provide:

(g) Where electronic filing is mandated, a party may file paper documents with that court and be served with paper documents according to subrule (G)(6)(a)(ii) if the party can demonstrate good cause for an exemption. For purposes of this rule, a court shall consider the following factors in determining whether the party has demonstrated good cause:

(i) Whether the person has a lack of reliable access to an electronic device that includes access to the Internet;

(ii) Whether the person must travel an unreasonable distance to access a public computer or has limited access to transportation and is unable to access the e-Filing system from home;

(iii) Whether the person has the technical ability to use and understand email and electronic filing software;

(iv) Whether access from a home computer system or the ability to gain access at a public computer terminal present a safety issue for the person;

(v) Any other relevant factor raised by a person.

(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 that prevents or limits the person's ability to use the electronic filing system;

(ii) a person who has limited English proficiency that prevents or limits the person's ability to use the electronic filing system; and

(iii) a party who is confined by governmental authority, including but not limited to an individual who is incarcerated in a jail or prison facility, detained in a juvenile

In addition, subpart (i) provides that if a party brings paper documents to be filed when they submit their e-filing exemption request, the clerk will process the document for filing and considered filed the day they were submitted:

A request for an exemption must be filed with the court in paper where the individual's case will be or has been filed. 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.

The new rules are effective September 1, 2019.

E-Filing Access Plans

ADM File 2002-37: Adoption of Administrative Order 2019-2

As part of its efforts to help ensure that litigants continue to have meaningful access to courts with the implementation of the statewide e-filing system, the Court adopted an administrative order requiring courts that seek permission to mandate e-filing to submit e-Filing Access Plans for approval by the State Court Administrative Office (SCAO). Each plan must conform to the model promulgated by the State Court Administrator and ensure access to at least one computer workstation per county.

The version of the administrative order published for comment contained a model SCAO e-Filing Access Plan, which the State Bar had a number of suggestions for improvement; however, the administrative order that was adopted by the Court did not include a model SCAO e-Filing Access Plan. From the staff comment, it appears that the Court did not adopt one State Bar recommendation – that courts mandating e-filing have at least one computer workstation at each courthouse – because the staff comment notes that "each plan must . . . ensure access to at least one computer workstation *per county*." (emphasis added).

The Administrative Order will be effective on September 1, 2019.

Protection of Personal Identifying Information

ADM File 2017-28: Amendments of MCR 1.109 and 8.119 and Amendment of Administrative Order 1999-4

On May 22, 2019, the Court adopted rule amendments that make certain personal identifying information nonpublic and clarify the process regarding redaction. The State Bar had supported in concept the Court's efforts to protect personal identifying information, but opposed the rules as published for comment, based on a number of concerns raised by its committees and sections.

The rules adopted by the Court address some of the concerns raised by sections and committees, including:

- removing telephone numbers in the definition of protected personal identifying information (MCR 1.109(D)(9)(a));
- clarifying applicability of rules to Friend of the Court proceedings (MCR 1.109(D)(10)(b)(ii));
- removing contempt as a sanction for including protected personal identifying information in a public court document;
- clarifying that parties are required to serve non-public versions of court documents to opposing party (MCR 1.109(D)(9)(b)(iv)); and
- requiring clerks to review documents for protected personal identifying information when responding to requests for public documents for all documents filed on or after March 1, 2006, rather than January 1, 2021 as originally proposed.

The Court adopted the amendments to Administrative Order 1999-4 as published for comment.

The amendments to the court rules and administrative order will be effective on January 1, 2021.

Qualified Foreign Language Interpreters

ADM File 2018-06: Amendments of MCR 1.111 and 8.127

On May 22, 2019, the Court adopted amendments to MCR 1.111 and 8.127, requiring additional testing for qualified interpreters and changing the timing for recertification applications. The adopted rules are the

same as those that had been published for comment, which the State Bar had supported because they would help improve the proficiency of qualified foreign language interpreters.

The rules will be effective on September 1, 2019.

Restitution Orders at Sentencing
ADM File 2017-17: Amendments of MCR 6.001, 6.006, 6.425, 6.427, and 6.610 and Addition of MCR 6.430
On May 22, 2019, the Court adopted amendments to more explicitly require restitution to be ordered at the time of sentencing as required by statute and to establish a procedure for modifying restitution amounts. The State Bar had supported the rules published for comment with amendments, two of which the Court adopted.

The Court agreed with the recommendation from the State Bar and Court of Appeals that appeals of orders amending restitution should be by leave rather than right. As initially proposed, MCR 7.202 would have been revised to add orders amending restitution to the definition of "final judgement" or "final order" entitling a defendant to an appeal by right of that order. The rules adopted by the Court do not contain any amendments to 7.202, making appeals of orders amending restitution by leave.

The Court also agreed with the State Bar's and Court of Appeals' recommendation not to adopt the proposed amendments to MCR 7.208 stating that the trial court retains jurisdiction over motions to amend restitution, as the amendments were unnecessary.

The Court did not adopt the recommendation amendments to MCR 6.425(E)(1)(f) and MCR 6.427(11) advocated by the State Bar and the Michigan District Judges Association that would only require judges to include a restitution amount at the time sentencing if that amount is known. Under the rule adopted by the Court, the trial court is required to include the dollar amount of restitution at the time of sentencing.

The rules will be effective on September 1, 2019.

Requests for Counsel on Appeal and Sentencing Guideline Deviations
ADM File 2017-27: Amendment of MCR 6.425
One May 15, 2019, the Court adopted amendments to MCR 6.425 to remove the requirement for a sentencing judge to articulate substantial and compelling reasons to deviate for the sentencing guidelines range, pursuant to *People v Lockridge*, 498 Mich 358 (2015). In addition, the rule states that requests for counsel must be completed and filed with the court or submitted to MAACS within 42 days after sentencing and allows defendants the opportunity to tender a completed form at sentencing.

The State Bar had supported the version publish for comment with amendments. The Court adopted a number of the State Bar's recommendations, including using "filed" rather than "made" throughout the rule and explicitly allowing defendants to submit a request for counsel form to the court at sentencing.

The rule amendments will be effective on September 1, 2019.

LEGISLATION

HB 4296 – Extending the e-Filing Fee Sunset
The State Bar supports the bill.

House Bill 4296 proposed extending the sunset on the electronic filing system fee until February 28, 2031. These fees finance the $8 million annual costs of implementing and maintaining a statewide e-filing system. The bill passed both the House and Senate unanimously and was singed into law on June 19, 2019, Public Act 40 of 2019.

HB 4407 – Extending Jurisdiction of District Court Magistrate to Include Marijuana-Related Cases
The State Bar supports the bill.

HB 4407 would amend the types of cases in which a district court magistrate can preside to include cases related to marijuana regulation, taxation, and civil infractions. The State Bar supported the bill. On May 24, 2019, the bill passed out of the House almost unanimously, 108-1. The bill is currently pending in the Senate and has been referred to the Committee on Judiciary and Public Safety.

HB 4509 – Allowing Certain LLCs to be Represented by Non-Lawyer in Landlord-Tenant Summary Proceedings
The State Bar opposes the bill.

HB 4509 would allow limited liability corporations (LLCs) owned by a single-member or married couple members to be represented by a non-attorney member in summary proceedings for recovery of the premises where the money judgment is less than the limit for small claims cases, as long as the member representing the LLC had direct and personal knowledge of the facts alleged in the complaint.

On June 4, 2019, the bill passed out of the House Judiciary Committee, 9-2. On June 19, 2019, the bill passed out of the House with substantial opposition, 62-47. The opposition is due in large part to the strong lobbying efforts by GCSI on behalf of the State Bar and the Michigan District Judges Association.

Order

Michigan Supreme Court
Lansing, Michigan

May 15, 2019

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

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

ADM File No. 2002-37

Proposed Amendments of Rules 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and Proposed Rescission of Rules 2.226 and 8.125 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and a proposed rescission of Rules 2.226 and 8.125 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 by the court 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 ~~print must be no smaller than 10 characters per inch (nonproportional) or 12-point (proportional)~~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)-(G) [Unchanged.]

Rule 2.107 Service and Filing of Pleadings and Other Documents

(A)-(C) [Unchanged.]

(D) Proof of Service. Except as otherwise provided by MCR 2.104, 2.105, or 2.106, proof of service of documents required or permitted to be served ~~may~~must be by written acknowledgment of service, or a written statement by the individual who served the documents verified under MCR 1.109(D(3). The proof of service may be included at the end of the document as filed. Proof of service must be filed promptly and at least at or before a hearing to which the document relates.

(E)-(F) [Unchanged.]

Rule 2.113 Form, Captioning, Signing, and Verifying of Documents

(A) Applicability. The form, captioning, signing, and verifying of all documents are prescribed in MCR 1.109(D) and (E).

(B) [Unchanged.]

(C) ~~Exhibits;~~ Written Instruments.

(1) If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading ~~as an~~

~~exhibit~~and labeled according to standards established by the State Court Administrative Office unless the instrument is

(a)-(d) [Unchanged.]

(2) An ~~exhibit attached or referred~~attachment or reference to an attachment under subrule (~~F~~C)(1)(a) or (b) is a part of the pleading for all purposes.

(D) [Unchanged.]

Rule 2.116 Summary Disposition

(A)-(F) [Unchanged.]

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a)-(b) [Unchanged.]

(c) Except where electronic filing has been implemented, a~~A~~ copy of a motion, response (including brief and any affidavits), or reply brief filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten. Where electronic filing has been implemented, a judge's copy may not be required.

(2)-(6) [Unchanged.]

(H)-(J) [Unchanged.]

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) [Unchanged.]

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions.

(a)-(c) [Unchanged.]

(d) Except where electronic filing has been implemented, a~~A~~ copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten. Where electronic filing has been implemented, a judge's copy may not be required.

(B)-(G) [Unchanged.]

Rule 2.222 Change of Venue; Venue Proper

(A)-(C) [Unchanged.]

(D) Order for Change of Venue; Case Records.

(1) The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the party that moved for change of venue to pay the applicable statutory filing fee to the receiving court.

(2) The transferring court must serve the order on the parties and send a copy to the receiving court. The clerk of the transferring court must prepare the case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(3) The receiving court must temporarily suspend payment of the filing fee and open a case pending payment of the filing fee as ordered by the transferring court. The receiving court must notify the party that moved for change of venue of the new case number in the receiving court, the amount due, and the due date.

(~~D~~E) Payment of Filing and Jury Fees ~~After Change of Venue~~.

(1) ~~At or before the time the order changing venue is entered, t~~The party that moved for change of venue ~~shall tender a negotiable instrument in the amount of the applicable filing fee, payable to the court to which the case is to be transferred. The transferring court shall send the negotiable instrument with the case documents to the transferee court~~must pay to the receiving court within 28 days of the date of the transfer order the applicable filing fee as

ordered by the transferring court. No further action may be had in the case until payment is made. If the fee is not paid to the receiving court within 28 days of the date of the order, the receiving court must order the case transferred back to the transferring court.

(2) If ~~the~~a jury fee has been paid, the clerk of the transferring court ~~shall~~must forward it to the clerk of the receiving court ~~to which the action is transferred~~as soon as possible after the case records have been transferred.

~~(E) In tort actions filed between October 1, 1986, and March 28, 1996, if venue is changed because of hardship or inconvenience, the action may be transferred only to the county in which the moving party resides.~~

Rule 2.223 Change of Venue; Venue Improper

(A) [Unchanged.]

(B) Order for Change of Venue; Case Records.

(1) The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the plaintiff to pay the applicable statutory filing fee directly to the receiving court. The court may also order the plaintiff to pay reasonable compensation and attorney fees to the defendant if the case was filed in the wrong court.

(2) The transferring court must serve the order on the parties and send a copy to the receiving court. The clerk of the transferring court must prepare the case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(3) The receiving court shall temporarily suspend payment of the filing fee and open a case pending payment of the filing fee and costs as ordered by the transferring court. The receiving court must notify the plaintiff of the new case number in the receiving court, the amount due, and the due date.

(~~B~~C) ~~Costs; Fees~~Payment of Filing and Jury Fees After Change of Venue.

(1) ~~The court shall order the change at the plaintiff's cost, which shall include the statutory filing fee applicable to the court to which the action is transferred, and which may include reasonable compensation for the~~

~~defendant's expense, including reasonable attorney fees, in attending in the wrong court.~~

~~(2)~~ The plaintiff must pay to the receiving court within 28 days of the date of the transfer order the applicable filing fee, costs, and expenses as ordered by the transferring court or the receiving court will dismiss the action. ~~After transfer, n~~No further proceedings may be had in the action until ~~the costs and expenses allowed under this rule~~payment has been made~~have been paid. If they are not paid within 56 days from the date of the order changing venue, the action must be dismissed by the court to which it was transferred.~~

(2~~3~~) If ~~the~~a jury fee has been paid, the clerk of the transferring court ~~shall~~must forward it to the clerk of the receiving court as soon as possible after the case records have been~~to which the action is~~ transferred.

(3~~4~~) [Renumbered by otherwise unchanged.]

Rule 2.225 Joinder of Party to Control Venue

(A) [Unchanged.]

(B) Order for Change of Venue; Case Records.

(1) The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the plaintiff to pay the applicable statutory filing fee directly to the receiving court. The court may also order the plaintiff to pay reasonable compensation and attorney fees to the defendant when necessary to accomplish the transfer.

(2) The transferring court must serve the order on the parties and send a copy to the receiving court. The clerk of the court must prepare the case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(3) The receiving court shall temporarily suspend payment of the filing fee and open a case pending payment of the filing fee and costs as ordered by the transferring court. The receiving court must notify the plaintiff of the new case number in the receiving court, the amount due, and the due date.

(~~B~~C) Payment of Filing and Jury Fees After Transfer~~ Costs. A transfer under this rule must be made at the plaintiff's cost, which shall include the statutory filing fee~~

~~applicable to the court to which the action is transferred, and which may include reasonable compensation for the defendant's expense, including reasonable attorney fees, necessary to accomplish the transfer.~~

(1) The plaintiff must pay to the receiving court within 28 days of the date of the transfer order the applicable filing fee and any expenses or attorney fees as ordered by the transferring court or the receiving court will dismiss the action.

(2) If a jury fee has been paid, the clerk of the transferring court must forward it to the clerk of the receiving court as soon as possible after the case records have been transferred.

~~(C) Jury Fee. If the jury fee has been paid, the clerk of the transferring court shall forward it to the clerk of the court to which the action is transferred.~~

~~Rule 2.226 Change of Venue; Orders~~

~~The court ordering a change of venue shall enter all necessary orders pertaining to the certification and transfer of the action to the court to which the action is transferred.~~

Rule 2.227 Transfer of Actions on Finding of Lack of Jurisdiction

(A) Transfer to Court Which Has Jurisdiction.

~~(1)~~ When the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper. If the question of jurisdiction is raised by the court on its own initiative, the action may not be transferred until the parties are given notice and an opportunity to be heard on the jurisdictional issue.

~~(2) As a condition of transfer, the court shall require the plaintiff to pay the statutory filing fee applicable to the court to which the action is to be transferred, and to pay reasonable compensation for the defendant's expense, including reasonable attorney fees, in attending in the wrong court.~~

~~(3) If the plaintiff does not pay the filing fee to the clerk of the court transferring the action and submit proof to the clerk of the payment of any other costs imposed within 28 days after entry of the order of transfer, the clerk shall notify the judge who entered the order, and the judge shall dismiss the action~~

~~for lack of jurisdiction. The clerk shall notify the parties of the entry of the dismissal.~~

~~(4) After the plaintiff pays the fee and costs, the clerk of the court transferring the action shall promptly forward to the clerk of the court to which the action is transferred the original papers filed in the action and the filing fee and shall send written notice of this action to the parties. If part of the action remains pending in the transferring court, certified copies of the papers filed may be forwarded, with the cost to be paid by the plaintiff.~~

(B) Order Transferring Jurisdiction; Case Records.

(1) The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the plaintiff to pay the applicable statutory filing fee directly to the receiving court. The court may also order the plaintiff to pay reasonable compensation and attorney fees to the defendant for filing the case in the wrong court.

(2) The transferring court must serve the order on the parties and send a copy to the receiving court. The clerk of the court must prepare the case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(3) The receiving court shall temporarily suspend payment of the filing fee and open a case pending payment of the filing fee and costs as ordered by the transferring court. The receiving court must notify the plaintiff of the new case number in the receiving court, the amount due, and the due date.

(C) Payment of Filing and Jury Fees After Transfer.

(1) The plaintiff must pay to the receiving court within 28 days of the date of the transfer order the applicable filing fee and must submit proof of the payment of any expenses as ordered by the transferring court or the receiving court will dismiss the action.

(2) If a jury fee has been paid, the clerk of the transferring court must forward it to the clerk of the receiving court as soon as possible after the case records have been transferred.

(~~B~~D) Procedure After Transfer.

(1) The action proceeds in the receiving court ~~to which it is transferred~~ as if it had been originally filed there. If further pleadings are required or allowed, the time for filing them runs from the date the ~~clerk sends notice that the file has been forwarded under subrule (A)(4)~~filing fee is paid under subrule (C)(1). The receiving court ~~to which the action is transferred~~ may order the filing of new or amended pleadings. If part of the action remains pending in the transferring court, certified copies of the papers filed may be forwarded, with the cost to be paid by the plaintiff.

(2) If a defendant had not been served with process at the time the action was transferred, the plaintiff must obtain the issuance of a new summons ~~by~~from the receiving court~~ to which the action is transferred~~.

(3) A waiver of jury trial in the court in which the action was originally filed is ineffective after transfer. A party who had waived trial by jury may demand a jury trial after transfer by filing a demand and paying the applicable jury fee within 28 days after the ~~clerk sends the notice that the file has been forwarded under subrule (A)(4)~~filing fee is paid under subrule (C)(1). A demand for a jury trial in the court in which the action was originally filed is preserved after transfer.~~ If the jury fee had been paid, the clerk shall forward it with the file to the clerk of the court to which the action is transferred.~~

(~~C~~E) [Relettered but otherwise unchanged.]

Rule 3.206 Initiating a Case

(A) Information in Case Initiating Document.

(1) The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E).

(2)-(6) [Unchanged.]

(B) [Unchanged.]

(C) Verified Statement.

(1) In an action involving a minor, or if child support or spousal support is requested, the party seeking relief must provide to the friend of the court~~attach~~ a verified statement containing, at a minimum, personal identifying, financial, and health care coverage information of the parties and minor children. A copy of the verified statement must be~~to the copies of the papers~~ served on the other party~~ and provided to the friend of the~~

~~court~~. The verified statement must be completed on a form approved by the State Court Administrative Office.~~, stating~~

~~(a) the last known telephone number, post office address, residence address, and business address of each party;~~

~~(b) the social security number and occupation of each party;~~

~~(c) the name and address of each party's employer;~~

~~(d) the estimated weekly gross income of each party;~~

~~(e) the driver's license number and physical description of each party, including eye color, hair color, height, weight, race, gender, and identifying marks;~~

~~(f) any other names by which the parties are or have been known;~~

~~(g) the name, age, birth date, social security number, and residence address of each minor involved in the action, as well as of any other minor child of either party;~~

~~(h) the name and address of any person, other than the parties, who may have custody of a minor during the pendency of the action;~~

~~(i) the kind of public assistance, if any, that has been applied for or is being received by either party or on behalf of a minor, and the AFDC and recipient identification numbers; if public assistance has not been requested or received, that fact must be stated; and~~

~~(j) the health care coverage, if any, that is available for each minor child; the name of the policyholder; the name of the insurance company, health care organization, or health maintenance organization; and the policy, certificate, or contract number.~~

(2) The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party. If the party submitting the verified statement excludes an address for good cause, that party shall provide an alternate address where mail can be received.

(3) If any of the information required to be in the verified statement is omitted, the party seeking relief must explain the omission in the verified statement or in a separate statement, verified under MCR 1.109(D)(3)(b)~~a sworn affidavit, to be filed with the court~~.

(4) When the action is to establish paternity or child support and the pleadings are generated from Michigan's automated child support enforcement system, the party is not required to comply with subrule (C)(1). However, the party may comply with subrule (C)(1) to provide the other party an opportunity to supply any omissions or correct any inaccuracies.

(D) [Unchanged.]

Rule 3.211 Judgments and Orders

(A)-(E) [Unchanged.]

(F) Entry of Judgment or Order

(1) [Unchanged.]

(2) The party submitting the first temporary order awarding child custody, parenting time, or support and the party submitting any final proposed judgment awarding child custody, parenting time, or support must:

(a) serve the friend of the court office and, unless the court orders otherwise, all other parties, with a completed copy of the latest version of the state court administrative office's D~~d~~omestic R~~r~~elations Judgment Information F~~f~~orm, and

(b) file a proof of service with the court certifying that the Domestic Relations Judgment Information F~~f~~orm has been provided to the friend of the court office and, unless the court orders otherwise, to all other parties.

(3) If the court modifies the proposed judgment or order before signing it, the party submitting the judgment or order must, within 7 days, submit a new Domestic Relations Judgment Information F~~f~~orm to the friend of the court if any of the information previously submitted changes as a result of the modification.

(4) Before it signs a judgment or order awarding child support or spousal support, the court must determine that:

(a) the party submitting the judgment or order has certified that the Domestic Relations Judgment Information ~~F~~form in subrule (F)(2) has been submitted to the friend of the court, and

(b) [Unchanged.]

(5) The Domestic Relations Judgment Information ~~F~~form must be ~~filed~~submitted to the friend of the court in addition to the verified statement that is required by MCR 1~~.109(D)(3)~~3.206(C).

(G)-(H) [Unchanged.]

Rule 3.212 Postjudgment Transfer of Domestic Relations Cases

(A)-(C) [Unchanged.]

(D) ~~Transfer~~ Order for Transfer; Case Records.

(1) The transferring court ~~ordering a postjudgment transfer~~ must enter all necessary orders pertaining to the certification and postjudgment transfer of the action to the receiving court. ~~The transferring court must send to the receiving court all court files and friend of the court files, ledgers, records, and documents that pertain to the action. Such materials may be used in the receiving jurisdiction in the same manner as in the transferring jurisdiction.~~

(a) The court may not enter an order transferring until all pending matters in the case have been resolved.

(b) The court must order the party who moved for the transfer to pay the applicable statutory filing fee directly to the receiving court unless fees have been waived in accordance with MCR 2.002.

(c) If the parties stipulate to the transfer of a case, they must share equally the cost of transfer unless the court orders otherwise.

(d) The court may also order one or both of the parties or the court-ordered custodian to pay past-due fees and costs under subrule (D)(4). Until all filing fees and court-ordered past-due fees and costs are paid, no further action in the case shall occur in the transferring court unless the moving party first demonstrates good cause and that substantial harm will occur absent the transferring court's immediate consideration.

(e) If the court or the friend of the court initiates the transfer, the statutory filing fee is waived.

(2) Except as otherwise ordered under subrule (D)(4), the transferring court must serve the order on the parties and send a copy to the receiving court. The clerk of the court and the friend of the court each must prepare the court's case records and the friend of the court's case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(3) The receiving court shall temporarily suspend payment of the filing fee and open a case pending payment of the filing fee as ordered by the transferring court. The receiving court must notify the party of the new case number in the receiving court, the amount due, and the due date.

(~~2~~4) The court may order that any past-due fees and costs be paid to the transferring friend of the court office at the time of transfer. If the court orders payment of past-due fees and costs, the order must state that the court will not send the order to the receiving court under subrule (1) and the records will not be transferred under subrule (2) until the past-due fees and costs are paid. If the past-due fees and costs are not paid within 28 days of entry, the transfer order becomes void.

