

Proposed Amendment of Rule 1.105, 2.301, 2.302, 2.305, 2.306, 2.307, 2.309, 2.310, 2.312, 2.313, 2.314, 2.316, 2.401, 2.411, 2.506, 3.201, 3.206, 3.922, 3.973, 3.975, 3.976, 3.977, 5.131, and Proposed New Rule 3.XXX of the Michigan Court Rules

Proposed Amendments of Rules 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and Proposed Addition of Rule 6.430 of the Michigan Court Rules

To read ADM File No. 2018-19, dated November 28, 2018; and ADM File No. 2017-17, dated November 28, 2018; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Proposed Amendments of Rule 1.111 and Rule 8.127 of the Michigan Court Rules

On order of the Court, dated November 28, 2018, this is to advise that the Court is considering an amendment of Rule 1.111 and Rule 8.127 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 <http://www.courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx>.

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 1.111 Foreign Language Interpreters

(A) Definitions. When used in this rule, the following words and phrases have the following definitions:

(1)–(5) [Unchanged.]

(6) “Qualified foreign language interpreter” means:

(a) A person who provides interpretation services, provided that the person has:

- (i) registered with the State Court Administrative Office; and
- (ii) passed the consecutive portion of a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator (if testing exists for the language), and is actively engaged in becoming certified; and

~~(iii)~~(iii) met the requirements established by the state court administrator for this interpreter classification; and

~~(iii)~~(iv) been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or

(b)–(c) [Unchanged.]

(B)–(H) [Unchanged.]

Rule 8.127 Foreign Language Board of Review and Regulation of Foreign Language Interpreters

(A)–(B) [Unchanged.]

(C) Interpreter Registration

(1) Interpreters who meet the requirements of MCR 1.111(A)(4) and MCR 1.111(A)(6)(a) and (b) must register with the State Court Administrative Office and renew their registration before October 1 of each year in order to maintain their status. The fee for registration is \$60. The fee for renewal is \$30. The renewal application shall include a statement showing that the applicant has used interpreting skills during the 12 months preceding registration. Effective 2019, rRenewal applications must be filed or postmarked on or before September ~~130~~. Any application filed or postmarked after that date must be accompanied by a late fee of \$100. Any late registration made after December 31 or any application that does not demonstrate efforts to maintain proficiency shall require board approval.

(2) [Unchanged.]

(D) [Unchanged.]

STAFF COMMENT: These two proposals, which would promote greater confidence that a qualified foreign language interpreter is proficient in the language and would reduce the possibility that renewals are delayed, were recommended to the Court by the Foreign Language Board of Review.

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 March 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. 2018-06. 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.

Proposed Amendment of Rule 6.001 of the Michigan Court Rules

On order of the Court, dated November 28, 2018, this is to advise that the Court is considering amendment of MCR 6.001. 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 6.001 Scope; Applicability of Civil Rules;
Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001–6.004, 6.005(B) and (C), 6.006, 6.101, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.201, 6.202, 6.425(E)(3), 6.427, 6.435, 6.440, 6.445(A)–(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)–(E) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 6.001 would allow for discovery in criminal cases heard in district court to the same extent that it is available for criminal cases heard in circuit court. The proposal was submitted by the Michigan District Judges Association. The MDJA noted that although many prosecutors provide discovery, there is no rule mandating it. The MDJA also noted that if the general discovery rule (MCR 6.201) is made applicable to district court criminal cases, subsection (I) could be used to limit its application where full-blown discovery may not be appropriate.

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 March 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. 2018-23. 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.

Amendment of Rule 2.002 of the Michigan Court Rules

On order of the Court, dated December 3, 2018, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of MCR 2.002 are adopted, effective January 1, 2019.

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

Rule 2.002 Waiver or ~~Suspension~~ of Fees
and ~~Costs~~ for Indigent Persons

(A) Applicability and Scope.

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

A private or public organization is not eligible for a waiver of fees unless an applicable statute provides that no fee(s) shall be required.

(2) Except as provided in subrule (HF), for the purpose of this rule “fees ~~and costs~~” applies only to filing fees required by ~~law~~ MCL 600.857, MCL 600.880, MCL 600.880a, MCL 600.880b, MCL 600.880c, MCL 600.1027, MCL 600.1986, MCL 600.2529, MCL 600.5756, MCL 600.8371, MCL 600.8420, MCL 700.2517, MCL 700.5104, and MCL 722.717.