~~(3) The court may order that one or both of the parties or court-ordered custodian pay the cost of the transfer.~~

(E) Payment of Filing Fee After Transfer. ~~An order transferring a case under this rule must provide that the party who moved for the transfer pay the statutory filing fee applicable to the court to which the action is transferred, except where MCR 2.002 applies. If the parties stipulate to the transfer of a case, they must share equally the cost of transfer unless the court orders otherwise. In either event, the transferring court must submit the filing fee to the court to which the action is transferred, at the time of transfer. If the court or the friend of the court initiates the transfer, the statutory filing fee is waived.~~ The party that moved for transfer must pay to the receiving court within 28 days of the due date provided under subrule (D)(3) the applicable filing fee as ordered by the transferring court. No further action in the case shall occur in the receiving court until the filing fee is paid unless the moving party first demonstrates good cause and that substantial harm will occur absent the receiving court's immediate consideration. If the fee is not paid to the receiving court within 28 days of the due date, the receiving court must order the case transferred back to the transferring court.

~~(F) Physical Transfer of Files. Court and friend of the court files must be transferred by registered or certified mail, return receipt requested or by another a secure method of transfer.~~

(~~G~~F) [Relettered but otherwise unchanged.]

Rule 3.214 Action Under Uniform Acts

(A) [Unchanged.]

(B) RURESA Actions.

(1) [Unchanged.]

(2) Transfer; Initiating and Responding RURESA Cases.

(a)-(b) [Unchanged.]

(c) A court ordering a transfer must send to the court that issued the prior valid support order all pertinent ~~papers, including all court files and friend of the court files, ledgers,~~ records~~, and documents~~. The clerk of the court and the friend of the court office must prepare the court and friend of the court records for transfer in accordance with the transfer order and the Michigan Trial Court Records Management Standards. The records must be sent to the court that issued the prior valid support order by a secure method within one business day of the date of the transfer order.

~~(d) Court files and friend of the court files must be transferred by registered or certified mail, return receipt requested or by other a secure method.~~

(~~e~~d) [Relettered but otherwise unchanged.]

(C)-(D) [Unchanged.]

Rule 3.303 Habeas Corpus to Inquire into Cause of Detention

(A)-(M) [Unchanged.]

(N) Answer.

(1) [Unchanged.]

(2) ~~Exhibits~~Attachments. If the prisoner is detained because of a writ, warrant, or other written authority, a copy must be attached to the answer ~~as an exhibit~~, and the original must be produced at the hearing. If an order under subrule (E) requires it, the answer must be accompanied by the certified transcript of the record and proceedings.

(3) [Unchanged.]

(O)-(Q) [Unchanged.]

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)-(20) [Unchanged.]

(21) "Petition authorized to be filed" refers to written permission given by the court to file ~~the petition containing the formal allegations against the juvenile or respondent with the clerk of the court~~the petition among the court's public records as permitted by MCR 3.925. Until a petition is authorized, it must be filed with the clerk and maintained as a nonpublic record, accessible only by the court and parties. After authorization, a petition and any associated records may be made nonpublic only as permitted by rule or statute.

(22)-(27) [Unchanged.]

(B) [Unchanged.]

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1) [Unchanged.]

(2) "Amended petition" means a petition filed to correct or add information to an original petition as defined in subrule (A)(21)~~, after it has been authorized, but~~ before it is adjudicated.

(3)-(13) [Unchanged.]

(D)-(F) [Unchanged.]

Rule 3.921 Persons Entitled to Notice

(A) Delinquency Proceedings.

(1) General. In a delinquency proceeding, the court ~~shall direct that~~must notify the following persons ~~be notified~~ of each hearing except as provided in subrule (A)(3):

(a)-(g) [Unchanged.]

(2)-(3) [Unchanged.]

(B)-(E) [Unchanged.]

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality; Destruction of Court Records; Setting Aside Adjudications

(A)-(B) [Unchanged.]

(C) Judgments and Orders. The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address, by e-mail under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a).

(D) Public Access to Case File Records; Confidential File.

(1) General. Except as otherwise required by MCR 3.903(A)(21), c~~C~~ase file records maintained under Chapter XIIA of the Probate Code, MCL 712A.1 *et seq*., other than confidential files, must be open to the general public.

(2) [Unchanged.]

(E)-(G) [Unchanged.]

Rule 3.926 Transfer of Jurisdiction; Change of Venue

(A) [Unchanged.]

(B) Transfer to County of Residence. When a minor is brought before the family division of the circuit court in a county other than that in which the minor resides, the court may request transfer of the case to the court in the county of residence

before trial. The court shall not order transfer of the case until the court to which the case is to be transferred has granted the request to accept the transfer.

(1)-(3) [Unchanged.]

(C)-(E) [Unchanged.]

(F) Transfer of Records. ~~The court entering an order of transfer or change of venue shall send the original pleadings and documents, or certified copies of the pleadings and documents, to the receiving court without charge.~~

(1) The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. Where the courts have agreed to bifurcate the proceedings, the court adjudicating the case shall send any supplemented pleadings and other records ~~or certified copies of the supplemented pleadings and records~~ to the court entering the disposition in the case.

(2) The clerk of the court must prepare the case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(G) [Unchanged.]

Rule 3.931 Initiating Delinquency Proceedings

(A) Commencement of Proceeding. Any request for court action against a juvenile must be by written petition. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). When any pending or resolved family division case exists that involves family members of the person(s) named in the petition filed under subrule (B), the petitioner must attach to the petition a completed case inventory listing those cases, if known. The case inventory must be on a form approved by the State Court Administrative Office.

(B) [Unchanged.]

(C) Citation or Appearance Ticket.

(1) A citation or appearance ticket may be used to initiate a delinquency proceeding if the charges against the juvenile are limited to~~:~~

~~(a)~~ violations of the Michigan Vehicle Code, or of a provision of an ordinance substantially corresponding to any provision of that law, as provided by MCL 712A.2b.

~~(b) offenses that, if committed by an adult, would be appropriate for use of an appearance ticket under MCL 764.9c.~~

(2) [Unchanged.]

(D) [Unchanged.]

Rule 3.933 Acquiring Physical Control of Juvenile

(A) Custody Without Court Order. When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:

(1)-(2) [Unchanged.]

(3) take the juvenile into custody and request the prosecutor to file~~submit~~ a petition, if:

(a)-(b) [Unchanged.]

(B)-(D) [Unchanged.]

Rule 3.942 Trial

(A) Time. In all cases the trial must be held within 6 months after the ~~filing~~authorization of the petition, unless adjourned for good cause. If the juvenile is detained, the trial has not started within 63 days after the juvenile is taken into custody, and the delay in starting the trial is not attributable to the defense, the court ~~shall forthwith~~must immediately order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.

(B)-(D) [Unchanged.]

Rule 3.950 Waiver of Jurisdiction

(A)-(C) [Unchanged.]

(D) Hearing Procedure. The waiver hearing consists of two phases. Notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.

(1) First Phase. The first-phase hearing is to determine whether there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony, and that there is probable cause to believe that the juvenile who is 14 years of age or older committed the offense.

(a) The probable cause hearing ~~shall~~must be commenced within 28 days after the ~~filing~~authorization of the petition unless adjourned for good cause.

(b)-(c) [Unchanged.]

(2) Second Phase. If the court finds the requisite probable cause at the first-phase hearing, or if there is no hearing pursuant to subrule (D)(1)(c), the second-phase hearing shall be held to determine whether the interests of the juvenile and the public would best be served by granting the motion. However, if the juvenile has been previously subject to the general criminal jurisdiction of the circuit court under MCL 712A.4 or 600.606, the court shall waive jurisdiction of the juvenile to the court of general criminal jurisdiction without holding the second-phase hearing.

(a) The second-phase hearing ~~shall~~must be commenced within 28 days after the conclusion of the first phase, or within 35 days after the ~~filing~~authorization of the petition if there was no hearing ~~pursuant to~~under subrule (D)(1)(c), unless adjourned for good cause.

(b)-(e) [Unchanged.]

(E)-(G) [Unchanged.]

Rule 3.961 Initiating Child Protective Proceedings

(A) Form. Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). When any pending or resolved family division case exists that involves family members of the person(s) named in the petition filed under subrule (B), the petitioner must attach to the petition a completed case inventory listing those cases, if known. The case inventory must be on a form approved by the State Court Administrative Office.

(B)-(C) [Unchanged.]

Rule 3.971 Pleas of Admission or No Contest

(A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the ~~filing~~authorization of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(B)-(C) [Unchanged.]

Rule 3.972 Trial

(A) Time. If the child is not in placement, the trial must be held within 6 months after the ~~filing~~authorization of the petition unless adjourned for good cause under MCR 3.923(G). If the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is removed from the home unless the trial is postponed:

(1)-(3) [Unchanged.]

When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that releasing the child to the custody of the parent, guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

If the child has been removed from the home, a review hearing must be held within 182 days of the date of the child's removal from the home, even if the trial has not been completed before the expiration of that 182-day period.

(B)-(E) [Unchanged.]

Rule 4.002 Transfer of Actions from District Court to Circuit Court

(A) Counterclaim or Cross-Claim in Excess of Jurisdiction.

(1) If a defendant asserts a counterclaim or cross-claim seeking relief of an amount or nature beyond the jurisdiction or power of the district court in which the action is pending, and accompanies the notice of the claim with a~~n~~

~~affidavit~~ statement verified in the manner prescribed by MCR 1.109(D)(3) ~~stating~~indicating that the defendant is justly entitled to the relief demanded, the clerk shall record the pleadings ~~and affidavit~~ and present them to the judge to whom the action is assigned. The judge shall either order the action transferred to the circuit court to which appeal of the action would ordinarily lie or inform the defendant that transfer will not be ordered without a motion and notice to the other parties.

(2) ~~MCR 4.201(G)(2) and 4.202(I)(4) govern t~~Transfer of summary proceedings to recover possession of premises are governed under MCR 4.201(G)(2) and 4.202(I)(4) and subrules (C) and (D) of this rule.

(B) Change in Conditions.

(1) A party may, at any time, file a motion with the district court in which an action is pending, requesting that the action be transferred to circuit court. The motion must be supported by a~~n~~ statement verified in the manner prescribed by MCR 1.109(D)(3)~~affidavit stating~~ indicating that

(a)-(b) [Unchanged.]

(2) [Unchanged.]

~~(C) Conditions Precedent to Transfer. The action may not be transferred under this rule until the party seeking transfer pays to the opposing parties the costs they have reasonably incurred up to that time that would not have been incurred if the action had originally been brought in circuit court, and pays the statutory circuit court filing fee to the clerk of the court from which the action is to be transferred. If a case is entirely transferred from district court to circuit court and the jury fee was paid in the district court, the district court clerk shall forward the fee to the circuit court with the papers and filing fee under subrule (D). If the amount paid to the district court for the jury fee is less than the circuit court jury fee, then the party requesting the jury shall pay the difference to the circuit court.~~

~~(D) Filing in Circuit Court. After the court has ordered transfer and the costs and fees required by subrule (C) have been paid, the clerk of the court from which the action is transferred shall forward to the clerk of the circuit court the original papers in the action and the circuit court filing fee.~~

~~(E) Procedure After Transfer. After transfer no further proceedings may be conducted in the district court, and the action shall proceed in the circuit court. The circuit court may order further pleadings and set the time when they must be filed.~~

(C) Order for Transfer; Case Records.

(1) The district court must enter all necessary orders pertaining to the certification and transfer of the action to the circuit court. The district court must order the moving party to pay the applicable statutory filing fee directly to the circuit court.

(2) The district court may also order the party seeking transfer to pay the opposing parties the costs they have reasonably incurred up to that time that would not have been incurred if the action had originally been brought in circuit court.

(3) The district court must serve the order on the parties and send a copy to the circuit court. The clerk of the district court must prepare the case records for transfer in accordance with the orders entered under subrule (1) and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method.

(4) The circuit court shall temporarily suspend payment of the filing fee and open a case pending payment of the filing fee and costs as ordered by the district court. The circuit court must notify the moving party of the new case number in the circuit court, the amount due, and the due date.

(5) After transfer, no further proceedings may be conducted in the district court, and the action shall proceed in the circuit court. The circuit court may order further pleadings and set the time when they must be filed.

(D) Payment of Filing and Jury Fees After Transfer; Payment of Costs.

(1) The party that moved for transfer must pay to the circuit court within 28 days of the date of the transfer order the applicable filing fee as ordered by the district court. No further action may be had in the case until payment is made. If the fee is not paid to the circuit court within 28 days of the date of the transfer order, the circuit court will either dismiss the counterclaim or cross-claim or order the case transferred back to the district court.

(2) If the jury fee has been paid, the clerk of the district court must forward it to the clerk of the circuit court to which the action is transferred as soon as possible after the case records have been transferred. If the amount paid to the district court for the jury fee is less than the circuit court jury fee, then the party requesting the jury shall pay the difference to the circuit court.

(3) If the court ordered payment of costs, the moving party must pay them to the opposing parties within 28 days of the date of the transfer order. If the costs are not paid within 28 days of the date of entry, the circuit court will either dismiss the counterclaim or cross-claim and/or order the case transferred back to the district court to proceed on the original claim.

Rule 4.101 Civil Infraction Actions

(A) Citation; Complaint; Summons; Warrant.

(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator~~,~~ and filing the citation in the district court. The citation serves as the complaint in a civil infraction action and may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement.

(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle.~~ In either event, the citation must be filed in the district court.~~

(b) [Unchanged.]

~~The citation serves as the complaint in a civil infraction action, and may be filed either on paper or electronically.~~

(2)-(4) [Unchanged.]

(B)-(E) [Unchanged.]

(F) Contested Actions; Notice; Defaults.

~~(1) A contested action may not be heard until a citation is filed with the court. If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, may be dismissed with prejudice.~~

(1~~2~~)-(4~~5~~) [Renumbered but otherwise unchanged.]

(G)-(H) [Unchanged.]

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A) [Unchanged.]

(B) Complaint.

(1) In General. The complaint must

(a)-(c) [Unchanged.]

(d) describe the premises or the defendant's holding if it is less than the entire premises; and

(e) show the plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized.~~; and~~

~~(f) demand a jury trial, if the plaintiff wishes one. The jury trial fee must be paid when the demand is made.~~

(2) Jury Demand. If the plaintiff wishes a jury trial, the demand must be made on a form approved by the State Court Administrative Office. They jury trial fee must be paid when the demand is made.

(~~2~~3) Specific Requirements.

(a)-(e) [Unchanged.]

(C)-(F) [Unchanged.]

(G) Claims and Counterclaims.

(1) [Unchanged.]

(2) Removal.

(a) [Unchanged.]

(b) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order, in accordance with the procedures in MCR 4.002, removal of that portion of the action to the circuit court, if the money claim or

counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

(H)-(O) [Unchanged.]

Rule 4.202 Summary Proceedings; Land Contract Forfeiture

(A)-(H) [Unchanged.]

(I) Joinder; Removal.

(1)-(3) [Unchanged.]

(4) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order, in accordance with the procedures in MCR 4.002, removal of that portion of the action, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

(J) Judgment. The judgment

(1)-(4) [Unchanged.]

(5) Notice. The ~~court~~plaintiff must mail or deliver a copy of the judgment to the parties. The time period for applying for the order of eviction does not begin to run until the judgment is mailed or delivered.

(K)-(L) [Unchanged.]

Rule 4.302 Statement of Claim

(A) Contents. The statement of the claim must be in an affidavit in substantially the form approved by the state court administrator. Affidavit forms shall be available at the clerk's office. The nature and amount of the claim must be stated in concise, nontechnical language, and the affidavit must state the date or dates when the claim arose. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E).

(B)-(D) [Unchanged.]

Rule 5.128 Change of Venue

~~(A)~~ Reasons for Change. On petition by an interested person or on the court's own initiative, the venue of a proceeding may be changed to another county by court order for the convenience of the parties and witnesses, for convenience of the attorneys, or if an impartial trial cannot be had in the county where the action is pending. Procedure for change of venue is governed by MCR 2.222 and MCR 2.223 except that a court must also transfer the original of an unadmitted will or a certified copy of an admitted will.

~~(B) Procedure. If venue is changed~~

~~(1) the court must send to the transferee court, without charge, copies of necessary documents on file as requested by the parties or the transferee court and the original of an unadmitted will or a certified copy of an admitted will; and~~

~~(2) except as provided in MCR 5.208(A) or unless the court directs otherwise, notices required to be published must be published in the county to which venue was changed.~~

Rule 5.302 Commencement of Decedent Estates

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding.

(1) When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death.

(2) Where electronic filing is implemented, if the application or petition to commence a decedent estate indicates that there is a will, it is available, and that it is not already in the court's possession, an exact copy of the will and any codicils must be attached to the application or petition. Within 7 days of the filing of the application or petition, the original will and any codicils must be filed with the court or the case will be dismissed without notice and hearing. Notice of a dismissal for failure to file the original will and any codicils shall be served on the petitioner and any interested persons in a manner provided under MCR 5.105(B).

(3) The court is prohibited from r~~R~~equiring additional documentation, such as information about the proposed or appointed personal representative~~, is prohibited~~.

(B)-(D) [Unchanged.]

Rule 5.731 ~~Confidential~~ Access to Records

Case r~~R~~ecords filed with the court under the mental health code are public except as otherwise indicated in court rule or statute.

Rule 6.101 ~~The~~ Complaint

(A) [Unchanged.]

(B) Signature and Oath. The complaint must be signed ~~and sworn to before a judicial officer or court clerk~~and verified under MCR 1.109(D)(3). Any requirement of law that a complaint filed with the court must be sworn is met by this verification.

(C) [Unchanged.]

Rule 6.615 Misdemeanor Traffic Cases

(A) Citation; Complaint, Summons; Warrant.

(1) A misdemeanor traffic case may be ~~begun~~initiated by one of the following procedures:

(a) Service of a written citation by a law enforcement officer on the defendant, and the filing of the citation in the district court. The citation may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement.

(b)-(c) [Unchanged.]

(2) [Unchanged.]

(B)-(C) [Unchanged.]

(D) Contested Cases.

~~(1) A contested case may not be heard until a citation is filed with the court. If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, may be dismissed with prejudice.~~

~~(2)~~ A misdemeanor traffic case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to misdemeanors cognizable by the district court.

Rule 8.105 General Duties of Clerks

(A)-(B) [Unchanged.]

(C) Notice of Judgments, Orders, and Opinions. ~~Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by t~~The court clerk must deliver, in the manner provided in MCR 2.107, a copy of the judgment, final order, written opinion, or findings entered in a civil action to the attorney~~s~~ or party who sought the order, judgment, opinion or findings. Except where e-Filing is implemented, if the attorney or party does not provide at least one copy when filing a proposed order or judgment, the clerk, when complying with this subrule, may charge the reproduction fee authorized by the court's local administrative order under MCR 8.119(H)(2).~~of record in the case, in the manner provided in MCR 2.107.~~

(D) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(H) [Unchanged.]

(I) Sealed Records.

(1)-(3) [Unchanged.]

(4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with or maintained by the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C). Materials that are subject to a motion to seal a record in whole or in part ~~shall~~must be ~~held under seal~~made nonpublic temporarily pending the court's disposition of the motion.

(5)-(9) [Unchanged.]

(J)-(L) [Unchanged.]

~~MCR 8.125 Electronic Filing of Citation~~

~~(A) Applicability. This rule applies to all civil infraction and misdemeanor actions initiated by a Michigan Uniform Law Citation or a Michigan Uniform Municipal Civil Infraction Citation.~~

~~(B) Citation; Complaint; Filing. A citation may be filed with the court either on paper or electronically. The filing of a citation constitutes the filing of a complaint. An electronic citation must contain all the information that would be required if the citation were filed on paper. A citation that contains the full name of the police officer or authorized local official who issued it will be deemed to have been signed pursuant to MCL 257.727c(3), 600.8705(3), or 600.8805(3).~~

~~(C) Contested Actions. If an electronic citation is contested, the court may decline to hear the matter until the citation is signed and filed on paper. A citation that is not signed and filed on paper, when required by the court, will be dismissed with prejudice.~~

Staff comment: The proposed amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of MCR 2.226 and 8.125 would continue the process for design and implementation of the statewide electronic-filing system.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, 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.

May 15, 2019

Clerk

Public Policy Position
ADM File No. 2002-37

Support with Amendments

Explanation:
The Committee supports the proposed rule changes with the following amendments (proposed changes are capitalized and in bold):

1. **Prohibit judges from requesting judge's copies of motions (p 3, 4)**

Rule 2.116(G)(1)(c):

> Except where electronic filing has been implemented, a~~A~~ copy of a motion, response (including brief and any affidavits), or reply brief filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten. Where electronic filing has been implemented, a judge's copy ~~may~~ **SHALL** not be required.

Same change to Rule 2.119(A)(2)(d)

Rationale: The purpose of this amendment is to make the filing process consistent statewide, to eliminate the practice of courts enforcing rules without providing notice to the public, and to eliminate the need for attorneys or self-represented parties to make and deliver (by mail or in person) a paper copy to specific judges. Such a prohibition is not a hardship to the court because, where electronic filing has been implemented, a judge can print a paper copy from the electronic file.

2. **Clarify that a fee waiver continues after transfer of a case (p 4)**

Rule 2.222(D)(1):

> The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the party that moved for change of venue to pay the applicable statutory filing fee to the receiving court **UNLESS FEES HAVE BEEN WAIVED IN ACCORDANCE WITH MCR 2.002**.

Same change to the following sections:
2.223(B)(1)
2.225(B)(1)
2.227(B)(1)
4.002(C)(1)

Rationale: If a party has had his or her fees waived and the case is subsequently transferred because of change of venue, lack of jurisdiction or from district to circuit court, that waiver should continue in the new court. The additional language is already included in the rules regarding post-judgment transfer of a domestic relations cases (see p. 12).

3. **Expand the definition of alternate mailing address to be provided to the Friend of the Court (p 10)**

Rule 3.206(C)(1):

> The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party. If the party submitting the verified statement excludes an address for good cause, that party shall provide an alternate address where mail can be received. **AN ALTERNATE ADDRESS MAY INCLUDE AN ELECTRONIC OR EMAIL ADDRESS.**

Rationale: This section is problematic for domestic violence survivors attempting to maintain a confidential address, low income or homeless parties who cannot afford the cost of a post office box or lack a reliable address available from third parties. We understand the need for Friend of the Court to be able to send notices to parties – and the importance of parties receiving court notices – but with e-filing and the wide availability of email addresses and public places with internet access, we think an email alternative serves the needs of the court and parties.

4. **Clarify that jury demand is filed with the complaint in summary proceedings (p 24)**

Rule 4.201(B)(2):

> Jury Demand. If the plaintiff wishes a jury trial, the demand must be made on a form approved by the State Court Administrative Office. The jury trial fee must be paid when the demand is made. **THE JURY DEMAND MUST BE FILED WITH THE COMPLAINT.**

Rationale: Although it's implied by the placement of this new section that a jury demand is filed with the complaint, it should be stated specifically for clarity and to reduce any confusion among parties or the court.

5. **Increase time to file original will with the court (p 26)**

Rule 5.302(A)(2):

> Where electronic filing is implemented, if the application or petition to commence a decedent estate indicates that there is a will, it is available, and that it is not already in the court's possession, an exact copy of the will and any codicils must be attached to the application or petition. Within **14** days of the filing of the application or petition, the original will and any codicils must be filed with the court or the case will be dismissed without notice and

hearing. Notice of a dismissal for failure to file the original will and any codicils shall be served on the petitioner and any interested persons in a manner provided under MCR 5.105(B).

Rationale: Seven days is not sufficient time for an attorney or party to mail or hand-deliver the original will to the court; 14 days is a more reasonable deadline.

6. **Require clerks to continue to deliver judgments or orders to both parties (p 28)**

Rule 8.105(C)

Notice of Judgments, Orders, and Opinions. ~~Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by t~~The court clerk must deliver, in the manner provided in MCR 2.107, a copy of the judgment, final order, written opinion, or findings entered in a civil action to the ~~**attorneys**~~ **ATTORNEYS OF RECORD IN THE CASE or THE ~~party~~ PARTIES IF UNREPRESENTED.** ~~**Who sought the order, judgment, opinion or findings. Except where e-Filing is implemented, if the attorney or party does not provide at least one copy when filing a proposed order or judgment, the clerk, when complying with this subrule, may charge the reproduction fee authorized by the court's local administrative order under MCR 8.119(H)(2).** of record in the case, in the manner provided in MCR 2.107.~~

Rationale: Particularly where the court issues the order, judgment, or opinion in a case, the clerk should serve both parties with a copy. Otherwise, one party is at the mercy of the party who receives the order to timely serve, which could impact the rights of the other party, including the right to appeal. Additionally, it's not always easy to determine which party is the "party who sought the order, judgment, opinion or findings," as required by the current proposal. For example, in a divorce action where a counter complaint is filed, either party may be the moving party.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote: 4

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2002-37

Support with Amendments

Explanation

The Civil Procedure & Courts Committee continues to support the Michigan Supreme Court's ongoing efforts to implement a statewide electronic filing system.

The committee, however, recommends that the language in MCR 2.222(E)(1) be clarified as follows (proposed changes shown in bold and underline):

> The party that moved for change of venue must pay to the receiving court within 28 days of the date **of service** of the transfer order the applicable filing fee as ordered by the transferring court. No further action may be had in the case until payment is made. If the fee is not paid to the receiving court within 28 days of the date **of service** of the order, the reviewing court must order the case transferred back to the transferring court.

The committee recommends that the same change be made to similar language contained in proposed MCR 2.223(C)(1), 2.225(C)(1), 2.227(C)(1), 4.002(D)(1), and 4.002(D)(3).

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Public Policy Position
ADM File No. 2002-37

Support

The committee supports these proposed amendments of the rules to further the Court's efforts in implementing a statewide e-filing system.

Position Vote:
Voted For position: 10
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

Contact Person:
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2002-37

Support with Recommended Amendments

Explanation:
Council voted to support this ADM file with a friendly amendment to clarify that the Judge's copy "shall not be required to be provided unless specifically requested by the hearing officer."

Position Vote:
Voted For position: 12
Voted against position: 8
Abstained from vote: 1
Did not vote (absent): 0

Contact Person: Robert C. Treat, Jr.
Email: bob.treat@qdroexpressllc.com

Order

Michigan Supreme Court
Lansing, Michigan

April 18, 2019

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

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

ADM File No. 2018-12

Proposed Amendment of Rule 2.612 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.612 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 2.612 Relief from Judgment or Order

(A)-(B) [Unchanged.]

(C) Grounds for Relief From Judgment.

(1)-(3) [Unchanged.]

(4) Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Staff comment: The proposed amendment of MCR 2.612 would clarify that writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. This language was previously included in the court rules before they were rewritten in 1985.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 August 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-12. 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.

April 18, 2019

Clerk

Public Policy Position
ADM File No. 2018-12

Support with Amendments

Explanation

The Civil Procedure & Courts Committee supports the proposed rule amendment with the following recommendation to make clear that writs of coram nobis, coram vobis, audita querela, and bills of review remained abolished after the rules were rewritten in 1985 (suggested changes shown in bold and underline):

> Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review **remain abolished**, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Position Vote:

Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Public Policy Position
ADM File No. 2018-12

Support

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 5

Contact Person: Robert C. Treat, Jr.
Email: bob.treat@qdroexpressllc.com

Order

Michigan Supreme Court
Lansing, Michigan

May 15, 2019

ADM File No. 2018-18

Proposed Amendment of
Rule 3.106 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.106 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 3.106 Procedures Regarding Orders for the Seizure of Property and Orders of Eviction

(A) [Unchanged.]

(B) Persons Who May Seize Property or Conduct Evictions. The persons who may seize property or conduct evictions are those persons named in MCR 2.103(B), and they are subject to the provisions of this rule unless a provision or a statute specifies otherwise.

(1) [Unchanged.]

(2) Each court must post, in a public place at the court, a list of those persons who are serving as court officers or bailiffs. The court must provide the State Court Administrative Office with a copy of the list and a copy of each court officer's bond required under subsection (D)(1), and must notify the State Court Administrative Office of any changes.

(C)-(H) [Unchanged.]

Staff comment: The proposed amendment of MCR 3.106 would require trial courts to provide a copy of each court officer's bond to SCAO along with the list of court officers.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-18. 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.

May 15, 2019

Clerk

Public Policy Position
ADM 2018-18

Support

Explanation
The committee voted unanimously to support the proposed amendment to Rule 3.106.

Position Vote:
Voted for position: 13
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 10

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-18

Support

Explanation
The Civil Procedure & Courts Committee supports the proposed court rule amendment to require that courts supply the State Court Administrative Office with a copy of each court officer's bond.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote: 7

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Order

Michigan Supreme Court
Lansing, Michigan

April 22, 2019

Bridget M. McCormack,
Chief Justice

ADM File No. 2018-16

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendment of Rule 3.201
and Proposed Addition of Rule
3.230 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 3.201 and a proposed addition of Rule 3.230 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 3.201 Applicability of Rules

(A) Subchapter 3.200 applies to

(1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, ~~family~~ support under MCL 552.451 *et seq.*, or MCL 722.1 *et seq.*, the custody of minors or parenting time under MCL 722.21 *et seq*. or MCL 722.1101 *et seq.*, ~~and visitation with minors under MCL 722.27b, and to~~

(2) an expedited proceeding to determine paternity or child support under MCL 722.1491 *et seq.*, or to register a foreign judgment or order under MCL 552.2101 *et seq*. or MCL 722.1101 *et seq.*, and to

(~~2~~3) proceedings that are ancillary or subsequent to the actions listed in subrules (A)(1) and (A)(2) and that relate to

(a) [Unchanged.]

(b) ~~visitation~~parenting time with minors, or

(c) [Unchanged.]

(B)-(C) [Unchanged.]

(D) When used in this subchapter, unless the context otherwise indicates:

(1) "Case" means an action ~~initiated~~commenced in the family division of the circuit court by:

(a)-(c) [Unchanged.]

(d) filing a petition under MCR 3.222(C); ~~or~~

(e) filing a consent judgment under MCR 3.223~~.~~;

(f) filing of a complaint and notice under MCR 3.230; or

(g) filing a request for entry of a consent agreement and a consent judgment or order under MCR 3.230.

(2)-(3) [Unchanged.]

(4) "Initiating document" means a statement, letter, or other document filed in lieu of a complaint to open a case and request relief under the Summary Support and Paternity Act, MCL 722.1491 *et seq.*, or to register a foreign judgment or order under the Uniform Interstate Family Support Act, MCL 552.2101 *et seq.* or the Uniform Child Custody Jurisdiction Enforcement Act, MCL 722.1101 *et seq.*

[NEW] Rule 3.230 Actions Under the Summary Support and Paternity Act

(A) Scope and Applicability of Rules; Definitions.

(1) Procedure in actions under the Summary Support and Paternity Act, MCL 722.1491 *et seq.*, is governed by the rules applicable to other domestic relations actions, except as otherwise provided in this rule and the act.

(2) Definitions. For purposes of this rule

(a) "IV-D agency" means the agency in a county that provides support and paternity establishment services under MCL 722.1501.

(b) "Plaintiff" means

(i) The child's mother, father, or alleged father on whose behalf the IV-D agency files the action, or

(ii) The Michigan Department of Health and Human Services when the IV-D agency files an action on behalf of a child.

(c) "Expedited paternity action" means an action commenced to establish either paternity or paternity and support under MCL 722.1491 *et seq*.

(d) "Expedited support action" means an action commenced to establish a parent's support obligation under MCL 722.1499.

(B) Commencing an Action.

(1) A IV-D agency commences an expedited paternity or expedited support action by filing one of the following with the court:

(a) A complaint and notice, or

(b) A request to enter a consent agreement, and a consent judgment or order signed by the parties.

(2) Upon filing an action, the court clerk shall assign a case number and judge. The court clerk shall not issue a summons under MCR 2.102.

(3) A complaint, notice, and request for entry of a consent agreement used to initiate an action or set child support must be completed on forms approved by the State Court Administrative Office.

(4) Complaint to Establish Paternity. A complaint filed in an expedited paternity action shall:

(a) contain a statement of the information required in MCL 722.1495 and other applicable laws and rules,

(b) comply with the provisions of MCR 2.113 and MCR 3.206(A),

(c) state the relief being requested, and

(d) be verified and signed by the mother or alleged father, or signed by the IV-D agency. A statement signed by a IV-D agency does not need to be verified, and may be signed "on information and belief." If the plaintiff is a minor, the complaint must be signed as provided in MCR 2.201(E).

(5) Complaint to Establish Duty for Child Support. A complaint filed in an expedited support action shall:

(a) contain the information required in MCL 722.1499, and other applicable laws and rules,

(b) comply with the provisions of MCR 2.113 and MCR 3.206(A),

(c) state the relief being requested, and

(d) be signed by the plaintiff or the IV-D agency. If the plaintiff is a minor, the complaint must be signed as provided in MCR 2.201(E).

(6) Notice. A notice to initiate an expedited paternity or expedited support action shall be titled "In the name of the people of the state of Michigan," and shall be signed by the IV-D agency. The notice must be directed to the defendant and include:

(a) the name and address of the court;

(b) the names and addresses of the parties;

(c) the case number and name of the assigned judge;

(d) the name, address, and phone number of the IV-D agency filing the action;

(e) the name and address of any attorney appearing in the matter;

(f) notice that written responses, agreements, and other actions must be filed with the court within 21 days after being served, and if the defendant fails to file a written response pursuant to statute or take other action within 21 days, an order or a judgment may be entered granting the relief requested in the complaint without further notice or hearing; and

(g) an expiration date, which does not exceed 126 days after the date the action is filed.

(7) Request to Enter Consent Agreement. A request for entry of a consent judgment or order to initiate an expedited paternity or expedited support action shall:

(a) state the following:

(i) the name and address of the court;

(ii) the names and addresses of the parties;

(iii) the name, address, and phone number of the IV-D agency filing the action; and

(iv) the name and address of any attorney appearing in the matter.

(b) contain the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request for entry of the judgment or order without further notice; and

(c) be signed by the parties and the IV-D agency.

(C) Service.

(1) A complaint and notice filed under subrule (B)(1)(a) must be served on the parties by the IV-D agency in accordance with MCR 2.105, or in the alternative, may be served by mail in accordance with MCL 722.1495(4).

(2) Pursuant to MCL 722.1501(4)(c), a request to enter a consent judgment or order filed under subrule (B)(1)(b) is considered served at the time of filing, and a party's signature on the request to enter a consent agreement, or the consent judgment or order signifies acknowledgement of service.

(3) After a party has been served under subrule (C)(1) or (2), other court papers, orders, and notices shall be served in accordance with MCR 3.203.

(D) Dismissal as to Defendant Not Served.

(1) Upon expiration of the notice under subrule (B)(6)(g), the action is deemed dismissed without prejudice if the defendant has not been served with notice of the action unless the defendant has responded.

(2) A court shall set aside a dismissal of an action under this subrule without hearing upon showing by the IV-D agency within 28 days of the expiration of the notice that the defendant did in fact receive timely notice or had submitted to the court's jurisdiction before the dismissal.

(E) Setting Child Support.

(1) At the time that a complaint is filed, or any time after establishing paternity or a duty to support a child, the IV-D agency may provide notice setting a proposed support amount. The proposed support obligation shall be calculated by application of the Michigan Child Support Formula or a properly documented deviation from the amount calculated using the formula. The notice or an accompanying calculation results report must state the amounts calculated for support, the proposed effective date, and the facts and assumptions upon which the calculation is based.

(2) A notice and calculation report setting a child support amount shall be filed with the court and provided to the parties. The notice shall contain statements notifying the parties of all of the following:

(a) that objections and responses to the notice must be filed within 21 days from:

(i) the date of service, if the notice setting child support is served at the same time as the complaint and notice; or

(ii) the date of mailing or service, if the notice is served under MCR 3.203.

(b) a party may object to the proposed child support amount based on either a mistake in the facts or assumptions used to calculate support, or on an error in the calculation by filing an answer requesting a hearing on the proposed obligation;

(c) if no objection is filed, an order will be submitted to the court in the proposed amounts for entry without further notice or hearing;

(d) if an objection is filed, a hearing will be scheduled, unless the IV-D agency recalculates the amount and sends a new notice.

(3) If the IV-D agency receives information from a party after filing a notice setting a child support amount and before a support order is submitted for

entry, the agency may recalculate support and issue a new notice and calculation report under this subrule proposing a corrected child support amount.

(F) Response.

(1) Within 21 days after being served with a notice under subrule (B) or a notice under subrule (E), a party must file a response with the court or take another action permitted by law or these rules. The party must serve copies of the response on the IV-D agency and the other party in accordance with MCR 3.203.

(2) The IV-D agency shall immediately forward to the court any response it receives from a party who has not filed the response with the court.

(3) A request to enter a consent agreement, or a consent judgment or order filed under subrule (B)(1)(b) does not require a response. A party may file an additional response or motion regarding issues not resolved by the agreement, consent judgment or order, or the other party filing an additional response.

(4) Within 14 days after the time permitted for responses under subrule (F)(1), if a party has filed a response, or pursuant to any matter left unresolved, the IV-D agency shall take one or more of the following actions:

(a) schedule genetic testing, if a party in an expedited paternity action requests genetic testing;

(b) schedule a hearing on any matters or relief proposed in a complaint or notice that are contested, and the IV-D agency may submit a proposed order or judgment that incorporates any proposed relief that was not contested; or

(c) submit a proposed judgment or order that incorporates any proposed relief that a party agrees to or that was not contested.

(G) Failure to Respond.

(1) Subrule MCR 3.210(B) does not apply to proceedings under this rule.

(2) If neither party in an action to establish paternity brought against an alleged father requests genetic tests and the defendant does not otherwise defend within 21 days after receiving notice, the IV-D agency may request entry of

a judgment establishing defendant as the child's legal father by submitting a proposed judgment for entry.

(3) In an action to establish paternity brought by an alleged father against the child's mother, if the mother does not admit the alleged father's paternity, the court shall not determine paternity unless based on genetic test results.

(4) When a defendant does not respond or otherwise defend, the IV-D agency shall submit a proposed order that establishes the duty to support the child.

(5) If neither party files an objection to a notice setting a support amount within 21 days, the IV-D agency shall submit a support order in the recommended amounts to the court.

(6) Nonmilitary affidavits required by law must be filed before a judgment is entered in cases in which the defendant has failed to respond or appear.

(7) A judgment may not be entered against a minor or an incompetent person who has failed to respond or appear unless the person is assisted in the action by a conservator or other representative, except as otherwise provided by law.

(H) Judgments and Orders.

(1) The court may consider the complaints and other documents filed with the court, relevant and material affidavits, or other evidence when entering an order in an expedited paternity or support action.

(2) Entering Orders. The court may enter a proposed judgment or order submitted by the IV-D agency without hearing if the court is satisfied of all of the following:

(a) that the parties were given proper notice and opportunity to file a response,

(b) the statutory and rule requirements were met, and

(c) the terms of the judgment or order are in accordance with the law.

(3) The IV-D agency seeking entry of a proposed judgment or order must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment or orders upon the parties at least 14 days before the hearing, and promptly file a proof of service when:

(a) the proposed judgment involves a request for relief that is different from the relief requested in the complaint; or

(b) the IV-D agency does not have sufficient facts to complete the judgment or order without a judicial determination of the relief to which the party is entitled.

(4) If the court determines that a proposed judgment or order is not in accordance with the law or that the court needs additional information to decide the matter, the court may direct the IV-D agency or the parties to do any of the following within 14 days:

(a) submit a modified proposed judgment or order in conformity with the court's ruling;

(b) file additional affidavits or other documents and notices, or

(c) schedule a hearing to present evidence sufficient to satisfy the court or to meet statutory requirements.

(5) A party may waive a statutory waiting period or further notice prior to entry of a consent judgment or order.

(6) If paternity of a child has not been established and a party or IV-D agency requests genetic testing, the court may order the parties and child to submit to genetic testing without a hearing.

(7) Upon entry of a judgment or order and as provided by MCR 3.203, the IV-D agency must serve a copy as entered by the court on all parties within 7 days after entry, and promptly file a proof of service.

Staff comment: The proposed amendment of MCR 3.201 and proposed addition of MCR 3.230 would provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, *et seq*.) to establish a parent's paternity or support obligation through a summary action.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 August 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-16. 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.

April 22, 2019

Clerk

Public Policy Position
ADM 2018-16

Support with Amendments

Explanation
The amendments are primarily intended to set rules for implementation of the Summary Support and Paternity Act, MCL 722.1491 et seq. This statute was passed several years ago and permits a IV-D agency, such as a county Friend of the Court (FOC) or support division of the prosecutor's office to administratively establish paternity and/or a support order. It also permits parents to enter into a consent order of paternity and/or support. The statute only applies in cases where a parent is receiving public benefits for the child at issue, such as cash assistance or Medicaid. Provisions regarding custody and parenting time may also be included in the order or referred to the FOC if the parents disagree.

The committee had two concerns with the proposed bill. First, because this is an expedited process with limited court involvement, the committee is concerned with the lack of safeguards to prevent an abuser from coercing the abused parent into signing a consent order. The rule does not require any domestic violence screening and it permits the court to enter a consent order without a hearing. Such a process does not provide for any judicial oversight of whether a consent order is free from coercion, especially in the context of domestic violence. To address this concern, the committee proposes that at commencement, the agency file a domestic violence screening tool completed by each party and that the court be required to hold a hearing if domestic violence is indicated.

Second, the committee is concerned that custodial parents receiving benefits would not be advised of their right to opt out of their obligation to cooperate with establishing paternity or support as a condition to receiving benefits. One basis to opt out is domestic violence. (See BEM 255). To address this concern, the committee proposes that at commencement of the action, the IV-D agency must file a waiver signed by each party that they were informed of their right opt out of the process.

The committee voted unanimously to support ADM File No. 2018-16 only with the following amendments:

[NEW] Rule 3.230 Actions Under the Summary Support and Paternity Act
(A) - UNCHANGED

(B)(1) - UNCHANGED

(2) A IV-D agency shall also file a waiver signed by the parent receiving benefits for the child that the parent was advised of his/her obligation to comply with all requests for action and information and the right to submit a claim of good cause for not cooperating and that the parent has been advised of the process for submitting a good-cause claim.

~~(2)~~(3) Upon filing an action, the court clerk shall assign a case number and judge. The court clerk shall not issue a summons under MCR 2.102.

~~(3)~~(4) A complaint, notice, and request for entry of a consent agreement used to initiate an action or set child support must be completed on forms approved by the State Court Administrative Office.

~~(4)~~(5) Complaint to Establish Paternity. A complaint filed in an expedited paternity action shall:

(a) contain a statement of the information required in MCL 722.1495 and other applicable laws and rules,

(b) comply with the provisions of MCR 2.113 and MCR 3.206(A),

(c) state the relief being requested, and

(d) be verified and signed by the mother or alleged father, or signed by the IV-D agency. A statement signed by a IV-D agency does not need to be verified, and may be signed "on information and belief." If the plaintiff is a minor, the complaint must be signed as provided in MCR 2.201(E).

~~(5)~~(6) Complaint to Establish Duty for Child Support. A complaint filed in an expedited support action shall:

(a) contain the information required in MCL 722.1499, and other applicable laws and rules,

(b) comply with the provisions of MCR 2.113 and MCR 3.206(A),

(c) state the relief being requested, and

(d) be signed by the plaintiff or the IV-D agency. If the plaintiff is a minor, the complaint must be signed as provided in MCR 2.201(E).

~~(6)~~(7) Notice. A notice to initiate an expedited paternity or expedited support action shall be titled "In the name of the people of the state of Michigan," and shall be signed by the IV-D agency. The notice must be directed to the defendant and include:

(a) the name and address of the court;

(b) the names and addresses of the parties;

(c) the case number and name of the assigned judge;

(d) the name, address, and phone number of the IV-D agency filing the action;

(e) the name and address of any attorney appearing in the matter;

(f) notice that written responses, agreements, and other actions must be filed with the court within 21 days after being served, and if the defendant fails to file a written response pursuant to statute or take other action within 21 days, an order or a judgment may be entered granting the relief requested in the complaint without further notice or hearing; and

(g) an expiration date, which does not exceed 126 days after the date the action is filed.

~~(7)~~(8) Request to Enter Consent Agreement. A request for entry of a consent judgment or order to initiate an expedited paternity or expedited support action shall:

(a) state the following:

(i) the name and address of the court;

(ii) the names and addresses of the parties;

(iii) the name, address, and phone number of the IV-D agency filing the action; and

(iv) the name and address of any attorney appearing in the matter.

(b) contain the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request for entry of the judgment or order without further notice; ~~and~~

(c) be accompanied by domestic violence screening forms. The domestic violence screening form shall be limited to reporting personal protection actions, domestic violence criminal

actions, and child protective actions involving the parties and shall be on a form approved by the State Court Administrative Office. Each party must complete a separate form; and ~~(c)~~(d) be signed by the parties and the IV-D agency.

(C) – (G) – UNCHANGED
(H) (1) – UNCHANGED

(2) Entering Orders. The court may enter a proposed judgment or order submitted by the IV-D agency without hearing if the court is satisfied of all of the following:

(a) that the parties were given proper notice and opportunity to file a response,
(b) the statutory and rule requirements were met, ~~and~~
(c) the terms of the judgment or order are in accordance with the law, and~~.~~
(d) Neither domestic violence screening forms identify domestic violence between the parties.

(3) The IV-D agency seeking entry of a proposed judgment or order must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment or orders upon the parties at least 14 days before the hearing, and promptly file a proof of service when:

(a) the proposed judgment involves a request for relief that is different from the relief requested in the complaint; ~~or~~
(b) the IV-D agency does not have sufficient facts to complete the judgment or order without a judicial determination of the relief to which the party is entitled; or ~~.~~
(c) a domestic violence screening form identifies domestic violence between the parties.

Position Vote:
Voted for position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-16

Oppose

Explanation:
Council passed a motion to NOT support this ADM file due to many due process concerns raised both at the Council meeting and the Court Rules Committee teleconference.

Position Vote:
Voted For position: 13
Voted against position: 8
Abstained from vote: 0
Did not vote (absent): 0

Contact Person: Robert C. Treat, Jr.
Email: bob.treat@qdroexpressllc.com

Order

Michigan Supreme Court
Lansing, Michigan

May 10, 2019

ADM File No. 2018-02

Proposed Amendment of
Rule 3.501 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.501 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 3.501 Class Actions

(A)-(C) [Unchanged.]

(D) Judgment.

(1)-(5) [Unchanged.]

(6) Any order entering a judgment or approving a proposed settlement of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of any residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan. Notwithstanding this requirement, the court may order the disbursement of all residual funds to a foundation or for any other purpose that has a direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class.

(E)-(I) [Unchanged.]

Staff Comment: The proposed amendment of MCR 3.501 would require 50 percent of unclaimed class action funds be disbursed to the Michigan State Bar Foundation or other distribution as deemed appropriate by the court. This proposal is a slightly modified version of a proposal submitted to the Court by the Michigan State Planning Body and Legal Services Association of Michigan.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-02. 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.

MARKMAN, J. (*concurring*). I agree with the Court's decision to invite public comment concerning the proposed rule. In that regard, and against the backdrop of what I view as a reasonable and responsible class action system in Michigan, I write to invite comment concerning the following matters in particular:

First, whether it constitutes an appropriate exercise of this Court's rulemaking authority to expand the purpose of the class action process from the compensation of specific victims of misconduct to the funding of public and charitable programs and activities that may have no relationship to the parties or the issue in the case, however worthy and meritorious those programs and activities might be.

Second, whether it constitutes an appropriate exercise of a court's "judicial power" under the Constitution-- the authority to adjudicate particular cases and controversies-- for that court to determine which public and charitable programs and activities will become the recipients of such funds.

Third, whether there is a basis for concern that the process of identifying the recipients of such funds may become an increasingly politicized exercise, one in which the personal perspectives, loyalties, and interests of the judge or attorney become determinative and in which various forms of lobbying activities come to be undertaken by interested groups and organizations.

Fourth, whether the trial court's authority to undertake such funding determinations may have an adverse impact, or an appearance of an adverse impact, upon that court's exercise of judgment in deciding the underlying class action or the amount of damages to be awarded in such lawsuit.

Fifth, whether there can be any effective review or appellate oversight of such judicial funding decisions and, if so, by what procedures and standards.

Sixth, whether the proposed rule may disincentivize judges or lawyers from undertaking what might be more diligent, time-consuming, and costly efforts to identify unidentified claimants for class action awards.

Seventh, whether any meaningful limitation is imposed upon the funding discretion of judges who must determine that some "purpose" bears a "direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class."

Eighth, whether there is an effective reordering of the attorney's relationship with his or her clients, beyond what is already inherent in the class action process, if substantial class action awards go not to these clients but to the funding needs of specific public and charitable programs and activities, the determination of which may have been made by the trial court with the assistance of such attorney.

Ninth, whether it is redefining of the lawyer-client relationship, or otherwise inconsistent with the Rules of Professional Conduct of this state, for an attorney in a class action to negotiate an element of a settlement of that action that is exclusively beneficial to a nonclaimant group or organization.

Tenth, whether specifically in class actions, additional procedures are necessary to ensure that the interests of claimants are fully and fairly protected rather than placed in competition with the interests of nonclaimants seeking to use the proposed rule to fund public and charitable programs and activities.

Eleventh, whatever the disposition of unclaimed funds in a class action, if claimants cannot be identified, whether that fact should have any effect on the calculation of attorney's fees.

Twelfth, however unsympathetic the losing defendant in a class action may be, whether it constitutes an appropriate sanction that such defendant be held responsible, not merely for compensating its victims, but also for the funding of public or charitable programs or activities that have been deemed to have a "direct or indirect relationship to the underlying litigation or otherwise promote[] the interests of the members of the certified class." See *Grigg v Mich Nat'l Bank*, 405 Mich 148, 219-220 (1979) (LEVIN, J., dissenting) (including as an appendix the Uniform Class Actions Rule, which provides in § 15(c)(5) that "the court shall determine what amount of the funds available for the payment of the judgment cannot be distributed to members of the class individually because they could not be identified or located or because they did not claim or prove the right to money apportioned to them. The court[,] after [a] hearing[,] shall distribute that amount, in whole or in part, to one or more states as unclaimed property or to the *defendant*") (emphasis added).

Thirteenth, whether there is cause for concern that some losing class action defendants will view awards made to public and charitable programs and activities as a preferable "public relations" alternative to these same funds being paid to private claimants and therefore make it more likely that such defendants will prefer to negotiate in favor of these types of dispositions rather than identifying actual claimants. See., e.g, *Frank v Gaos*, 586 US ___; 139 S Ct 1041 (2019).

Fourteenth, to what extent, if any, the proposed rule will affect the prevalence or the breadth of class actions brought in Michigan, including but not limited to the incentivization of so-called "noninjury" lawsuits in which the administrative costs of identifying large numbers of small claimants may outweigh the benefits of relatively small class action recoveries.

Fifteenth, how appropriately to respond to United States Supreme Court Chief Justice John Roberts' inquiry "when, *if ever*, [a cy pres class action settlement] should be considered [and] how to assess its fairness as a general matter . . . ." *Marek v Lane*, 571 US 1003, 1006 (2013) (statement of Roberts, C.J.) (emphasis added).

Sixteenth, whether the disposition of unclaimed class action awards should be a matter determined, as here, by the court rule process-- in which public comment comes largely from the bench and bar-- or by the legislative process, in which public comment derives more broadly from its representative nature.

SEAL OF THE MICHIGAN SUPREME COURT · LANSING · DISCITE JUSTITIAM MONITI

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.

May 10, 2019

Clerk

Letter Originally Sent to MSC Requesting Rule Change

MICHIGAN STATE PLANNING BODY

420 N. Fourth Avenue Ann Arbor, Michigan 48104-1197 (734) 665-6181, ext. 124

December 30, 2017

Hon. Milton L. Mack, Jr.
State Court Administrator
Michigan Supreme Court
925 W. Ottawa St.
Lansing, MI 48915

Re: proposed revisions to MCR 3.501

Dear Judge Mack,

We are writing on behalf of the Michigan State Planning Body and the Legal Services Association of Michigan to request that the Court adopt an addition to MCR 3.501 that would provide guidance to trial courts in managing cy pres awards in class action suits. Specifically, we are suggesting that the Court, by rule, require that 50% of cy pres funds be dedicated to access to justice programs administered by the Michigan State Bar Foundation. We are attaching proposed language for the addition to the rule. See Attachment A.

As background, the unmet needs for civil legal services for the poor are well documented—see, e.g., the *Justice Gap Report* published earlier this year by the federal Legal Services Corporation, documenting that 86% of the civil legal needs of the poor are unmet or inadequately met. The State Bar of Michigan has published parallel reports based on Michigan data showing similar unmet needs in this state.

Both the national Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSSA) have recognized that the lack of meaningful access to justice by the poor is a judicial system problem and have pledged their organizations to work towards "100% access" to the court system. See CCJ and COSSA Joint Resolution 5 of 2015, "Reaffirming the Commitment to Meaningful Access to Justice for All".

One of the innovative ways for courts to address this unmet need is to dedicate a portion of cy pres funds directly to programs providing civil legal services to the poor. In August 2016, the American Bar Association adopted a Resolution urging all states "to adopt court rules or legislation authorizing the award of class action residual funds to non-profit organizations that improve access to civil justice for persons living in poverty". See ABA Resolution 104 of 2016, attached as B. Over the past several years, 21 states have adopted legislation or court rules directing a portion of class action residual funds to access to justice. We urge Michigan to join this national movement.

The proposed Michigan rule generally restates current law (providing that courts first identify and compensate class members) but goes on to provide that 50% of unclaimed funds shall be disbursed to the Michigan State Bar Foundation (MSBF) in the same manner as it administers IOLTA funds.

We believe that the MSBF is the ideal recipient of these funds. It has administered the IOLTA program (see MRPC 1.15) for over 30 years and also administers the legislature's Indigent Civil Legal Assistance fund, see MCL 600.1485. The Foundation possesses both a solid administrative structure and a deep knowledge of the legal services delivery system in the state. The MSBF Trustees are aware of this proposed court rule and have agreed to accept the responsibility to be the entity to receive cy pres funds and to distribute the funds to support activities and programs that promote access to the civil justice system for low income residents of Michigan.

Please contact us if you have any questions or if you need any additional information.

Sincerely,

Juan Salazar	*Ann Routt*	*Judith E. Levy*	*Robert F. Gillett*
Juan Salazar	Ann L. Routt	Judith E. Levy	Robert F. Gillett
Co-chair	Co-chair	Co-chair	Co-chair
LSAM	LSAM	State Planning Body	State Planning Body

Cc: Anne Boomer
Jennifer Bentley

Attachment A to State Planning Body Letter to the Court

Proposed "Cy Pres" amendment to Michigan Court Rules

Added as addition to Rule 3.501 (D)

(6) Any order entering a judgment or approving a proposed settlement of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of any residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan. The court may order the disbursement of the balance of any residual funds to said foundation or for any other purpose that has a direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class.

Comment. This rule incorporates the recommendation of ABA Resolution 104 of 2016. The Resolution is stated as a mandate to reflect the recognition that providing access to justice is a high priority of the judicial system and that providing general access to the court system is likely to benefit class members in the vast majority of cases. However, every cy pres decision shall be made on a case by case basis and the rule is not intended to prevent a trial court from identifying another more targeted and appropriate beneficiary of residual funds in a specific case.

Attachment B to State Planning Body Letter to the Court

Adopted by the ABA House of Delegates
August 2016

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS
COMMISSION ON HOMELESSNESS & POVERTY
COMMISSION ON INTEREST ON LAWYERS' TRUST ACCOUNTS
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges state, local, territorial and tribal jurisdictions to adopt court rules or legislation authorizing the award of class action residual funds to non-profit organizations that improve access to civil justice for persons living in poverty.

FURTHER RESOLVED, That before class action residual funds are awarded to charitable, non-profit or other organizations, all reasonable efforts should be made to fully compensate members of the class, or a determination should be made that such payments are not feasible.

B

REPORT

Introduction

The unmet need for civil legal services among those living in poverty is well documented: study after study has demonstrated that the majority of poor people who need civil legal services are turned away due to a severe shortage of legal aid resources. This not only has grave consequences for the people who are unable to get this critical legal help; everyone with matters before the courts and the justice system suffers as well as a result of the large increase in people left with no choice but to represent themselves in court on often complex legal matters.

Funding for legal aid services is woefully inadequate and the Association annually organizes bar leaders from around the country to lobby for more funding for the Legal Services Corporation to partially address this problem. The Association has adopted policy statements in support of adequate funding for LSC, as well as called upon bar associations and lawyers to "undertake vigorous leadership and aggressive advocacy to identify, pursue and implement creative initiatives that will result in new funding mechanisms for legal services providers.[1]"

A creative initiative that has now been adopted in 19 U.S. jurisdictions helps provide critical funding for legal aid while at the same time providing a balanced resolution to what otherwise can often become a thorny issue in class action litigation. Specifically, these rules and statutes authorize non-profit organizations that improve access to civil justice for persons living in poverty as appropriate recipients of awards of undistributed class action settlement residuals. This resolution seeks to have the Association go on record as supporting this approach for the reasons articulated below.

The Origins of the Cy Pres Doctrine

Cy pres awards are distributions of the residual funds from class action settlements or judgments (and occasionally from other proceedings, such as probate and bankruptcy matters) that, for various reasons, are unclaimed or cannot be distributed to the class members or other intended recipients. The term cy pres derives from the Norman-French phrase, cy pres comme possible, meaning "as near as possible." Originating at least as early as sixth-century Rome, the cy pres doctrine has its roots in the laws of trusts and estates, operating to modify charitable trusts that specified a gift that had been granted to a charitable entity that no longer existed, had become infeasible, or was in contravention of public policy. In such instances, courts transferred the funds to the next best use that would satisfy "as nearly as possible" the trust settlor's original intent.

When class actions are resolved through settlement or judgment, it is not uncommon for excess funds to remain after a distribution to class members. Residual funds are often a result of the inability to locate class members or class members failing or declining to file claims or cash settlement checks. Such funds are also generated when it is "economically or administratively

[1] House of Delegates policy resolution 95A124.

infeasible to distribute funds to class members if, for example, the cost of distributing individually to all class members exceeds the amount to be distributed.[2]"

In these circumstances courts have used the cy pres doctrine to accomplish the distribution of residual funds to charities that benefit persons similarly-situated to the plaintiffs, or that advocate to improve access to justice more generally. This preserves the deterrent effect of the class action device, and allows courts to distribute residual funds to charitable causes that reasonably approximate the interests pursued by the class action for absent class members who have not received individual distributions.

Cy Pres is a Well-Established Practice

The application of the cy pres doctrine in class actions, as with any other doctrine throughout legal history, has evolved as courts have been required to grapple with complex and unique facts and circumstances in each particular case. Because of such complexities, trial courts sometimes fashion unique cy pres distributions; some such awards have been reversed on appeal. The vast majority of such reversals are not for "abusing" the cy pres doctrine (i.e., using cy pres for personal gain for counsel or judges). Rather, most reversals are due to the misapplication of the doctrine within the particular circumstances of the case (e.g., failure to make every effort to fully compensate class members or misalignment between the interests of the class members and the interests of the cy pres recipients). While addressing these problems, federal courts have consistently found that the cy pres doctrine is valid in the class action context. The American Law Institute's Principles of Law of Aggregate Litigation ("ALI Principles") agrees and provides key guidance on the application of cy pres awards in class actions, which is respected and generally followed by the courts. The ALI Principles acknowledge that "many courts allow a settlement that directs funds to a third party when funds are left over after all individual claims have been satisfied . . . [and] some courts allow a settlement to require a payment only to a third party, that is, to provide no recovery at all directly to class members.[3]"

With respect to funds left over after a first-round distribution to class members, the ALI Principles express a policy preference that residual funds should be redistributed to other class members until they recover their full losses, unless such further distributions are not practical:

> If the settlement involves individual distributions to class members and funds remain after distribution (because some class members could not be identified or chose not to participate), the settlement should presumptively provide for further distributions to participating class members unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.[4]

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[2] *In re* Baby Prods. Antitrust Litig.,708 F.3d 163, 169 (3d Cir. 2013)
[3] PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.07 cmt. a (2010) [hereinafter ALI PRINCIPLES]
[4] ALI PRINCIPLES, *supra* note 3, § 3.07(b)

As the ALI Principles recognize, when further distributions to class members are not feasible, the court has discretion to order a cy pres distribution, which puts the settlement funds to their next-best use by providing an indirect benefit to the class.

Legal Aid and Access to Justice Organizations Are Appropriate Recipients of Cy Pres Distributions

The fundamental purpose of every class action is to offer access to justice for a group of people who on their own would not realistically be able to obtain the protections of the justice system. This purpose is closely aligned with the mission of every civil legal aid and access to justice initiative across the nation.

In class action suits, when distributions to the class members are not feasible, it is necessary to determine other recipients who would be appropriate to receive the residual cy pres funds. The ALI Principles state that such recipients should be those "whose interests reasonably approximate those being pursued by the class," and, if no such recipients exist, "a court may approve a recipient that does not reasonably approximate the interests" of the class.[5]

Courts evaluate whether distributions to proposed cy pres recipients "reasonably approximate" the interest of the class members by considering a number of factors, including: the purposes of the underlying statutes claimed to have been violated, the nature of the injury to the class members, the characteristics and interests of the class members, the geographical scope of the class, the reason why the settlement funds have gone unclaimed, and the closeness of the fit between the class and the cy pres recipient.

Organizations with objectives directly related to the underlying statutes or claims at issue in the relevant class action are clearly appropriate cy pres recipients. But narrowly limiting the scope of appropriate cy pres recipients to the precise claims in the class action may not always be possible or practical. Too narrow of a focus on the subject matter of the case can unnecessarily complicate the socially desirable settlement of large class action disputes. In a typical class action, counsel for plaintiffs and a defendant are resolving a complex dispute, and the disposal of residual funds is typically a detail in a larger resolution. While some court opinions speak of residual funds as "penalties" or "recoveries" for violations of the law, settling defendants usually see themselves as making a pragmatic business decision that specifically avoids any admission that they violated the law. Moreover, settling defendants have a practical interest in how residual funds are used, and may wish to avoid funding interest groups that campaign against the interests of the defendant.

There have been cases where parties improperly attempted to direct cy pres awards to causes that had no connection to the class or the case or to access to justice through the courts. Examples have included general awards to charities or educational institutions with no particular relationship to the class action. The concerns in the cy pres context are not about whether these are good and effective charities and institutions; it is their relevance to the class action where

[5] ALI PRINCIPLES, *supra* note 3, § 3.07(c)

there are residual funds to be awarded. In some instances, the reasons for including the organization have not been articulated, leaving the appeals court to guess about the connection of a particular organization to the issues of the case.

An appropriate recipient in most cases will be a legal services organization, so long as the underlying premise of expanding access to justice is properly articulated. Thus, federal and state courts throughout the country have long recognized organizations that provide access to justice for low-income, underserved, and disadvantaged people as appropriate beneficiaries of cy pres distributions from class action settlements or judgments. The access to justice nexus falls squarely within ALI Principles' guidance that "there should be a presumed obligation to award any remaining funds to an entity that resembles, in either composition or purpose, the class members or their interests.[6]"

An issue that sometimes arises in disposition of class action residuals is whether the scope of a suit (local or national) has been properly matched to the scope of a cy pres award. It is clearly disfavored under the case law for a cy pres award in a national class action case to be directed solely to a local charity. One advantage of an award to an organization with a broad access to justice mission is that such organizations exist throughout the country so any distribution can easily be structured to take into account the national nature of the case.

Because organizations with broad access to justice missions are widely recognized as appropriate recipients of cy pres awards, a growing number of states have adopted statutes or court rules codifying the principle that cy pres distributions to organizations promoting access to justice are an appropriate use of residual funds in class action cases. The state courts and legislatures in 19 states have adopted rules and statutes that specify, as appropriate cy pres recipients, charitable entities that promote access to legal services for low-income individuals.[7] Nine of these courts and legislatures have mandated a minimum baseline distribution (usually 25% to 50%) to the pre-approved category of recipients.[8] Because such statutes and court rules establish that it is permissible for any residual funds in class action settlements or judgments to be distributed to organizations that provide access to justice/civil legal aid, they make clear that such organizations are distinct from other charitable causes that have drawn legitimate concerns regarding a lack of nexus with the interests of the class members.

Conclusion

[6] ALI PRINCIPLES, *supra* note 3, § 3.07 cmt. b.

[7] The states are: California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Montana, Nebraska, New Mexico, North Carolina, Oregon, Pennsylvania, South Dakota , Tennessee, Washington. As of this writing, it has been reported that the Wisconsin Supreme Court adopted a petition for a cy pres rule, which is expected to become effective January 1, 2017 after final orders are drafted.

[8] The states with rules requiring a percentage of cy pres awards to be devoted to access to justice organizations are: Colorado (50%), Illinois (50%), Indiana (25%), Kentucky (25%), Montana (50%), Oregon (50%), Pennsylvania (50%), South Dakota (50%) and Washington (50%). When effective, Wisconsin (50%) will become the 10th state.

Class action litigation has become an important device for resolving a wide range of disputes between individual plaintiffs and corporate defendants. Cy pres awards of undistributed class action settlement residue are an important part of the settlement process. Distributing funds to appropriate recipients is a practical variant of the cy pres device long recognized in trust law and is generally accepted as preferable to returning undistributed funds to the settling defendants or escheat of those funds to the state.

Awards of class action settlement funds should follow these principles: (1) compensation of class members should come first; (2) cy pres awards are appropriate where cash distributions to class members are not feasible; (3) cy pres recipients should reasonably approximate the interests of the class; (4) cy pres distributions should recognize the geographic make-up of the class, and where circumstances dictate should be made on the basis of such factors; (5) legal aid and access to justice organizations should be considered as appropriate cy pres recipients.

The American Bar Association therefore urges that state, local, territorial, and tribal jurisdictions adopt court rules or legislation that authorize non-profit organizations that improve access to civil justice for persons living in poverty as appropriate recipients of class action residual funds.

Respectfully submitted,

Jacquelynne J. Bowman, Member
Standing Committee on Legal Aid & Indigent Defendants

August 2016

Public Policy Position
ADM File No. 2018-02

Support the Civil Procedure & Courts Committee Recommendations with an Additional Amendment

Explanation

The Michigan State Planning Body and the Legal Services Association of Michigan submitted a proposed court rule that would specifically require 50% of the cy pres funds to go to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan. The LSAM/SP proposed rule also provided that the court may disburse **the balance** of the cy pres to "said foundation or for any other purpose that has a direct or indirect relationship to the underlying litigation."

Proposed Rule 3.501 is a modified version of the LSAM/SP proposal. The proposed cy pres rule would require 50% of the cy pres funds to be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan or disburse **all** of the cy pres funds "to a foundation or for any other purpose that has a direct or indirect relationship to the underlying litigation."

The Civil Procedure & Courts Committee did not take a position on the policy underlying the rule but offered language to clarify the proposed rule 3.501. See below.

Rule 3.501 Class Actions

(A)– (C) [Unchanged]
(D) Judgment.
(1)-(5) [Unchanged]
(6)

(a) "Residual Funds" are funds that remain after the payment of approved class member claims, expenses, litigation costs, attorney's fees, and other court-approved disbursements made to implement the relief granted in the order entering judgment or approving a proposed settlement of a class action.

(b) Nothing in this rule is intended to limit the parties to a class action from proposing a settlement, or the court from entering a judgment or approving a settlement, that does not create Residual Funds.

(c) Any order entering a judgment or approving a proposed settlement of a class action certified under this rule that may result in the existence of Residual Funds shall provide for the disbursement of any such Residual Funds. In matters where the claims process has been exhausted and Residual Funds remain, not less than fifty percent (50%) of the Residual Funds shall be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan, unless the court otherwise determines to disburse all Residual Funds to **a foundation** or not for profit organization that has a direct or indirect relationship to the

underlying litigation or otherwise promotes the interests of the members of the certified class. **(emphasis added)**

After discussing the various proposed rules with the LSAM/SP workgroup, the Committee agreed to adopt the Civil Procedure & Courts Committee's version but delete the words **"foundation or."** The committee opposes the money being sent to a foundation because, without specifically designating where the money should go, there is no guarantee that a foundation will disburse the money to a nonprofit that has a direct or indirect relationship to the underlying litigation or that promotes the interests of the class. Therefore, the committee thinks it makes more sense that the residual funds are distributed directly to a nonprofit that is related to the underlying litigation or promotes the interests of the class.

Rule 3.501 Class Actions
(A)– (C) [Unchanged]
(D) Judgment.
(1)-(5) [Unchanged]
(6)
(a) "Residual Funds" are funds that remain after the payment of approved class member claims, expenses, litigation costs, attorney's fees, and other court-approved disbursements made to implement the relief granted in the order entering judgment or approving a proposed settlement of a class action.

(b) Nothing in this rule is intended to limit the parties to a class action from proposing a settlement, or the court from entering a judgment or approving a settlement, that does not create Residual Funds.

(c) Any order entering a judgment or approving a proposed settlement of a class action certified under this rule that may result in the existence of Residual Funds shall provide for the disbursement of any such Residual Funds. In matters where the claims process has been exhausted and Residual Funds remain, not less than fifty percent (50%) of the Residual Funds shall be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan, unless the court otherwise determines to disburse all Residual Funds to a ~~**foundation or**~~ not for profit organization that has a direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class.

Additional Comments:
Justice Markman, concurring, raised 16 questions concerning the proposed rule. Without responding point by point to all 16 questions, we wanted to respond globally to some of Justice Markman's concerns. A number of Justice Markman's questions seemed to pertain to whether it is an appropriate exercise of the court's judicial power to determine which public or charitable programs would receive the cy pres funds.

Whether the proposed amendment to MCR 3.501 is within the Court's rulemaking authority or an appropriate exercise of judicial authority depends on whether it is substantive or procedural in nature. The Court is authorized to "by general rules establish, modify, amend, and simplify the practice and procedure in all courts of this state," Mich. Const. Art. 6, § 5 (West 2019), but may not enact rules

that establish, abrogate, or modify the substantive law. *See McDougall v. Shanz*, 461 Mich. 15, 26 (1999). The question then, is whether the proposed cy pres rule is a procedural or substantive rule.

The proposed rule "'regulates procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them,'" *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.,* 559 U.S. 393, 407 (2010) (citing *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)), as the proposed rule indirectly distributes remedies to unidentifiable class members and therein regulates the process by which unidentified class members receive redress for the violation of their rights. Since the proposed cy pres rule is procedural in nature, it constitutes an appropriate exercise of the Court's judicial authority.

Finally, legal aid organizations are appropriate recipients of cy pres awards. Federal Courts regularly approve cy pres awards to legal aid organizations for access to justice. *See, e.g.*, *Lessard v. City of Allen Park*, 470 F. Supp. 2d 781, 783-84 (E.D.Mich. 2007); *see also Jones v. Nat'l. Distillers*, 56 F. Supp. 2d 355, 359 (S.D.N.Y. 1999) (discussing multiple cases in which a cy pres distribution for legal aid was found appropriate). Courts in other states such Colorado, Illinois, Montana, Oregon, Pennsylvania, South Carolina, South Dakota, West Virginia, Wisconsin, have promulgated rules that provide that a portion of the residual funds in a class-action case shall be directed to legal aid organizations. *See* William B. Rubenstein, 4 Newberg on Class Actions § 12:35 (5th ed., June 2019 update).

When cy pres awards are distributed to legal aid organizations, more people have access to justice. *See* Calvin C. Fayard, Jr. & Charles S. McCowan, Jr., *The Cy Pres Doctrine: A Settling Concept*, 58 La. B.J. 248, 251 (2011); courts); Danny Van Horn & Daniel Clayton, *It Adds Up: Class Action Residual Funds Support Pro Bono Efforts*, 45 Tenn. B.J. 12, 13-14 (2009). Moreover, the services legal aid organizations offer, which protect and serve millions of Americans with respect to matters such as housing, public benefits, and domestic violence, are advanced by cy pres awards. *See* Daniel Blynn, *Cy Pres Distributions: Ethics & Reform*, 25 Geo. J. Legal Ethics 435, 438 (2012).

Position Vote:
Voted For position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote: 9

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-02

Support with amendments

Explanation
The committee supports in concept the proposed rule amendments but recommends the following alternative language to further clarify the rule:

Rule 3.501 Class Actions

(A)– (C) [Unchanged]

(D) Judgment.

(1)-(5) [Unchanged]
(6)
(a) "Residual Funds" are funds that remain after the payment of approved class member claims, expenses, litigation costs, attorney's fees, and other court-approved disbursements made to implement the relief granted in the order entering judgment or approving a proposed settlement of a class action.

(b) Nothing in this rule is intended to limit the parties to a class action from proposing a settlement, or the court from entering a judgment or approving a settlement, that does not create Residual Funds.

(c) Any order entering a judgment or approving a proposed settlement of a class action certified under this rule that may result in the existence of Residual Funds shall provide for the disbursement of any such Residual Funds. In matters where the claims process has been exhausted and Residual Funds remain, not less than fifty percent (50%) of the Residual Funds shall be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan, unless the court otherwise determines to disburse all Residual Funds to a foundation or not for profit organization that has a direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class.

Position Vote:
Voted For position: 18
Voted against position: 2
Abstained from vote: 1
Did not vote (absent): 5

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

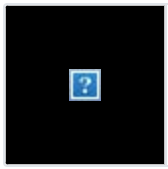
From:	Sue Bond
To:	ADMcomment
Subject:	Unclaimed Class Action Settements
Date:	Friday, May 10, 2019 11:14:15 AM

The law states that class action settlement money goes to the State Treasury.

The excess gone unclaimed should stay unclaimed in the State Treasury until family or the person finds it. If not, then give it to the others who did claim their share, because you know that they did not get what they have coming to them in a class action. To see it given to attorneys is a slap in the face.

Do not give it away to a third party entity.

Paralegal Sue Bond



Relief HubTM
P.O. Box 42
Grand Haven, MI 49417
(616) 888-9838
Sue@ReliefHub.net
www.ReliefHub.net

Order

Michigan Supreme Court
Lansing, Michigan

May 1, 2019

ADM File No. 2017-02

Proposed Amendment of
Rule 6.508 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.508 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 6.508 Procedure; Evidentiary Hearing; Determination

(A)-(C) [Unchanged.]

(D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(1)-(2) [Unchanged.]

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) [Unchanged.]

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that,

(i) in a conviction following a trial,

(A) but for the alleged error, the defendant would have had a reasonably likely chance of acquittal; or

(B) where the defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, it is reasonably likely that

(1) the prosecutor would not have withdrawn any plea offer;

(2) the defendant and the trial court would have accepted the plea but for the improper advice; and

(3) the conviction or sentence, or both, under the plea's terms would have been less severe than under the judgment and sentence that in fact were imposed.

(ii)-(iv) [Unchanged.]

The court may waive the "good cause" requirement of subrule (D)(3)(a) if it concludes that there is a significant possibility that the defendant is innocent of the crime.

(E) [Unchanged.]

Staff Comment: The proposed amendment of MCR 6.508 would enable a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, and it was reasonably likely the defendant and court would have accepted the plea (which would have been less severe than the judgment or sentence issued after trial) but for the improper advice.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-02. 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.

May 1, 2019

Clerk

Public Policy Position
ADM 2017-02

Support

Explanation

The committee supports the proposed amendments to Rule 6.508 of the Michigan Court Rules, which would add an additional method of showing actual prejudice in a motion for relief from judgment. The rule amendment provides an avenue of relief for a defendant who enters a plea or refuses a plea and does so based on ineffective assistance of counsel or incorrect information from a court. This is in line with criminal jurisprudence that officers of the court (attorneys and judges) should provide accurate information that criminal defendants can rely on as true. Without that presumption, our criminal justice system fails. Therefore, adoption of this amendment is consistent with criminal jurisprudence, and even mistake of law concepts (defenses) that are provided to criminal defendants. Additionally, as noted by the Criminal Jurisprudence & Practice Committee, this proposed amendment codifies what already happens in practice.

Position Vote:

Voted for position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Persons:

Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2017-02

Support

Explanation
The committee voted unanimously to support the proposed amendment to Rule 6.508. Committee members noted that the proposal codifies what is already the practice in many courts.

Position Vote:
Voted For position: 12
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 5

Contact Persons:
Sofia V. Nelson snelson@sado.org
Michael A. Tesner mtesner@co.genesee.mi.us

Public Policy Position
ADM File No. 2017-02

Support

Explanation
The amendment incorporates *Lafler* into the Court rule providing needed clarity to trial courts.

Position Vote:
Voted For position: 13
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 4

Contact Person: Josh Blanchard
Email: josh@blanchard.law

Order

Michigan Supreme Court
Lansing, Michigan

April 3, 2019

ADM File No. 2019-03

Proposed Amendment of
Rule 8.110 of the
Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.110 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 8.110 Chief Judge Rule

(A) [Unchanged.]

(B) Chief Judge, Chief Judge Pro Tempore, and Presiding Judges of Divisions.

(1) The Supreme Court shall select a judge to serve as chief judge of each trial court. When SCAO is considering recommending appointment of a chief judge of a specific group of courts, SCAO shall inform and seek input from those courts. Any judge of a court or group of courts may submit an application or recommendation to SCAO regarding the selection of a chief judge for that court or group of courts. The application for appointment of chief judge shall be made available to all judges. The application will describe the criteria for selection of chief judge, and will include an opportunity for any judge or judges to provide information to the Court regarding the selection of a particular person as chief judge. The input submitted from judges in a court for which a chief judge is being selected shall be given respectful consideration.

(2) [Unchanged.]

(3) The chief judge, chief judge pro tempore, and any presiding judges shall serve a two-year term beginning on January 1 of each even-numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief judge pro tempore and any presiding judges serve at the pleasure of the chief judge. A chief judge shall attend training as required by the state court administrator.

(4) [Unchanged.]

(C) Duties and Powers of Chief Judge.

(1)-(8) [Unchanged.]

(9) The delegation of such authority to a chief judge does not in any way limit the Supreme Court's authority to exercise "general superintending control over all courts" under Const 1963, art 6, § 4.

(D) Court Hours; Court Holidays; Judicial Absences.

(1)-(2) [Unchanged.]

(3) Judicial Vacation Standard. A judge ~~is expected to~~may take an annual vacation leave of ~~20~~30 days ~~with the approval of the chief judge to ensure docket coordination and coverage~~. ~~A judge may take an additional 10 days of annual vacation leave with the approval of the chief judge.~~ A maximum of ~~30~~15 days of annual vacation unused due to workload constraints may be carried ~~from one calendar year~~ into the ~~first quarter of the~~ next calendar year ~~and used during that quarter, if approved by the chief judge~~. Vacation days do not include:

(a) [Unchanged.]

(b) attendance~~, with the chief judge's approval,~~ at educational meetings or seminars;

(c) attendance~~, with the chief judge's approval,~~ at meetings of judicial committees or committees substantially related to judicial administration of justice;

(d)-(e) [Unchanged.]

(4) Judicial Education Leave Standard. A judge is expected to take judicial education leave of 2 weeks every 3 years to participate in continuing legal

education and training at Michigan judicial training programs and nationally recognized judicial education programs, including graduate and refresher courses. Judicial education leave does not include judicial conferences for which attendance is required. The use of judicial education leave ~~approved by the chief judge~~ does not affect a judge's annual leave.

(5) Judicial Professional Leave Standard. Judges are encouraged, as part of their regular judicial responsibilities, to participate in professional meetings and conferences that advance the administration of justice or the public's understanding of the judicial system; to serve on commissions and committees of state and national organizations that contribute to the improvement of the law or that advance the interests of the judicial system; and to serve on Supreme Court-appointed or in-house assignments or committees. The use of judicial professional leave ~~approved by the chief judge~~ does not affect a judge's annual leave or education leave.

(6) Approval of Judicial Absences. A judge may not be absent from the court without ~~the chief judge's prior approval,~~ notifying the chief judge except for personal illness. ~~In making the decision on a request to approve a vacation or other absence, the chief judge shall consider, among other factors, the pending caseload of the judge involved.~~ The chief judge ~~shall withhold approval of~~may require a judge to forego vacation, judicial education, or judicial professional leave ~~that conforms to these standards~~ only if ~~withholding approval is~~ necessary to ensure ~~the orderly conduct of judicial business~~docket coordination and coverage. The chief judge shall maintain records of absences to be available at the request of the Supreme Court.

Staff comment: The proposed amendment of MCR 8.110 would provide additional opportunity for input by judges in the process for chief judge selection in courts, would clarify that vacation leave time may be taken by notifying the chief judge, and would make vacation leave policies more uniform from one court to another. Under the proposed amendment, a chief judge could require a judge to forego vacation, judicial, or education, or professional leave to ensure docket coordination and coverage.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 August 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-03. 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.

VIVIANO, J., would have declined to publish the proposal for comment.

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.

April 3, 2019

Clerk

From: Carol Kuhnke
To: ADMcomment
Subject: chief judge rule amendments
Date: Wednesday, April 3, 2019 4:02:33 PM

Regarding 8.110(B)(1), the following language is unclear:

"The application for appointment of chief judge shall be made available to all judges."

I think it would be more clear to say either:

1. Completed applications shall be made available to all judges within the court; or
2. Any judge may apply to be chief judge.

I think the proposed language permits either of the above readings.

Carol Kuhnke
Washtenaw County Circuit Court Judge
101 E. Huron St.
Ann Arbor, MI 48107
734-222-3386

The Circuit Court
for the Sixth Judicial Circuit of Michigan
COURTHOUSE TOWER
PONTIAC, MICHIGAN 48341-0404

MICHAEL WARREN
CIRCUIT JUDGE

TELEPHONE
(248) 975-4250
FACSIMILE
(248) 975-9796

April 26, 2019

Chief Justice McCormack and Justices of the Supreme Court
Michigan Supreme Court
PO Box 30052
Lansing, Michigan 48909

RE: ADM File No. 2019-03
Proposed Amendment of Rule 8.110 of the Michigan Rule of Court

Dear Chief Justice McCormack and Justices of the Supreme Court:

I offer the following comments on the Proposed Amendment of Rule 8.110:

Roll-Over Timing. As you know, the current version of MCR 8.110(D)(3) (Judicial Vacation Standard) allows a maximum of 30 days of annual vacation leave, and clarifies that "A maximum of 30 days of annual vacation unused due to workload constraints may be carried from one calendar year into the first quarter of the next calendar year and used during that quarter, if approved by the chief judge." This situation can often result in judges rushing to use roll-over days in less than convenient times in the first quarter of the year, or simply letting them expire. This is particularly true for the many judges who have school age children with Spring Break in April. Because attempting to jam in roll-over days on the eve of Spring Break is so burdensome on the docket, often they just expire without use. On more than one occasion, I personally lost carry-over days, yet in April I took off 5 days to spend Spring Break with my family. I am not alone. The flexibility offered by the revisions on the roll-over expiration period would be most welcome. It has the added benefit of improving docket management by likely spreading the use of annual leave more evenly across the year.

Cap of Roll-Over Days. The new cap of 15 roll-over days (as opposed to 30 days in the current rule) is reasonable. My understanding is that very few judges roll over more than 15 days and use them all in the first quarter. The trade-off of reducing the number of roll-over days in exchange for the flexibility of when they can be used is welcomed.

Elimination of Chief Judge Veto over Number of Days and Roll-Over Use. Sufficient vacation time is important to relieve stress, clear thinking, community engagement, energy, enthusiasm, mental health, and family. This in turn improves judicial decision-making. Accordingly, increasing the annual leave to 30 days and the use of roll-over days without having to obtain permission from the Chief Judge is an excellent objective. To my knowledge, all my Chief Judges have gracefully given permission to all judges to use all 30 days and all roll-over days. However, hearsay suggests that some other Chief Judges have been less than graceful. That situation can only sow the seeds of discontent and discord.

Approval of Judicial Absences. The change from approving absences to notification (with the caveats listed) can only improve judicial comity. Again, this has never been an issue with my Chief Judges but could be a minefield with others.

Application and Input for Chief Judge Appointments. A standardized application and the opportunity to provide input regarding the selection of the chief judge is appropriate. My personal experience has been that on some occasions I was asked for my thoughts (for whatever they were worth), and other times I was not. Having a uniform opportunity to provide input is welcome. Likewise, having specific objective criteria would help provide greater transparency to the selection process, and could assist potential applicants or judges wishing to provide input to provide the most material information possible to the Supreme Court. Based on the professionalism of the Michigan Supreme Court, I would always expect any input to be given "respectful consideration," but the acknowledgement is a wonderful gesture that further invites input.

Warmest Regards,

Hon. Michael Warren

Order

Michigan Supreme Court
Lansing, Michigan

May 15, 2019

ADM File No. 2018-30

Proposed Amendment of
Rule 8.115 of the Michigan
Court Rules

_____

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

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 8.115 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.

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

Rule 8.115 Courtroom Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices

(A)-(B) [Unchanged.]

(C) Use of~~Establishment of a Policy Regarding~~ Portable Electronic ~~Communication~~ Devices in a Courthouse.

(1) Purpose. This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. This rule does not modify or supersede the guidelines for media coverage of court proceedings set forth in AO No. 1989-1.~~A facility that contains a courtroom may determine use of electronic equipment in nonjudicial areas of the facility.~~

(2) ~~The chief judge may establish a policy regarding the use of cell phones or other portable electronic communication devices within the court, except that no photographs may be taken of any jurors or witnesses, and no photographs may be taken inside any courtroom without permission of the court. The policy regarding the use of cell phones or other portable electronic communication devices shall be posted in a conspicuous location outside~~

~~and inside each courtroom. Failure to comply with this section or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both for contempt of court.~~ Definitions. The following definitions apply in this rule:

(a) "portable electronic device" is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

(b) A "courthouse" includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court. A "courthouse" also includes areas outside a court building where a judge conducts an event concerning a court case.

(c) "Courtroom participant" includes a litigant (plaintiff or defendant), witness, or juror who is present in the courtroom as part of a proceeding.

(3) Photography and audio or video recording or broadcasting. The following restrictions apply to photography, audio recording, video recording or broadcasting in a courthouse.

(a) In a courtroom: In a courtroom, no one may use a portable electronic device to take photographs or for audio or video recording or broadcasting unless that use is specifically allowed by the Judge presiding over that courtroom.

(b) Outside a courtroom: In areas of a courthouse other than courtrooms, no one may photograph, record, or broadcast an individual without that individual's prior express consent.

(c) Jurors: No one may photograph, record, or broadcast any juror or anyone called to the court for jury service.

(d) Local orders: By local administrative order, a court may adopt further reasonable limits on photography and audio or video recording or broadcasting in a courthouse that are not inconsistent with this rule.

(e) Violations of this subsection: Violations of this subsection are punishable by appropriate sanctions up to and including contempt of court as determined in the discretion of the court.

(4) Jurors and witnesses. The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.

(a) Jurors: Jurors must turn off their portable electronic devices while present in a courtroom. A court may order jurors to turn over to the court their portable electronic devices during deliberations. If so, the court must provide jurors with a phone number where they can be reached in case of an emergency during deliberations.

(b) Witnesses: A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.

(5) Attorneys, parties, and members of the public. The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this paragraph is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice.

(a) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information. Attorneys, parties, and members of the public may use a portable electronic device to reproduce public court documents in a clerk's office as long as the device leaves no mark or impression on the document and does not unreasonably interfere with the operation of the clerk's office.

(b) Prohibited uses: Attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for any other audible function while court is in session. Portable electronic devices may not be used to communicate in any way with any courtroom participant including, but not limited to, a party, a witness, or juror at any time during any

court proceedings. Additional prohibited uses related to photography, recording, and broadcasting are found in 8.115(C)(3) above.

(6) Use of a portable electronic device outside a courtroom; limitations. Except as provided in paragraphs (3), (4) and (5) of this rule, a person may use a portable electronic device in a courthouse, subject to the authority of judges, Clerks of the Court, or court administrators to limit or terminate activity that is disruptive to court operations or that compromises courthouse security. Such limitations and terminations must be consistent with this rule.

(7) Violations of this rule. If these rules are violated, the presiding judge may confiscate the device for the remainder of the day or order that the phone be turned off and put away. After a serious intentional violation, or multiple violations, the presiding judge may impose any other appropriate sanction, including contempt of court and/or the removal of person or persons from the courtroom during a time when they are not actively involved in the case being heard.

Staff comment: The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another, and broaden the ability of litigants to use their devices in support of their court cases when possible.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-30. 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.

May 15, 2019

Clerk

Letter Originally Sent to MSC Requesting Rule Change

To: **Larry Royster, Clerk, Michigan Supreme Court**
Anne Boomer, Administrative Counsel, Michigan Supreme Court

From: **Bob Gillett, Co-Chair, Michigan State Planning Body**

Re: **PROPOSED AMENDMENTS TO MCR 8.115(C) TO GOVERN THE ACCESS AND USE OF ELECTRONIC PORTABLE DEVICES IN COURTHOUSES AND COURTROOMS**

Date: **October 4, 2018**

Introduction

Cell phones have become an indispensable part of many people's lives, not only for making telephone calls, but also for using the internet and storing information. Given this reliance, rules banning the possession and use of cell phones by non-attorneys in courts greatly disadvantage self-represented litigants (SRLs). Without their cell phones, SRLs may not be able to access their e-mail; critical e-filing functions such as registration, service, and account information; their calendars; or important evidence for their case such as text messages or photographs.

To address this problem, the Michigan State Planning Body for the Delivery of Legal Services to the Poor[1] (Planning Body) proposes amending MCR 8.115(C) to regulate the use of cell phones in courts and allow non-attorneys to possess and use cell phones in courts in certain defined circumstances. It is our request that the Court review, publish for comment, and eventually adopt this rule amendment.

Cell Phones Are Essential to Self-Represented Litigants

Portable electronic devices are widely used in our society. A Pew Research Center survey states that within the U.S. 77% of adults report owning a smartphone.[2] Not only are people using smartphones for calling and texting, they are also using them for other tasks, such as applying for jobs and doing legal research. There is even a population of "smartphone-only" internet users. A significantly larger proportion of adults who live in households earning less than $30,000 a year are identified as "smartphone-only" internet users.

1. **SRLs Need Access to Cell Phones to Present Evidence and E-File**

SRLs frequently fall into this "smartphone-only" category; they frequently use their smartphones to gather information for and to present evidence in court. They are dependent on smartphones in their cases and unaware of the fact that phones are banned in almost all courts throughout Michigan. Additionally, statewide e-filing is coming to Michigan and already exists in many courts. Currently, in order to create a new MiFile account, users must enter an email address and then verify that address from within their personal email account. Most courts don't allow (or at

[1] The Planning Body is made up of representatives from the bench, bar, community services organizations, and providers of both civil and criminal legal services to the poor. The mission of the Planning Body is to plan, organize, and coordinate effective legal services delivery systems in Michigan.

[2] *Mobile Fact Sheet*, Pew Research Center <http://www.pewinternet.org/fact-sheet/mobile/> (accessed September 4, 2018).

least discourage) checking personal email from public computer terminals, so a SRL who attempts to create a new e-filing account from within a courthouse without a cell phone cannot complete this process without either breaking a rule (no personal email on public terminals) or leaving the courthouse and coming back to finish their e-filing. All e-service is also done via email, so email may be the only place where a SRL has a copy of a case document or hearing notice which is imperative to their case.

Many SRLs are not aware that many courts ban phones — they only learn of the prohibition when they arrive at the courthouse. In Michigan, only around 25% of courts have their cell phone policies listed on their websites; even those that post this information often have it buried in a lengthy list of court policies. When already disadvantaged SRLs cannot use their smartphones, they cannot present evidence, access information to support their case, or access court resources.

The lack of awareness also presents a logistical problem – what are SRLs to do with their phone once they arrive at a court where they are banned? Many self-represented litigants rely on public transportation to get to court, so if they are refused entry with a cell phone they have nowhere to store the phone while at court. Few courts offer litigants a place to store their phones while in court, so many people choose options like hiding their phones in the bushes outside of the courthouse[3].Some litigants choose to keep their cell phone and miss court, making their existing legal problems even worse.

2. Policies Prohibiting Cell Phones in Court Create Serious Barriers to SRLs Effectively Accessing Courts

SRLs are at a significant disadvantage when they are not allowed to access portable electronic devices. Court policies barring cell phones were written when the majority of individuals relied on paper rather than electronic access to information. Some court rules specifically ban cell phones with cameras – but that is another outdated rule, as today nearly 90% of cell phones contain cameras, making a "camera ban" a total ban for 90% of SRLs.

3. The Current Michigan Rules Do Not Guarantee SRLs Adequate Access to Cell Phones

The Michigan Court Rules currently provide that a court "may" adopt a policy "regarding portable electronic communication devices." MCR 8.115(C). The rule makes the decision whether or not to adopt a policy at all discretionary with the each court. Other than prohibiting photographs, the rule provides little guidance to courts in terms of the specifics of their policy. As a result, there is no consistency across courts in cell phone policies — many courts prohibit litigants from bringing their phones into the building; other courts permit cell phones in the building with only the moderate use restrictions set out in MCR 8.115(C).[4]

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[3] See, e.g., Badger and Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, New York Times (April 7, 2018). The experience described in this article was also described as affecting several Michigan SRLs.

[4] The Planning Body is not aware of any evaluation of cell phone policies by the State Court Administrative Office (SCAO). As part of its research into this rule proposal, the Planning Body reached out to several courts that had adopted policies permitting cell phones in the courthouse, and those courts expressed satisfaction with those policies. The most typical response is that the policy is a significant benefit to the public without being a burden on the court.

Planning Body Proposal for an Amended MCR 8.115(C)

1. Rule Development Process

In response to concerns raised by legal services lawyers and clients, the Planning Body began discussion this issue in April of 2018. The Planning Body formed a committee to research the issue; the committee looked at the experience of courts in Michigan and other jurisdictions that allow SRLs to possess and use their cell phones in court buildings. The Planning Body collected materials on cell phone policies—including the materials available through the National Center for State Courts and rules and guidance published by courts in other states.

The committee summarized this research for the full Planning Body. The committee also surveyed legal services staff about court policies and spoke to a number of judges about the practical implications of various policies. The committee drafted a proposed rule, using some of the national models and relying on current rules from Arizona and Maryland. The full Planning Body discussed the subcommittee's research and draft rules at its April and July meetings. The propose amendments to MCR 8.115(C) were supported by the Planning Body.

These rule amendments were presented to the Legal Services Association of Michigan (LSAM),[5] at its September 2018 meeting; LSAM also supports this proposal.

Subsequent to developing this proposal, we learned that the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSSA) had also taken up this issue and CCJ passed Resolution 7—encouraging courts to review their cell phone policies—on August 22, 2018. The CCJ/COSSA resolution sounds many of the same themes reflected in the Planning Body discussion. The CCJ Resolution is attached.

2. Proposed Amendments to MCR 8.115(C)

To regulate the use of cell phones in courts, the Planning Body proposes a new MCR 8.115(C) to replace the current subsection:

> **MCR 8.115 (C).** Use of portable electronic devices in a courthouse.
>
> **(a) Purpose.** This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. This rule does not modify or supersede the guidelines for media coverage of court proceedings set forth in AO No. 1989-1.
>
> **(b) Definitions.** The following definitions apply in this rule:
>
> > (1) A "portable electronic device" is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size,

[5] LSAM is a non-profit organization established in 1982 whose members are the largest civil legal aid providers in Michigan. LSAM's member programs provide direct civil legal services to over 50,000 Michigan residents each year.

including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

(2) A "courthouse" includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court. A "courthouse" also includes areas outside a court building where a judge conducts an event concerning a court case.

(3) "Courtroom participant" includes a litigant (plaintiff or defendant), witness, or juror who is present in the courtroom as part of a proceeding.

(c) Photography and audio or video recording or broadcasting. The following restrictions apply to photography, audio recording, video recording or broadcasting in a courthouse.

(1) In a courtroom: In a courtroom, no one may use a portable electronic device to take photographs or for audio or video recording or broadcasting unless that use is specifically allowed by the Judge presiding over that courtroom.

(2) Outside a courtroom: In areas of a courthouse other than courtrooms, no one may photograph, record, or broadcast an individual without that individual's prior express consent.

(3) Jurors: No one may photograph, record, or broadcast any juror or anyone called to the court for jury service.

(4) Local orders: By local administrative order, a court may adopt further reasonable limits on photography and audio or video recording or broadcasting in a courthouse that are not inconsistent with this rule.

(5) Violations of this subsection: Violations of this subsection are punishable by appropriate sanctions up to and including contempt of court as determined in the discretion of the court.

(d) Jurors and witnesses. The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.

(1) Jurors: Jurors must turn off their portable electronic devices while present in a courtroom. A court may order jurors to turn over to the court their portable electronic devices during deliberations. If so, the court must provide jurors with a phone number where they can be reached in case of an emergency during deliberations.

(2) Witnesses: A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.

(e) Attorneys, parties, and members of the public. The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this paragraph is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice.

(1) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information. Attorneys, parties, and members of the public may use a portable electronic device to reproduce public court documents in a clerk's office as long as the device leaves no mark or impression on the document and does not unreasonably interfere with the operation of the clerk's office.

(2) Prohibited uses: Attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for any other audible function while court is in session. Portable electronic devices may not be used to communicate in any way with any courtroom participant including, but not limited to, a party, a witness, or juror at any time during any court proceedings. Additional prohibited uses related to photography, recording, and broadcasting are found in 8.115(C)(c) above.

(f) Use of a portable electronic device outside a courtroom; limitations. Except as provided in paragraphs (c), (d) and (e) of this rule, a person may use a portable electronic device in a courthouse, subject to the authority of judges, Clerks of the Court, or court administrators to limit or terminate activity that is disruptive to court operations or that compromises courthouse security. Such limitations and terminations must be consistent with this rule.

(g) Violations of this rule. If these rules are violated, the presiding judge may confiscate the device for the remainder of the day or order that the phone be turned off and put away. After a serious intentional violation, or multiple violations, the presiding judge may impose any other appropriate sanction, including contempt of court and/or the removal of person or persons from the courtroom during a time when they are not actively involved in the case being heard.

CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 7

In Support of a Review of Courthouse Cell Phone Policies

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators have long supported the expansion of meaningful access to the justice system for all; and

WHEREAS, in 2015 the Conferences adopted Resolution 5, which urged their members to provide leadership in achieving the aspirational goal of 100 percent access to effective assistance for essential civil legal needs; and

WHEREAS, cell phones have become an integral part of daily life for many litigants, serving as an essential tool for communication, research, information storage, and safety; and

WHEREAS, there is currently a wide range of policies with respect to cell phone use in courthouses, both across the country and within states; and

WHEREAS, restrictions on cell phone use in courthouses may impose additional burdens on litigants, particularly those who are self-represented, by preventing them from:

- Accessing and presenting evidence stored on cell phones;
- Gathering information and conducting legal research on the Internet;
- Communicating with individuals outside of the courthouse, for example, to coordinate appearances of "on-call" witnesses, childcare, eldercare, or transportation; or
- Using cell phones to overcome language or accessibility barriers, for example, accessing translation services or hearing assistance applications; and

WHEREAS, these burdens may be especially serious for those self-represented litigants who are not aware of the cell phone restrictions and who may consequently appear in court expecting to offer evidence stored on their cell phones, such as texts or photographs, and who may be unable to offer the evidence or information necessary to prevail in their cases without their cell phones; and

WHEREAS, restrictions on cell phone use in courthouses may also limit litigants' access to innovative self-help solutions such as text messages reminding them where

and when to appear for court, informational videos, online forms, and financial calculation tools; and

WHEREAS, courthouses may not offer adequate storage for cell phones, forcing litigants to leave their cell phones in unsecure locations outside the court or to pay a fee to a neighborhood store or office for storage; and

WHEREAS, there are also significant security risks presented by cell phone use in courthouses, including the risk that individuals may use their cell phones to photograph or record witnesses, jurors, or prosecutors involved in trials or hearings, leading to witness intimidation or other threats to safety; and

WHEREAS, the Conferences recognize the need to strike a careful balance between expanding meaningful access to the justice system and protecting the safety of witnesses, jurors, prosecutors, and all court personnel and court users;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to carefully review and assess their policies with respect to cell phone use in courthouses, so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented.

Approved as proposed by the CCJ/COSCA Joint Committee on Access and Fairness Committee at the Conference of Chief Justices and Conference of State Court Administrators 2018 Annual Meeting on August 22, 2018.

Public Policy Position
ADM 2018-30

Support

Explanation
The committee voted to support the proposed rule.

The proposed rule was submitted by the Michigan State Planning Body for Legal Services, allowing for the use of cell phones in the courthouse. The cell phone rule increases access to justice for self-represented litigants given the public's reliance on cell phones and internet access. Many people rely on their cell phone to store relevant documents they may need in court, to use it access their calendars, contact information of people connected to their cases, texts that are relevant to their cases, etc. To address the concerns that people will use the cellphones to record witnesses or victims' testimonies or take photos of witnesses, the proposed court rule prohibits such uses. To help ensure that people comply with the restrictions on cell phone usage, any violation of the rule would be punishable as contempt of court.

Position Vote:
Voted for position: 12
Voted against position: 2
Abstained from vote: 0
Did not vote (absent): 9

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-30

Support

Explanation

The Civil Procedure & Courts Committee supports the proposed amendments to Rule 8.115 of the Michigan Court Rules, which would allow non-attorneys access to portable electronic devices in courthouses and defines permissible and impermissible uses for such devices.

While the committee recognizes that some of the provisions in the proposed rule may be difficult to enforce, the committee understands the public's reliance on their portable electronic devices. Allowing non-attorneys to bring cell phones and laptops into the courthouse will make it easier for people to use the courts and participate as witnesses and jurors. For example, this policy would allow a witness to call home to arrange for unexpected childcare needs. The proposed rule would also provide consistent portable electronic device policies across courts.

Position Vote:

Voted For position: 17
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Public Policy Position
ADM File No. 2018-30

Support with Recommended Amendments

Explanation:
Council voted to support this ADM file with a friendly amendment to change "Judges" to "Hearing Officers" so that Referees, Magistrates and other Court staff who preside over hearings would be included.

Position Vote:
Voted For position: 16
Voted against position: 4
Abstained from vote: 1
Did not vote (absent): 0

Contact Person: Robert C. Treat, Jr.
Email: bob.treat@qdroexpressllc.com

Public Policy Position
ADM File No. 2018-30

Oppose and Amend

Explanation
The Council opposes the proposed amendments to MCR 8.115 set forth in ADM File 2018-30 based on security concerns, but if the proposed amendments are adopted, the definition of "courtroom participant" should be expanded to include "parties and interested persons."

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote: 4

Contact Person: David Skidmore
Email: dskidmore@wnj.com

From:
To: ADMcomment
Subject: Cell phones in court
Date: Thursday, May 16, 2019 9:25:43 PM

Sent from The Desk of a Grouchy Old Man,

Absolutely citizens should be allowed to carry cell phones into court. Recently I missed jury duty because all though many were being allowed inside with brief cases going unchecked (probably lawyers) I was stopped and told I couldn't enter with my phone. After explaining I am disabled (partly paralyzed and legally blind) from a stroke and had arrived by uber car so had no place to leave the phone and needed to have it to get home. "not my problem was the answer of two security persons on duty. I missed jury duty and may even have a warrant for that but it was out of my control.

From:	Colette Hamlin
To:	ADMcomment
Subject:	Cell Phones in Court Houses
Date:	Thursday, May 16, 2019 4:07:28 PM

Please, please consider changing the court rule and allowing electronic devices to be taken in to courthouses with the proposed restrictions in place. Transparency is key. So many things are done via electronic devices. I fully support a change in the current court rule.

Thank you,

Colette Hamlin

From: Mike
To: ADMcomment
Subject: Cell Phones in courtroom
Date: Thursday, May 16, 2019 1:45:37 PM

Please make a rule ALLOWING cell phones and other devices into a courtroom. As a private investigator, I am required to testify in court at times and all of my cases are stored on my laptop/cell. It is ridiculous that some courts allow phones (Macomb County Circuit) while others don't (Oakland County Circuit).

Just this morning, I visited Roseville District court to get records and I was able to bring my phone in. I then drove to Eastpointe about 3 miles down the street and they would not let me bring my phone in. It needs to be allowed at the state level.

There needs to be an SCAO rule that provides that cell phones and other devices must be allowed in the courthouse, and takes away chief judges discretion in this matter.

Thanks,

Michael Torrice
Private Investigator

From: Kristen Millard <kmillard@montcalm.us>
Sent: Friday, May 17, 2019 2:35 PM
To: Stacy Westra <WestraS@courts.mi.gov>
Subject: Opposition

Hello Kris,

ABSOLUTELY OPPOSED TO THIS. NO picture should be taken. This would put a dent in our revenue as we charge $1.00 per page to copy for and $10 for certified copies for those who wish to have a copy/certified. Also, opens the door for an individual to print and duplicate their own forms off of a picture that was taken.

Do you need anything further?

Please advise.

Thank you.

Cheryl Kelly
Mason County Clerk
Mason County Court House
304 E. Ludington Ave.
Ludington, MI 49431
(231)843-8202

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Kristen Millard
Montcalm County Clerk
My email has changed to: kmillard@montcalm.us

From:	Heather
To:	ADMcomment
Subject:	Technology Amendment
Date:	Friday, May 17, 2019 1:43:08 PM

This is not a good idea to allow wireless electronic devices into a courthouse. There are many individuals who enter a courthouse and would not like to have the potential for a photo or video of them to be taken, in the halls or other waiting areas without their permission. Additionally, phones and other electronic devices have recording capabilities that can be used without the knowledge of anyone else. This is a bad precedent to set. All courtroom activity is on record and available for purchase if one is so inclined, therefore there is no reason that the public would need a personal device with them. Is it inconvenient for some, yes, however it would be better to order all courts to have locking mechanisms for the public to utilize for storage of personal devices instead of allowing them in the courthouse. We need to be more mindful of victims privacy as well. Please do not allow technological devices in the courthouse, this is not in the best interest of justice.

Sent from Mail for Windows 10

From:	TAMMY L. MOERY
To:	ADMcomment
Subject:	Cameras and laptops in Michigan courts
Date:	Friday, May 17, 2019 8:51:26 PM

Yes, I would like to see cell phones and laptops be allowed in all Michigan courts, with reasonable restrictions in the courtrooms. For jnstance, at the Oakland County Courthouse, you can't even take your cell phone in the building, which is a huge inconvenience, especially when you're there are to, for example, get records. Most people keep all their information on their cell phones or laptops, and be not being allowed to take them in, you don't have access to that. Also, sometimes you're in the building for hours, and you have no access to any important phone calls that might come in, for example.

From: Linda Strick
To: ADMcomment
Subject: ADM file no. 2018-30
Date: Saturday, May 18, 2019 9:25:46 AM

Calhoun County altered it's rules recently to ban cell phones in the Courthouse with many unintended consequences.
Consider a person who has a valid PPO against an estranged spouse, who must now leave their cell phone in their car. They must then walk from the parking lot into the Courthouse and may be confronted by this person and have no means of getting help.
Domestic violence is an issue that is not taken seriously enough and this rule highlights the issue.
I ask that you seriously consider the amendment to allow cell phones in court again.

Sincerely,
Linda Strick

From:	Bruce Jacob
To:	ADMcomment
Subject:	Cell phone rules
Date:	Monday, May 20, 2019 9:29:53 AM

To whom it may concern:
In this day and age rules need to be changed to allow Cell phones and eledtronic devices in courtrooms. It is absurd that attorneys are allowed to bring Cell phones and use them in courtrooms, but others are not. We have all become dependent on electronic devices and need them for work issues in our everyday lives.

Sincerely,

--
Dr. Bruce Jacob
Auburn Adult Foot Care, P.C.

From:	Gretchen Hertz
To:	ADMcomment
Subject:	cell phones
Date:	Monday, May 20, 2019 5:11:34 PM

As an attorney, I am able to bring my phone into most courts. However, I think the rule should be changed so that people can bring in their phones.

Thanks!

From: John A. Hallacy
To: ADMcomment
Subject: Proposed Amendment to MCR 8.115
Date: Monday, May 20, 2019 10:50:46 AM

I have great concerns about the proposed amendments to MCR 8.115. The safety of all who attend court proceedings as spectators, participants, lawyers and jurors should be of the utmost importance to the court. Allowing cellphones and other electronic devices into the courthouse with extremely limited safeguards is dangerous. The ability of those involved in cases to videotape jurors, undercover officers, judges, lawyers and others involved in a case is cause for tremendous concern. With the ability to take such information/photos etc.. and place them immediately onto the internet or social media, it will place many people in danger. While this rule "says" no photos, recordings etc… there is absolutely no way to prevent this from happening until it is to late. NONE! Gang cases, contentious family court cases, militia cases are only a few of the examples of cases that raise concern. Until there is better technology that would allow the court to know for sure that recordings an photos cannot be taken, this rule change is premature.

Thank you!

John A. Hallacy

Judge - 37th Judicial Circuit Court
Calhoun County

From: Gibbs, Katrinia
To: ADMcomment
Subject: Cell Phones and other devices in the courthouse
Date: Monday, May 20, 2019 8:13:05 AM

I thought the reason electronic devices were originally banned from the courthouses was due to those items being used as explosive devices and other types of weapons. If I remember correctly, someone even found a way to make a gun that looked like a cell phone. Why should they be allowed back in?

Katrinia M. Gibbs
Court Recorder/Judicial Secretary to the
Honorable Herman Marable, Jr.
67-5 District Court
630 S. Saginaw St.
Flint, MI 48502
Phone: (810) 766-8985
Fax: (810) 257-2607

BRANCH OFFICE
Veterans Memorial Courthouse
Lansing, MI 48933
inghamclerk@ingham.org
www.ingham.org

Barb Byrum
Ingham County Clerk

MAIN OFFICE
P.O. Box 179
341 South Jefferson
Mason, MI 48854
Phone: (517) 676-7201
Fax: (517) 676-7254

May 21, 2019

Michigan Supreme Court
Post Office Box 30052
Lansing, Michigan 48909

RE: ADM File No. 2018-30 – Proposed Amendment of Rule 8.115 of the Michigan Court Rules

Dear Sir or Madam:

I respectfully recommend that the Michigan Supreme Court not adopt the Proposed Amendment of Rule 8.115 of the Michigan Court Rules.

As Clerk of the Ingham County Circuit Court (30th Judicial Circuit), I have concerns with permitting the taking of pictures of documents filed in Circuit Court files. Specifically, this could result in easier release of confidential/non-public information. Further, this may result in pictures being taken rather than certified copies being purchased, resulting in a loss of revenue.

Also, as an individual familiar with hearing impairments, I find the requirement of portable electronic devices being turned off, while present in a courtroom to be completely out-of-touch with the special needs' communities. For example, a hearing aid is often controlled by a smartphone application ("app") from which ambient noise may be filtered out, volume may be increased, et cetera. Being able to hear is fundamental to a juror's ability to serve in the role the Court places them. The counter argument that the juror could ask for an accommodation from a judge is also unacceptable, as then the juror would then be singled out because of their disability.

Finally, I respectfully request County Clerks be involved if they are not, already, in the drafting of amendments and policies that touch on Circuit Court Clerk's Offices as we, as Clerks of the Circuit Courts, could provide helpful feedback, resulting in better policies and procedures.

For the reasons above, I respectfully recommend against adoption.

Please feel free to contact me if I may ever be of assistance.

Sincerely,

Barb Byrum, JD, CERA
Ingham County Clerk

From: dave_wolf@comcast.net
To: ADMcomment
Subject: Proposed Change to Michigan Court Rule 8.115
Date: Tuesday, May 21, 2019 1:35:07 PM

To whom it may concern,

By way of introduction, I am a retired police lieutenant and I have been an investigator and researcher for a law firm in Bloomfield Hills, Michigan for the past 21 years. I have also served on the Citizens Alliance for the Oakland County Oakland County Probate and Circuit Courts for 26 years. In my current position as an investigator and researcher, as well as serving with the Citizens Alliance, I have spent a great deal of time at the Oakland County Circuit Courthouse, as well as many other courthouses around the State of Michigan.

I would like to offer my own observations in support of the proposed changes affecting Court Rule 8.115.

First, I absolutely understand and respect the need to bar photography in courtrooms, absent permission from the Court. The need to protect identities and privacy of witnesses, confidential informants, undercover officers, jurors, jury pools, etc., is critical to the proper administration of justice. But this should come down to regulating behavior rather than whether or not someone can be in possession of a cellphone that also incorporates a camera or audio recording.

For years I struggled to find and carry a smartphone that did NOT have a camera, just so that I could efficiently access my office and our electronic files while doing my work at the courthouses. Sadly, a number of years ago, it became impossible to get a smartphone that did not have a camera. This created a significant handicap, forcing me to leave my phone in my car and requiring me to exit the courthouse (rain or shine) to make a call or check some information critical to what I was handling, and then re-enter the courthouse through its TSA-esque security process. This certainly did nothing to advance the public's need for access to public records housed in the courthouse. (Note that most of my work has nothing to do with being in a courtroom, but involves reviewing public records at the offices of the Register of Deeds, Treasurer, Tract Index, and the Circuit Court and Probate Court Clerks, which are located within those courthouses.)

Many people transacting business in courthouses – whether professionals or private citizens – have a need to communicate with others outside of the courthouse or to have access to records or information that they can't readily bring with them. Thus, the no-cellphone/camera-phone-possession rules imposed by some (but not all) courts has a negative impact on many people who need to interact with government offices located within courthouses. This is exceptionally burdensome for those among us who can least afford the advantages that even minimal wealth provides.

It has not been uncommon to see persons come to the courthouse to transact business, arriving by bus, Uber, taxi, or being dropped off, only to be told that they cannot enter the courthouse with their cellphone. Not only would they be deprived of the use of their connection to outside resources – whether for necessary advice or information – they would also be in limbo: with no vehicle, there

is no ability to even return to the parking lot and leave their phone in a car. They are essentially marooned outside of the court. It's a sad quandary that I have witnessed many people face over the years. I have occasionally seen these folks try to hide their phones in bushes or planters or behind trash cans near the building, in the hope that they would still be there when they returned.

Many people who are required to appear at the court – whether as a plaintiff or defendant, under subpoena, prospective jurors, etc. – are caught in the trap of having a phone that cannot be brought in, but then have no place to secure it. Again, those of us who can afford to drive to the court are fortunate. Those of us who cannot afford to drive a car (much less retain counsel to appear on our behalf) are the ones who are unfairly disadvantaged by rules imposed by some courts.

The fact that only ***some*** courts impose the restrictions further confuses the issue. Granted, most people don't regularly visit various courthouses around the state, however being surprised by an unexpected or different cellphone rule at any courthouse would be a significant problem. A standardized rule across the state would help to resolve the issue.

All of our lives are becoming more and more data-centric. Interacting efficiently with courts and public offices requires ever greater real-time access to information. The courts belong to all of us and public information should be easily accessible to all – not just to the privileged.

I applaud the proposed changes, as described in the Oakland Press on May 20th, which would be a giant stride toward bring access to our judicial system into the 21st century.

Thank you for your consideration of this important issue.

David L. Wolf
3800 Reseda Ct
Waterford, MI 48329-2551
248-496-9604 (Cell)
248-232-3079 (Home)
248-674-0856 (Fax)

From:	Karen Bubenko
To:	ADMcomment
Subject:	Allowing cell phones, laptops, in courthouses
Date:	Wednesday, May 22, 2019 6:02:01 PM

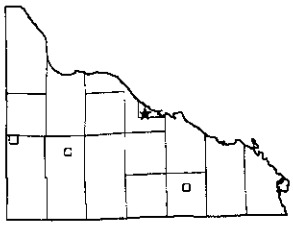
I am responding to an article read in the News Herald May 17, 2019. Absolutely NOT. Phones and laptops should not be permitted in courthouses. Bottom line — most people can't be trusted to do the right thing. You are not supposed to text and drive, you see it happening all the time. I work in the medical field and we allow a family member to be present for a procedure. They are asked not to take pictures and record-but many disregard rules and do it anyway. We spend unnecessary time policing family members. I don't see it happening any differently in a courthouse

Sent from my iPhone

Presque Isle County Clerk

Ann Marie Main
County Clerk

Darrin C. Darga
Chief Deputy



Rose M. Przybyla
Arlene E. Wojda
Melody Hincka
Deputies

May 30, 2019

Michigan Supreme Court
PO box 30052
Lansing, MI 48909

RE: ADM File No. 2018-30 – Proposed Amendment of MCR 8.115

Dear Sir or Madam

I respectfully submit this letter as my objection to the proposed amendment of MCR 8.115. I do not wish to argue the entire court rule amendment but specifically Section (5)(a) in which it states that parties "may use a portable electric device to reproduce public court documents in a clerk's office..." this is a serious undermining of the Clerk's protection of such documents.

It seems this added sentence is overreach into the County Clerk's duties to protect and preserve court files. Allowing an attorney to use his or her computer or phone for notes or review documents they should already have during a court hearing is up to the courts and I would not presume to tell the judge how to run his courtroom on those matters.

I am not sure if this was meant as a rider or a wrecking amendment, but either way it should not be part of this recommendation.

On a separate note, I respectfully request that County Clerk's be invited in to the conversations earlier in the drafting of amendments and polices that affect their constitutional office duties. A willingness to open the conversation sooner could result in less turmoil and delays of processes. I have in the past submitted my opinion on revisions of forms, but it seems more and more unless you check the website every single day we are getting notified of memo's that directly affect our office and staff, weeks after they have been written or passed. We strive to obey the rules set forth by the courts, but how can we do that if the rules change and no one tells us!

Ann Marie Main
Presque Isle County Clerk

151 E. Huron Ave.
P.O. Box 110
Rogers City, MI 49779

Phone: (989) 734-3288
Fax: (989) 734-7635

ail: piclerk@picounty.org

From: Rebekah Zinn
To: ADMcomment
Subject: Comment on Proposed 8.115
Date: Friday, June 7, 2019 11:20:17 AM

To whom it may concern,

I am a judicial officer outside your jurisdiction and am commenting because increasing meaningful access to courts is my personal mission. I have 13 years of experience in the Washington State judiciary. I support this proposal.

Rules that prohibit cell phones in courthouses, in particular, are tremendously difficult for low-income court users. While I could easily stash my devices in my car, a person who arrived by bus or were dropped off by friend may not have a place to put their devices. Some courthouses that prohibit cell phones have free lockers to stow them, which helps this problem, but many others do not. That leaves the court user with an impossible choice – either break the court's rules or miss their hearing.

Sincerely,
Rebekah Zinn
Staff Attorney and Court Commissioner
Thurston County Superior Court
Olympia, Washington

From: Laura Bibeau
To: ADMcomment
Subject: Phones in court
Date: Monday, June 17, 2019 8:20:36 PM

This is so important! Most courts will not only not allow recording in the court but they also shut off their own cameras. In order to get transcripts you have to be financially well off. Because of that most people cannot adequately defend themselves. Transcripts also do not show mannerisms or attitude. Video and audio tells the entire story. It allows for complaints to be heard and seen. Transcripts are prone to human error. We need transparency in the courts especially family courts. I cannot stress enough how important this issue is.

STATE

Change in law proposed to allow phones, laptops in courthouses

By Aileen Wingblad
awingblad@medianewsgroup.com
@awingblad on Twitter

Should Michigan's court rules be changed to uniformly allow cell phones and other electronic devices in courthouses?

Currently, regulations on using those devices can be established by each court's chief judge. But a proposed amendment to Michigan Court Rule 8.115 would permit them, while prohibiting certain uses, in a courthouse.

AILEEN WINGBLAD/MEDIA NEWS GROUP
52-1 District Court

The Michigan Supreme Court is seeking public comment on the proposed amendment, which would do away with the provision that has chief judges making the decision for their courthouses. Rather, it would be OK to bring phones, laptops, tablets, cameras and other recording devices in courthouses throughout the state, as long as users adhere to specified rules.

The proposed changes would allow, for example, people to reproduce court documents with their devices — which is currently prohibited. People could make phone calls in the courthouse, yet not while in a courtroom unless a judge gives permission. The amendment wouldn't affect the restriction on photographing jurors, and any other photos taken in a courtroom would need a judge's permission. Elsewhere in the courthouse, an individual's consent would be required before their photo is taken.

The proposed amendment wouldn't change or supersede established guidelines for media coverage of court proceedings.

Violators risk being kicked out of a courtroom, having their electronic devices confiscated, and, in more serious cases, being found in contempt of court.

Provide feedback on the proposal to ADMcomment@courts.mi.gov or the Office of Administrative Counsel, PO Box 30052, Lansing, MI 48909. The comment period expires Sept.1, 2019.

No Way!
No Way!
No Way!
More problems indeed!
Think before you vote!
Please —
Thank You
Don't add more problems
OK.

From: Todd Winchek
To: ADMcomment
Subject: Re: Phones in court
Date: Wednesday, June 19, 2019 8:23:34 AM

On Tue, Jun 18, 2019 at 11:05 PM Todd Winchek <yourcellstop@gmail.com> wrote:

> Pls allow phones in court houses. It has turned into a neccessity in this day and age.
>
> Thanks
>
> Todd

From: Michael A. Gibbs
To: ADMcomment
Subject: Comment on Change of Court Rules to Allow Cell Phones
Date: Sunday, June 30, 2019 2:19:32 PM

Hello,

I completely support the proposed change in our Court Rules to permit the possession and use of cell phones in our courthouses by all persons. I am a practicing attorney who has to deal with the present setup which is a seemingly random set of rules established by individual courts. Fortunately, I practice mostly in Macomb County and our circuit court does not prohibit anyone from having a phone in the courthouse. Go over to Oakland Circuit, on the other hand, and it's a different story. And, various district courts around here do prohibit non-attorneys from bringing their phones in. Aside from these prohibitions being unnecessary, it's frustrating that I can't reach a client if they are in the courthouse but went to the wrong courtroom, or some other location in the courthouse, since they had to leave their phone in the car. I've had occasions where I am trying to resolve a case and my client indicates that the can call a family member or employer for information that will help. Except...their phone is in the car and they don't have the number memorized!

And, as for Oakland Circuit Court specifically, I've witnessed first hand many times that citizens who unknowingly try to enter the courthouse with their phones have been met with a very rude and unprofessional admonition from an Oakland County deputy. Their entrance security detail treats people rude in general, but the sight of a cell phone seems to invite a rather ill-mannered reaction (as an aside, here in Macomb Circuit we've got a great set of court officers who really do treat people professionally and with much courtesy).

As we know from being in our courts regularly, any time people have cell phones there will always be idiots who don't silence them in the courtrooms. There will also be idiots who try to video record in the courthouses. However, that is an issue which can be addressed per the proposed rule change. The vast majority of persons inside the courts are orderly and just trying to get their business handled so they can leave.

Anyone who would argue otherwise, please visit us in Macomb Circuit and see for yourself - we really don't have problems with cell phones.

-Michael Gibbs
586-604-8085

From: Barry Malone
To: ADMcomment
Subject: Comment to MCR 8.115
Date: Monday, July 1, 2019 9:33:32 AM

I am submitting this comment regarding the proposed amendment to MCR 8.115 regarding allowing cell phones in courthouses. I am employed as a staff attorney with a legal aid organization serving southeastern Michigan. I represent low-income individuals in litigation matters. I am writing to support the amendment to allow cell phones in the courthouses. I have encountered numerous issues that wouldn't have been a problem if my client had had their phone with them. Whether it's not being able to fill out a form because they haven't memorized their phone number or not having a piece of evidence because it is only saved to a client's phone, I encounter a problem weekly that directly impacts my ability to represent the client to the fullest. Often the issues are resolvable, but take additional time to address. Time that I could be better spent serving additional clients.

My main reason for writing a comment is to raise the point about how it impacts the clients. Many of my clients do not have their own transportation. Often, and increasingly, my clients have used a ride sharing service like Lyft or Uber to get to court. Once at court, they are stranded because they need their phones to access the application that allows the riding sharing service to pick them up. Unfortunately, this often leaves clients with no way to get home from court.

Allowing litigants to bring their phones into court will allow for better and fuller access to the legal system by the most economically disadvantaged in our society.

Kindest regards

Barry Malone
Staff Attorney

Click to view our website:
LAKESHORE LEGAL AID

Barry Malone
Staff Attorney
Pronouns: he/him/his

2630 Featherstone Rd.
Auburn Hills, MI 48326
248-335-0125, ext. 7724

MCKNIGHT, CANZANO, SMITH, RADTKE & BRAULT, P.C.
Attorneys at Law
423 N. MAIN STREET • SUITE 200
ROYAL OAK, MI 48067

TELEPHONE (248) 354-9650
FAX (248) 354-9656

SAMUEL C. MCKNIGHT
JOHN R. CANZANO
LISA M. SMITH
DARCIE R. BRAULT
MATTHEW Z. ROBB
BENJAMIN L. KING

email address:
bking@michworkerlaw.com

SHELDON L. KLIMIST 1931-2014
ELLEN F. MOSS 1956-2011

OF COUNSEL

JUDITH A. SALE
ROGER J. MCCLOW
DAVID R. RADTKE

July 1, 2019

Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: Comments on ADM File No. 2018-30 – Proposed Amendment of MCR 8.115

Dear Supreme Court Clerk,

I am a member of the private bar. I practice labor law, representing both unions and workers. I support the proposed amendment of MCR 8.115.

Courthouse cell phone bans disproportionately impact low-income litigants. Restrictions on the use/possession of cellphones in courthouses create additional barriers for individuals who already enter the justice system at a disadvantage. These bans are seldom applied to litigants equally. Attorneys, court/peace officers (appearing as litigants) are frequently permitted to bring and use their phones in courthouses. Litigants, that can afford attorneys, give their lawyers their phones for safekeeping, and use (once they have passed security). I have seen courts allow represented parties to produce documentary evidence via electronic device, while at the same time prohibiting *pro se* litigants from doing the same.

Pro se litigants use their devices to document information relevant to their cases, as well as to store crucial evidence they hope to present. For *pro se* litigants cell phones frequently store *highly relevant* information including proof of contract, fault, and injury. Because they cannot bring their cellphones into some courthouses, low-income litigants oftentimes cannot present crucial evidence that, if presented in another medium, would be permitted. The reality is that low-income litigants cannot afford to present evidence in another medium.

For all litigants, cell phones are an important tool used to organize transportation, childcare, and work schedules. For survivors of domestic violence, a cell phone can provide physical and emotional security. I have seen *pro se* litigants bury their cellphones and hide them in trees after being turned away from courthouses. I have seen *pro se* litigants lose their jobs because they were unable to tell their employer that they were held-up in court proceedings. I have driven *pro se* litigants home in sub-zero weather, because they could not call a family member to pick them up.

I understand that these bans are intended to preserve the integrity of the justice system, but in execution they do the exact opposite.

Sincerely,

McKnight, Canzano, Smith
Radtke & Brault, P.C.

Benjamin L. King

President:
Hon. Pamela L. Lightvoet
Kalamazoo County
227 West Michigan Avenue
Kalamazoo, MI 49007
Office: (269) 383-8916
Email:
Plligh@kalcounty.com

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Executive Director:
Cami Pendell

Michigan Judges Association
Founded 1927

July 9, 2019

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

Re: ADM File No. 2018-30
Proposed policy on the use of portable electronic devices in the courtroom

Dear Clerk Royster:

At the June 18, 2019 meeting of the Michigan Judges Association, the Executive Committee considered and acted upon the ADM No. 2018-30.

The Michigan Judges Association voted to support in concept the creation of a statewide policy on the use of portable electronic devices (PED) in the courtroom. MJA voted to support the efforts behind the proposal to provide equal access to justice, but determined there is a need to give careful consideration to the impact on witnesses, victims and jurors. There are unique concerns and unintended consequences for trial courts. Trial courts are busy venues, often with multiple cases scheduled at the same time. Evidentiary hearings and trials require the trial judge to be completely engaged with the case that is called. Many trial courts do not have support staff, bailiffs or police in the courtroom. Some of the concerns raised are:

- Recording of jurors
- Disruptive noises from cell phones during witness testimony
- Third party communication to sequestered witnesses
- Inability to monitor disallowed behavior
- Disruption of court proceedings to address disallowed behavior

MJA recommends that the proposal be amended as follows: Members of the public should not be allowed to have PEDs in the courtroom. Self-represented litigants, litigants and attorneys may have PEDs in the courtroom but only if powered off. If those persons wish to use a PED, they must request to use the device

which the court should allow if for a proper purpose, such as legal research or the presentation of evidence.
Thank you for the opportunity to comment on this proposed rule.

Sincerely,

Honorable Pam Lightvoet, President
Michigan Judges Association

CC: Honorable Bridget McCormack, Chief Justice, Michigan Supreme Court

Order

Michigan Supreme Court
Lansing, Michigan

May 15, 2019

ADM File No. 2018-28

Proposed Amendment of LCR 2.119 for the Court of Claims

Bridget M. McCormack, Chief Justice

David F. Viviano, Chief Justice Pro Tem

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 Local Court Rule 2.119 for the Court of Claims. 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 2.119 Motion Practice

(A) Form of Motions.

(1) [Unchanged.]

(2) The moving party must affirmatively state that he or she requested opposing counsel's concurrence in the relief sought on a specified date, and that opposing counsel has denied or not acquiesced in the relief sought, and therefore, that it is necessary to present the motion.

(2)-(6) [Renumbered (3)-(7) but otherwise unchanged.]

(B)-(G) [Unchanged.]

Staff comment: The proposed amendment of LCR 2.119 for the Court of Claims would require a moving party to affirmatively state that he or she has sought concurrence in the relief sought on a specific date, and opposing counsel denied concurrence in the relief sought.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-28. 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.

May 15, 2019

Clerk

Public Policy Position
ADM File No. 2018-28

Support

Explanation
The Civil Procedure & Courts Committee supports the proposed local rule amendment to require that a moving party in a Court of Claims proceeding request that the opposing party agree to the relief sought prior to filing a motion.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Janet Welch, Executive Director
Peter Cunningham, Director of Governmental Relations
Kathryn L. Hennessey, Public Policy Counsel

Date: July 12, 2019

Re: HB 4378

Background
MCL 15.243 lists items that a public body may exempt from disclosing in response to a Freedom of Information Act (FOIA) request. HB 4378 would add an additional exemption – information that would reveal the identity of a party who proceeds anonymously in a civil action alleging that he or she was a victim of sexual misconduct.

***Keller* Considerations**
The Access to Justice Policy and Civil Procedure & Courts committees agree that the bill is *Keller*-permissible because it would improve the availability of legal services to society, specifically for survivors of sexual misconduct. The Access to Justice Policy Committee explained that "the bill would make survivors of sexual misconduct more willing to file a lawsuit without fear that their identity could be disclosed from a FOIA request." The Civil Procedure & Courts Committee had a similar rationale, explaining that the bill "would encourage survivors of domestic violence and human trafficking to utilize the courts by filing anonymous civil actions without fear that their identities could be discovered through a FOIA request."

In addition, the Access to Justice Policy Committee thought that the bill would improve the functioning of the courts by not requiring survivors to file and courts to rule on motions for protective orders.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:		
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts ✓ Availability of legal services to society

Staff Recommendation
The bill satisfies the requirements of *Keller*.

House Bill 4378 (2019) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2019-HB-4378

Sponsors

Kristy Pagan (district 21)
Sherry Gay-Dagnogo, Pamela Hornberger, Annette Glenn, Julie Alexander, Angela Witwer, Laurie Pohutsky, Sarah Anthony, Julie Brixie, Cara Clemente, Jim Ellison, Vanessa Guerra, Jon Hoadley, Abdullah Hammoud, Alex Garza, Mary Whiteford, David LaGrand, Daire Rendon, Padma Kuppa, Terry Sabo, Brian Elder, Kyra Harris Bolden, William Sowerby, Darrin Camilleri, Cynthia Johnson, Tim Sneller, Kevin Hertel, Karen Whitsett, Sheryl Kennedy, Matt Koleszar, Tyrone Carter, Nate Shannon, Roger Hauck, Joseph Tate, Donna Lasinski, Christine Greig, Wendell Bryd, LaTanya Garrett, Rebekah Warren, Robert Wittenberg
(click name to see bills sponsored by that person)

Categories

Civil rights: public records; Crime victims: rights; Crimes: criminal sexual conduct;

Civil rights; public records; identity of parties proceeding anonymously in civil actions alleging sexual misconduct; exempt from disclosure under freedom of information act. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2019-2020 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

House Fiscal Agency Analysis

Summary As Introduced (4/22/2019)
This document analyzes: HB4378

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
3/14/2019	HJ 27 Pg. 280	introduced by Representative Kristy Pagan
3/14/2019	HJ 27 Pg. 280	read a first time
3/14/2019	HJ 27 Pg. 280	referred to Committee on Judiciary

HOUSE BILL No. 4378

March 14, 2019, Introduced by Reps. Pagan, Gay-Dagnogo, Hornberger, Glenn, Alexander, Witwer, Pohutsky, Anthony, Brixie, Clemente, Ellison, Guerra, Hoadley, Hammoud, Garza, Whiteford, LaGrand, Rendon, Kuppa, Sabo, Elder, Bolden, Sowerby, Camilleri, Cynthia Johnson, Sneller, Hertel, Whitsett, Kennedy, Koleszar, Tyrone Carter, Shannon, Hauck, Tate, Lasinski, Greig, Byrd, Garrett, Warren and Wittenberg and referred to the Committee on Judiciary.

A bill to amend 1976 PA 442, entitled

"Freedom of information act,"

by amending section 13 (MCL 15.243), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

HOUSE BILL No. 4378

(*i*) Interfere with law enforcement proceedings.

(*ii*) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(*iii*) Constitute an unwarranted invasion of personal privacy.

(*iv*) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(*v*) Disclose law enforcement investigative techniques or procedures.

(*vi*) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(*i*) The information is submitted upon a promise of confidentiality by the public body.

(*ii*) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(*iii*) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(g) Information or records subject to the attorney-client privilege.

(h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.

(j) Appraisals of real property to be acquired by the public body until either of the following occurs:

(*i*) An agreement is entered into.

(*ii*) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(*l*) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.

(m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans

for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archaeological sites. The department of natural resources may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do

any of the following:

(*i*) Identify or provide a means of identifying an informant.

(*ii*) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(*iii*) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(*iv*) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(*v*) Disclose operational instructions for law enforcement officers or agents.

(*vi*) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(*vii*) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(*viii*) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(*ix*) Disclose personnel records of law enforcement agencies.

(*x*) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the

public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(*i*) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(*ii*) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the ~~social security~~ **SOCIAL SECURITY** number of an individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a

position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, or the confidentiality, integrity, or availability of information systems, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and cybersecurity plans, assessments, or vulnerabilities, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(z) Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.

(aa) Research data on road and attendant infrastructure collected, measured, recorded, processed, or disseminated by a public agency or private entity, or information about software or hardware created or used by the private entity for such purposes.

(BB) INFORMATION THAT WOULD REVEAL THE IDENTITY OF A PARTY WHO PROCEEDS ANONYMOUSLY IN A CIVIL ACTION IN WHICH THE PARTY ALLEGES THAT HE OR SHE WAS THE VICTIM OF SEXUAL MISCONDUCT. AS USED IN THIS SUBDIVISION, "SEXUAL MISCONDUCT" MEANS THE CONDUCT DESCRIBED IN SECTION 90, 136, 145A, 145B, 145C, 520B, 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.90, 750.136, 750.145A, 750.145B, 750.145C, 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G, REGARDLESS OF WHETHER THE CONDUCT RESULTED IN A CRIMINAL CONVICTION.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection ~~shall~~ **IS** not ~~be~~ used, rented, or sold for the

purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection ~~shall~~ **WILL** not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

Analysis available at
http://www.legislature.mi.gov

FOIA EXEMPTION FOR ANONYMOUS PARTY IN CERTAIN CIVIL ACTIONS

House Bill 4378 as introduced
Sponsor: Rep. Kristy Pagan
Committee: Judiciary
Complete to 4-22-19

SUMMARY:

House Bill 4378 would amend the Freedom of Information Act (FOIA) to exempt disclosure of information that would reveal the identity of an anonymous party in certain civil actions.

Michigan's FOIA statute, 1976 PA 442, establishes procedures and requirements for the disclosure of public records by all public bodies in the state. There are two classes of public records: those subject to disclosure and those exempt from disclosure. Generally, all records are subject to disclosure unless specifically exempted.

The bill would create an exemption from disclosure for any information that would reveal the identity of a party who proceeds anonymously in a civil action in which that party alleges that he or she was the victim of ***sexual misconduct***.

> ***Sexual misconduct*** would mean sexual contact or penetration under the pretext of medical treatment; female genital mutilation of a child; accosting, enticing, or soliciting a child for an immoral purpose; child pornography; or criminal sexual conduct in the first, second, third, or fourth degree or assault with intent to commit criminal sexual conduct in the first, second, or third degree, regardless of whether the conduct resulted in a criminal conviction.

MCL 15.243

BACKGROUND INFORMATION:

House Bill 4378 is identical to House Bill 5797 of the 2017-18 legislative session, which was passed by the House of Representatives in May 2018.[1]

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

Legislative Analyst: Emily S. Smith
Fiscal Analysts: Michael Cnossen
Ben Gielczyk

[1] See http://legislature.mi.gov/doc.aspx?2018-HB-5797

Public Policy Position
HB 4378

Support and Recommend an Amendment to Include Human Trafficking

Explanation

HB 4378 would amend the Freedom of Information Act (FOIA) to exempt disclosure of information that would reveal the identity of a civil litigant who proceeds anonymously in a civil action in which that party alleges that he or she was the victim of sexual misconduct. The bill defines sexual misconduct in keeping with existing Michigan law.

For survivors of sexual violence, the ability to recover financially can be crucial to meaningful recovery. By several estimates, the financial cost of a sexual assault can reach hundreds of thousands of dollars over a lifespan. Tort recovery can mean access to therapy, an opportunity to return to school, and other avenues towards a better life. Even so, the primary deterrent to filing a lawsuit is the fear of such an intimate matter becoming public. This bill would remove, in part, the concern that a survivor's attempt to recover financially would result in significant press coverage and would also protect survivors from perpetrators who seek to locate their victims.

This bill will also enhance access to justice for those affected by retaliatory litigation. In recent years, it has been increasingly common to see alleged perpetrators threaten to sue or actually sue victims who come forward about misconduct. Lawsuits and invasive civil discovery are substantial disincentives for victims to report the crimes perpetrated against them. This reality negatively implicates the effective administration of justice and undermines the victims' constitutional right to access the courts. When a survivor experiences retaliatory litigation, this bill will at least provide protection from FOIA-related discovery of intimate details if the survivor is successful in obtaining pseudonym status as a defendant.

In sum, this bill would save victims and courts the burdens and costs that come from additional motions to protect the victims' identity and enhance safety.

The committee recommends amending the bill so that it extends to survivors of human trafficking, as many survivors of human trafficking, especially sex trafficking, will have similar concerns about anonymity. This can be accomplished by adding to the definition of sexual misconduct "forced labor or services" as that term is defined in 750.462a(i)(l).

Position Vote:

Voted for position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Keller Permissibility:

The majority of the committee agreed that this legislation is *Keller*-permissible in improving the availability of legal services to society for survivors of sexual misconduct because it would make survivors more willing to file a lawsuit without fear that their identity could be disclosed from a FOIA request. In addition, the bill would improve the functioning of the courts by not requiring survivors to file and courts to rule on motions for protective orders.

Keller Permissibility Vote:

Voted for position: 10
Voted against position: 4
Abstained from vote: 1
Did not vote (absent): 8

Contact Persons:

Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
HB 4378

Support with Amendment

Explanation

The Civil Procedure & Courts Committee supports HB 4378. The bill would protect the identities of survivors of sexual misconduct who proceed anonymously in civil actions from being disclosed through a Freedom of Information Act (FOIA) request. This will encourage survivors of sexual misconduct to utilize the courts to secure civil judgments. The committee agrees with the Access to Justice Policy Committee that the bill should be extended to also apply to survivors of human trafficking.

***Keller* Explanation**

The bill would improve the availability of legal services because it would encourage survivors of domestic violence and human trafficking to utilize the courts by filing anonymous civil actions without fear that their identities could be discovered through a FOIA request.

Position Vote:

Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Janet Welch, Executive Director
Peter Cunningham, Director of Governmental Relations
Kathryn L. Hennessey, Public Policy Counsel

Date: July 12, 2019

Re: HB 4535

Background

The Law Enforcement Information Network (LEIN) is a computerized criminal justice database that includes a person's criminal history, including criminal arrests, criminal convictions and driving record information from all U.S. states. In Michigan, LEIN is maintained by the Michigan State Police and tied into the FBI's National Crime Information Center. Access to LEIN is restricted to criminal justice agencies or those agencies statutorily granted authorization. It is to be used for official criminal justice purposes only. Individuals are forbidden from using it for personal use or from providing it to third parties such as employers, private investigators, or private citizens.

HB 4535 would grant LEIN access to criminal defense attorneys who are currently representing criminal defense clients if they have received training established by the Michigan State Police.

***Keller* Considerations**

When defense attorneys have access to their client's information in LEIN, it allows them to better represent their client's interest, and proffer better legal advice on their case. This improvement in the quality of the legal services provided to criminal defendants leads to an improvement in the functioning of the courts, helping to ensure more efficient and just outcomes in criminal proceedings.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:		
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

The bill satisfies the requirements of *Keller* and can be considered on its merits.

House Bill 4535 (2019) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2019-HB-4535

Sponsors
Ryan Berman (district 39)
David LaGrand, Beau LaFave
(click name to see bills sponsored by that person)

Categories
Law enforcement: law enforcement information network (LEIN); Law enforcement: records; Criminal procedure: defenses; Criminal procedure: prosecuting attorneys;

Law enforcement; law enforcement information network (LEIN); access to law enforcement information network (LEIN); allow for defense attorneys under certain circumstances. Amends sec. 4 of 1974 PA 163 (MCL 28.214) & adds sec. 4a.

Bill Documents
Bill Document Formatting Information
[x]
The following bill formatting applies to the 2019-2020 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History
(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
4/30/2019	HJ 40 Pg. 471	introduced by Representative Ryan Berman
4/30/2019	HJ 40 Pg. 471	read a first time
4/30/2019	HJ 40 Pg. 471	referred to Committee on Judiciary
5/1/2019	HJ 41 Pg. 474	bill electronically reproduced 04/30/2019

HOUSE BILL No. 4535

April 30, 2019, Introduced by Reps. Berman, LaGrand and LaFave and referred to the Committee on Judiciary.

A bill to amend 1974 PA 163, entitled

"C.J.I.S. policy council act,"

by amending section 4 (MCL 28.214), as amended by 2018 PA 66, and by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 4. (1) The council **OR THE DEPARTMENT OF STATE POLICE** shall do all of the following:

(a) Establish policy and promulgate rules governing access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement. The policy

HOUSE BILL No. 4535

and rules must do all of the following:

(*i*) Ensure access to information obtained by a federal, state, or local governmental agency to administer criminal justice or enforce any law.

(*ii*) Ensure access to information provided by the law enforcement information network or the automated fingerprint identification system by a governmental agency engaged in the enforcement of child support laws, child protection laws, or vulnerable adult protection laws.

(*iii*) Ensure access by the department of health and human services to information necessary to implement section 10c of the social welfare act, 1939 PA 280, MCL 400.10c.

(*iv*) Authorize a fire chief of an organized fire department or his or her designee to request and receive information obtained through the law enforcement information network by a law enforcement agency for the following purposes:

(A) A preemployment criminal convictions history.

(B) A preemployment driving record.

(C) Vehicle registration information for vehicles involved in a fire or hazardous materials incident.

(*v*) Authorize a public or private school superintendent, principal, or assistant principal to receive vehicle registration information, of a vehicle within 1,000 feet of school property, obtained through the law enforcement information network by a law enforcement agency.

(*vi*) ENSURE ACCESS TO CLIENT INFORMATION CONTAINED IN THE LAW ENFORCEMENT INFORMATION NETWORK BY A CRIMINAL DEFENSE ATTORNEY WHO

MEETS THE REQUIREMENTS OF SECTION 4A AND SUBMITS AN ELECTRONIC STATEMENT AFFIRMING THAT THE ATTORNEY MEETS THE REQUIREMENTS OF SECTION 4A AND IS CURRENTLY REPRESENTING THE CLIENT BEFORE ACCESS IS GRANTED.

(*vii*) ~~*(vi)*~~ Establish fees for access, use, or dissemination of information from criminal justice information systems.

(b) Review applications for C.J.I.S. access and approve or disapprove the applications and the sites. If an application is disapproved, the applicant must be notified in writing of the reasons for disapproval.

(c) Establish minimum standards for equipment and software and its installation.

(d) Advise the governor on issues concerning the criminal justice information systems.

(e) Establish policy and promulgate rules concerning the expunction, destruction, or both, of information and data in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement, as required under section 26a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.26a.

(2) A person having direct access to nonpublic information in the information systems governed by this act shall submit a set of fingerprints for comparison with state and federal criminal history records to be approved for access under the C.J.I.S. security policy. A report of the comparison must be provided to that person's employer.

(3) A person shall not access, use, or disclose nonpublic information governed under this act for personal use or gain.

(4) The attorney general or his or her designee, a prosecuting attorney, or the court, in a criminal case, may disclose to the defendant or the defendant's attorney of record information pertaining to that defendant that was obtained from the law enforcement information system.

(5) A person shall not disclose information governed under this act in a manner that is not authorized by law or rule.

(6) A person who intentionally violates subsection (3) or (5) is guilty of a crime as follows:

(a) For a first offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(b) For a second or subsequent offense, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.

SEC. 4A. (1) AN INDIVIDUAL MAY ACCESS THE LAW ENFORCEMENT INFORMATION NETWORK UNDER SECTION 4(1)(A)(*vi*) IF HE OR SHE IS LICENSED AND AUTHORIZED TO PRACTICE LAW IN THIS STATE AND REGULARLY REPRESENTS DEFENDANTS IN CRIMINAL ACTIONS, AND SATISFIES THE TRAINING REQUIREMENTS ESTABLISHED BY THE DEPARTMENT OF STATE POLICE.

(2) THE DEPARTMENT OF STATE POLICE SHALL PROMULGATE RULES ESTABLISHING THE MINIMUM STANDARDS OF TRAINING REQUIRED UNDER SUBSECTION (1). EXCEPT AS PROVIDED UNDER SUBSECTION (3), THE MINIMUM STANDARDS MUST BE EQUIVALENT TO THE MINIMUM STANDARDS OF

TRAINING REQUIRED FOR A LAW ENFORCEMENT OFFICER TO ACCESS THE LAW ENFORCEMENT INFORMATION NETWORK.

(3) THE TRAINING UNDER SUBSECTION (1) IS NOT REQUIRED TO INCLUDE TRAINING ON THE ENTRY OR MODIFICATION OF INFORMATION IN THE LAW ENFORCEMENT INFORMATION NETWORK.

(4) AN INDIVIDUAL WHO PROVIDES A FALSE ELECTRONIC STATEMENT UNDER SECTION 4(1)(A)(*vi*) TO ACCESS INFORMATION CONTAINED IN THE LAW ENFORCEMENT INFORMATION NETWORK IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 92 DAYS OR A FINE OF NOT MORE THAN $500.00, OR BOTH.

Public Policy Position
HB 4535

Support

Explanation
The committee voted unanimously to support the bill. The bill provides access and training for criminal defense attorneys to access the LEIN system. Access to LEIN information will allow criminal defense attorneys to better represent their clients rather than relying than attempting to obtain this information from law enforcement officials or prosecuting attorneys both of whom have regular access to this information.

Position Vote:
Voted for position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

***Keller* Permissibility:**
The committee agreed that the bill is Keller permissible in the regulation and discipline of attorneys, the availability of legal services to society, and the regulation of the legal profession.

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
HB 4535

Explanation:
The committee supports the concept of defense attorneys having access to limited Law Enforcement Information Network (LEIN) information on criminal history, but opposes the bill as written because it is overly broad.

The committee notes that under MCL 28.214 (4) defense attorneys can already have access to LEIN information regarding their clients through the prosecuting office or court, however not all jurisdictions share LEIN information with defense attorneys.

The committee believes that prosecutors need to have greater clarification that information in LEIN can be shared with defense attorneys without fear of being sanctioned, because some offices do not share LEIN information because they think that existing policies prohibit it.

Additionally, it was noted that attorneys who do defense work full-time and have received training on accessing LEIN are authorized to use it, while attorneys who do not fall into those categories cannot. This creates two different classes of defense attorneys and can affect legal representation.

Position Vote:
Voted For position: 9
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 7

***Keller* Explanation:**
The committee agreed that the bill is *Keller* permissible because it improves the functioning of the courts because it potentially improves the legal representation for defendants.

Contact Person:
Sofia V. Nelson snelson@sado.org

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Janet Welch, Executive Director
Peter Cunningham, Director of Governmental Relations
Kathryn L. Hennessey, Public Policy Counsel

Date: July 12, 2019

Re: SB 0231 – Requiring Proof of Service Be Signed Under Penalty of Perjury

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Background
MCL 600.1910 governs proofs of service of process. SB 231 would amend MCL 600.1910 to require a person who does not qualify under (b)(i) or (b)(ii) (sheriff, medical examiner, court officer, or deputy of any of those offices) to complete service by verifying under penalty of perjury the facts of service.

***Keller* Considerations**
The Civil Procedure & Courts Committee determined that SB 231 is *Keller*-permissible because it would improve the functioning of the courts. The bill would help ensure that the information in the proof of service is correct, which in turn would increase the likelihood that the appropriate individual is served with court documents and receives notice of legal proceedings.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:		
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation
The bill satisfies the requirements of *Keller*.

Senate Bill 0231 (2019) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2019-SB-0231

Sponsors
Jim Runestad (district 15)
Tom Barrett
(click name to see bills sponsored by that person)

Categories
Civil procedure: service of process;

Civil procedure; service of process; proof of service; provide for verification of service. Amends sec. 1910 of 1961 PA 236 (MCL 600.1910).

Bill Documents
Bill Document Formatting Information
[x]
The following bill formatting applies to the 2019-2020 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
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Documents

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As Passed by the Senate
As Passed by the Senate is the bill, as introduced, that includes any adopted Senate amendments.

As Passed by the House
As Passed by the House is the bill, as received from the Senate, that includes any adopted House amendments.

Senate Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History
(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/19/2019	SJ 28 Pg. 246	INTRODUCED BY SENATOR JIM RUNESTAD
3/19/2019	SJ 28 Pg. 246	REFERRED TO COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

SENATE BILL No. 231

March 19, 2019, Introduced by Senators RUNESTAD and BARRETT and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 1910 (MCL 600.1910), as amended by 1994 PA 403.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1910. (1) Proof of service ~~shall~~ **OF PROCESS MAY** be made by 1 of the following methods:

(a) Written acknowledgment of **THE** receipt of a summons and a copy of the complaint, dated and signed by the person authorized under this act to receive them.

(b) A certificate, stating the facts of service, if service is made ~~within the~~ **IN THIS** state ~~of Michigan~~ by **ANY OF THE FOLLOWING**:

(*i*) A sheriff.

(*ii*) A deputy sheriff, medical examiner, ~~bailiff,~~ **COURT OFFICER, OR** constable, or a deputy of **ANY OF** these officers, if the officers held office in a county in which the court issuing the

SENATE BILL No. 231

process is held.

(c) ~~An affidavit, stating the facts of service, if~~ **IF** service is made by any other ~~person, and indicating his or her official capacity, if any~~ **INDIVIDUAL, A WRITTEN STATEMENT OF THE FACTS OF SERVICE, VERIFIED BY THE FOLLOWING STATEMENT: "I DECLARE UNDER THE FELONY PENALTY OF PERJURY THAT THIS PROOF OF SERVICE HAS BEEN EXAMINED BY ME AND THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.".**

(2) Failure to make proof of service does not affect the validity of the service.

Enacting section 1. This amendatory act takes effect 180 days after the date it is enacted into law.

Public Policy Position
SB 231

Support

Explanation
The Civil Procedure & Courts Committee supports SB 231, as it would require a layperson serving court papers to verify under penalty of perjury that the contents in the proof of service are true to the best of his or her information, knowledge, and belief. This will help ensure that individuals have been served court documents as described in the proof of service, thereby improving the functioning of the courts.

***Keller* Explanation**
The bill would improve the functioning of the courts by helping to ensure that the information in the proof of service is correct and that individuals were served with court documents.

Position Vote:
Voted For position: 15
Voted against position: 2
Abstained from vote: 1
Did not vote (absent): 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by August 1, 2019. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

==========

PROPOSED

The Committee proposes amending the language of M Crim JI 3.8 to make it easier to read and understand, and proposes adding a footnote to clarify its use in light of many instructions that contain lesser-included offenses in the instruction itself.

[AMENDED] M Crim JI 3.8 Less Serious Crimes

You may also consider whether [the defendant is / the defendants are] guilty of the less serious crime ~~known as _____~~ of [*name lesser included charge(s)*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Provide elements of lesser included offense(s).*]

Use Note

In some instructions, the language necessary for providing the jury with an instruction on lesser included offenses may be found within the instruction itself. In some instances, it will be necessary to use this instruction to introduce the lesser included offense.

Public Policy Position
M Crim JI 3.8

Support

Explanation:
The committee supports the amended language to Model Criminal Jury Instructions 3.8 as it will be easier for juries understand than the current instruction.

Position Vote:
Voted For position: 10
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

Contact Person:
Sofia V. Nelson snelson@sado.org

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee solicits comment on the following proposal by August 1, 2019. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

==========

PROPOSED

The Committee proposes amending components of the self-defense instructions found in M Crim JI 7.15, 7.16, 7.21, and 7.22 to correct and clarify amendments to the instructions adopted by the State Bar of Michigan Standing Committee on Criminal Jury Instructions in response to the enactment of the Self-Defense Act, MCL 780.971 et seq. The self-defense instructions were amended in 2007 pursuant to language in MCL 780.972(1) regarding a person "not engaged in the commission of a crime at the time" when deadly force was used. They direct that self-defense is only available where the defendant was not committing a crime. MCL 780.972(1) actually addresses the duty to retreat before using deadly force. MCL 780.974 states that the common law right to self-defense was not diminished by the Act. *People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974), states that a defendant does not necessarily lose the right to self-defense while committing another offense if that other offense was not likely to lead to the other person's assaultive behavior. The current instructions state that self-defense is barred if the defendant is committing any crime, even one not likely to lead to assaultive behaviors, and would also appear to bar self-defense when the defendant is charged with, *inter alia*, being a felon in possession of a firearm, contrary to holdings in *People v Dupree*, 486 Mich 693 (2010), and *People v Guajardo*, 300 Mich App 26 (2013). The proposal amends the Use Note to M Crim JI 7.15, eliminates language in M Crim JI 7.21 and 7.22 that bars self-defense when the defendant is engaged in a criminal act, and combines acts using deadly and non-deadly force in M Crim JI 7.16.

[AMENDED USE NOTE] M Crim JI 7.15 Use of Deadly Force in Self-Defense

(1) The defendant claims that [he / she] acted in lawful self-defense. A person has the right to use force or even take a life to defend [himself / herself] under certain circumstances. If a person acts in lawful self-defense, that person's actions are justified and [he / she] is not guilty of [*state crime*].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / sexually assaulted]. If the defendant's belief was honest and reasonable, [he / she] could act immediately to defend [himself / herself] even if it turned out later that [he / she] was wrong about how much danger [he / she] was in. In deciding if the defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time.

(4) Second, a person may not kill or seriously injure another person just to protect [himself / herself] against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury / sexual assault]. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances: [the condition of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person].

(5) Third, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is necessary at the time to protect [himself / herself]. When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

Use Note

Use this instruction when requested where some evidence of self-defense has been introduced or elicited. Where there is evidence that, at the time that the defendant used deadly force, he or she was engaged in the commission of some other crime, the Committee on Model Criminal Jury Instructions believes that circumstances of the case may provide the court with a basis to instruct the jury that the defendant does not lose the right to self-defense if the commission of that other offense was not likely to lead to the other person's assaultive behavior. *See People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). The Committee expresses no opinion regarding the availability of self-defense where the other offense may lead to assaultive behavior by another.

[AMENDED] M Crim JI 7.16 Duty to Retreat to Avoid Using Force or Deadly Force

(1) A person can use [force / deadly force] in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed [he / she] needed to use [force / deadly force] in self-defense.*

(2) However,* a person is never required to retreat if attacked in [his / her] own home, nor if the person reasonably believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.

(3) Further, a person is not required to retreat if ~~the person~~ he or she:

(a) has not or is not engaged in the commission of a crime at the time the [force / deadly force] is used, and

(b) has a legal right to be where ~~the person~~ he or she is at that time, and

(c) has an honest and reasonable belief that the use of [force / deadly force] is necessary to prevent imminent [death / great bodily harm / sexual assault] of [himself / herself] ~~person~~ or another person.

Use Note

*Paragraph (1) and "However" should not be given if ~~the duty to retreat is not in dispute~~ there is no dispute that the defendant had no duty to retreat. *See People v Richardson*, 490 Mich 115, 803 NW2d 302 (2011).

Use this instruction when requested where some evidence of self-defense has been introduced or elicited. Where there is evidence that, at the time that the defendant used force or deadly force, he or she was engaged in the commission of some other crime, the Committee on Model Criminal Jury Instructions believes that circumstances of the case may provide the court with a basis to instruct the jury that the defendant does not lose the right to self-defense if the commission of that other offense was not likely to lead to the other person's assaultive behavior. *See People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). The Committee expresses no opinion regarding the availability of self-defense where the other offense may lead to assaultive behavior by another.

[AMENDED] M Crim JI 7.21 Defense of Others—Deadly Force

(1) The defendant claims that [he / she] acted lawfully to defend _____. A person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, [his / her] actions are justified and [he / she] is not guilty of [*state crime*].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful defense of another. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, ~~at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime~~.

~~(4) Second~~, when [he / she] acted, the defendant must have honestly and reasonably believed that _____ was in danger of being [killed / seriously injured / sexually assaulted]. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend _____, even if it turns out later that the defendant was wrong about how much danger _____ was in.

(~~5~~ 4) ~~Third~~ Second, if the defendant was only afraid that _____ would receive a minor injury, then [he / she] was not justified in killing or seriously injuring the attacker. The defendant must have been afraid that _____ would be [killed / seriously injured / sexually assaulted]. When you decide if [he / she] was so afraid, you should consider all the circumstances: [the conditions of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring _____ / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the attacker].

(~~6~~ 5) ~~Fourth~~ Third, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is needed at the time to protect the other person. When you decide whether the force used appeared to be necessary, you may consider whether the defendant knew about any other ways of protecting _____, but you may also consider how the excitement of the moment affected the choice the defendant made.

(~~7~~6) The defendant does not have to prove that [he / she] acted in defense of _____. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in defense of _____.

[AMENDED] M Crim JI 7.22 Use of Non-deadly Force in Self-Defense or Defense of Others

(1) The defendant claims that [he / she] acted in lawful [self-defense / defense of _____]. A person has the right to use force to defend [himself / herself / another person] under certain circumstances. If a person acts in lawful [self-defense / defense of others], [his / her] actions are justified and [he / she] is not guilty of [*state crime*].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful [self-defense / defense of _____]. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, ~~at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime~~.

~~(4) Second~~, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to use force to protect [himself / herself / _____] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend [himself / herself / _____], even if it turns out later that [he / she] was wrong about how much danger [he / she / _____] was in.

(~~5~~ 4) ~~Third~~ Second, a person is only justified in using the degree of force that seems necessary at the time to protect [himself / herself / the other person] from danger. The defendant must have used the kind of force that was appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the force used was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself / herself / _____], but you may also consider how the excitement of the moment affected the choice the defendant made.

(~~6~~ 5) ~~Fourth~~ Third, the right to defend [oneself / another person] only lasts as long as it seems necessary for the purpose of protection.

(~~7~~ 6) ~~Fifth~~ Fourth, the person claiming self-defense must not have acted wrongfully and brought on the assault. [However, if the defendant only used words, that does not prevent (him / her) from claiming self-defense if (he / she) was attacked.]

Public Policy Position
M Crim JI 7.15, 7.16, 7.21, and 7.22

Support

Explanation

The committee voted unanimously to support the Model Criminal Jury Instructions 7.15, 7.16, 7.21, and 7.22 as drafted because the proposed amendments correct and provide clarification to the current jury instructions regarding self-defense.

Position Vote:

Voted For position: 12
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 5

Contact Persons:

Sofia V. Nelson snelson@sado.org
Michael A. Tesner mtesner@co.genesee.mi.us

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by September 1, 2019. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

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PROPOSED

The Committee proposes new instructions, M Crim JI 10.10, 10.10a, 10.10b and 10.10c, for use where gang-related crimes found in MCL 750.411u and 750.411v have been charged.

[NEW] M Crim JI 10.10 Gang-Motivated Crimes

(1) The defendant is charged with committing a crime related to gang membership or association. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that the defendant was a member or an associate[1] of the gang.[2]

(4) Third, that the defendant committed or attempted to commit the felony crime of [*identify underlying charged offense*], as has previously been described to you.

(5) Fourth, that the defendant's membership in or association with the gang provided the defendant with the motive, means, or opportunity to commit the crime of [*identify underlying charged offense*].

Use Note

1. The statute does not define the term "associate." Where the jury expresses some confusion about the term or asks for a definition, the Committee on Model Criminal Jury Instructions offers the following: an "associate" is a person who is not a member of the gang, but engages in gang-related activities with its members.

2. Where the defendant challenges whether he or she is a member or associate of a gang, it may be necessary to explain that merely being in the presence of persons who are gang members is not sufficient to establish that a person is a member or associate, but proof of engaging in activities with the gang or as part of the gang is required.

[NEW] M Crim JI 10.10a Encouraging Gang-Motivated Crimes

(1) The defendant is charged with causing, encouraging, or coercing another person to assist a gang in committing a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that members of the gang committed or planned to commit the felony crime of [*identify underlying charged offense*], as has previously been described to you.

(4) Third, that the defendant caused, encouraged, or coerced [*identify other person(s)*] to join, participate in, or assist the gang in committing or attempting to commit the crime of [*identify underlying charged offense*].

[NEW] M Crim JI 10.10b Making Threats to Deter a Person from Assisting Another to Withdraw from Gang Membership

(1) The defendant is charged with communicating a threat intending to deter a person from helping another person to withdraw from gang membership or association. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that [*identify gang member*] was a member or associate[1] of the gang.

(4) Third, that the defendant communicated a threat to [*identify complainant*] that [he / she], [his / her] relative, or someone associated with [him / her] would be injured, or that the person or property of [*identify complainant*], [his / her] relative, or someone associated with [him / her] would be damaged if [*identify complainant*]

assisted or helped [*identify gang member*] withdraw from the gang. It does not matter whether the threat directly described the injury or damage that would occur, or implied that injury or damage would occur, so long as a reasonable person would understand it to be a threat of injury or damage.

(5) Fourth, that, when the defendant communicated the threat, [he / she] intended to deter or discourage [*identify complainant*] from assisting or helping [*identify gang member*] to withdraw from the gang.

Use Note

1. The statute does not define the term "associate." Where the jury expresses some confusion about the term or asks for a definition, the Committee on Model Criminal Jury Instructions offers the following: an "associate" is a person who is not a member of the gang, but engages in gang-related activities with its members.

[NEW] M Crim JI 10.10c Threatening a Person to Retaliate for Withdrawing from Gang Membership

(1) The defendant is charged with communicating a threat intending to punish or retaliate against a person for withdrawing from gang membership. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there was a group of persons that was a gang.

To prove that the group of persons was a gang, the prosecutor must prove that it was a group of five or more persons who had a continuing relationship with each other, and identified themselves as a gang in all three of the following ways:

(a) The group had a unifying mark, manner, protocol, or method of expressing membership, which may include a common name, sign, or symbol, means of recognition, geographical or territorial sites, or boundary or location.

(b) The group had an established leadership or command structure.

(c) The group had defined membership criteria.

(3) Second, that [*identify complainant*] was at one time a member or associate[1] of the gang.

(4) Third, that [*identify complainant*] withdrew from the gang.

(5) Fourth, that the defendant communicated a threat to [*identify complainant*] that [he / she], a relative of [his / hers], or someone associated with [him / her] would be injured, or that the person or property of [*identify complainant*], [his / her] relative, or someone associated with [him / her] would be damaged as punishment or retaliation against [*identify complainant*] for withdrawing from the gang. It does not matter whether the threat directly described the injury or damage that would occur, or implied that injury or damage would occur, so long as a reasonable person would understand it to be a threat of injury or damage.

(6) Fifth, that, when the defendant communicated the threat, [he / she] intended to punish or retaliate against [*identify complainant*] for withdrawing from the gang.

Use Note

1. The statute does not define the term "associate." Where the jury expresses some confusion about the term or asks for a definition, the Committee on Model Criminal Jury Instructions offers the following: an "associate" is a person who is not a member of the gang, but engages in gang-related activities with its members.

Public Policy Position
M Crim JI 10.10, 10.10a, 10.10b, 10.10c

Support

Explanation:
The committee supports the new criminal jury instructions as written.

Position Vote:
Voted For position: 10
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

Contact Person:
Sofia V. Nelson snelson@sado.org