(3) A request to waive fees must be filed in each case for which a waiver is requested. A request cannot be applied to multiple cases involving the same individual.

(4) If fees are waived under this rule before judgment, the waiver continues through the date of judgment unless ordered otherwise under subrule (IG). If fees are waived under this rule postjudgment, the waiver continues through the date of adjudication of the postjudgment proceedings. If jurisdiction of the case is transferred to another court, the order granting the waiver continues in the receiving court according to this rule unless ordered otherwise by the receiving court under subrule (IG). If an interlocutory appeal is filed in another court, the order granting the waiver continues in the appellate court.

(5) If the case is appealed, the order granting the waiver is void in the appellate court. A request to waive appellate filing fees may be filed in the appellate court in accordance with this rule.

(B) Request for Waiver of Fees. A request to waive fees must accompany the documents the individual is filing with the court. The request must be on a form approved by the State Court Administrative Office entitled “Fee Waiver Request.” Except as provided in (J), no additional documentation may be required. The information contained on the form shall be nonpublic. The request must be verified in accordance with MCR 1.109(D)(3)(b) and ~~Execution of Affidavits. An affidavit required by this rule may be signed either~~

(1) by the individual party in whose behalf the request affidavit is made; or

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

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

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

(2) Medicaid;

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

(4) Women, Infants, and Children benefits;

- (5) Supplemental Security Income through the federal government; or
- (6) Any other federal, state, or locally administered means-tested income or benefit.

The clerk of the court shall certify the waiver on a form approved by the State Court Administrative Office and shall send a copy to the individual.

- (D) Representation by a Legal Services Program. If a party is represented by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, or by a law school clinic that provides services on the basis of indigence, the payment of fees as to that party shall be waived.

The clerk of the court shall certify the waiver on a form approved by the State Court Administrative Office and shall send a copy to the individual.

- ~~(D)~~(E) Other Indigent Individuals ~~Persons~~. If an individual party shows by ~~ex parte affidavit or otherwise~~ that he or she is unable because of indigence to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation. For purposes of this rule, indigence is defined as living in a household whose gross household income is under 125% of the federal poverty level.

- (F) Denial of a Request to Waive Fees. A judge shall enter an order either granting or denying the request within three business days. If required financial information is not provided in the waiver request, the judge may deny the waiver. An order denying shall indicate the reason for denial. The order granting a request must include a statement that the person for whom fees are waived is required to notify the court when the reason for waiver no longer exists.

- (1) The clerk of the court shall send a copy of the order to the individual. If the court denied the request, the clerk shall also send a notice that to preserve the filing date the individual must pay the fees within 14 days from the date the clerk sends notice of the order or the filing will be rejected.

- (2) De Novo Review of Order Denying Waiver.

- (a) Request for De Novo Review. If the court denies a request for fee waiver, the individual may file a request for de novo review within 14 days of the date of entry of the order. There is no motion fee for the request. A request for de novo review automatically stays the case or preserves the filing date until the review is decided. A de novo review must be held within 14 days of receiving the request.

- (b) Review.

- (i) If the court holds a hearing on the request for de novo review, it shall be closed and held on the record. The clerk of the court shall serve notice of the review at least 9 days before the time set for the hearing if served by mail, or at

least 7 days before the time set for the hearing if served by delivery under MCR 2.107(C)(1) or (2). The Michigan Rules of Evidence do not apply at this hearing.

- (ii) If a hearing is held, the individual shall bring documents to verify the statements made in the fee waiver request and request for de novo review. The court may question the individual regarding the statements made in the requests.

- (c) Chief Judge Ruling, Judicial Assignment.

- (i) In a court having two or more judges, the chief judge shall decide the request for de novo review. In a single-judge court, or if the order denying waiver was issued by the chief judge, the judge shall refer the request to the state court administrator for assignment to another judge, who shall decide the request for de novo review.

- (ii) The court shall enter an order reflecting its decision on the de novo review. If the court denies the request, it shall explain its reasoning in the order.

- ~~(E)~~(G) Domestic Relations Cases; Payment of Fees and Costs by Spouse.

- (H) If a party entitled to relief in an action for divorce, separate maintenance, or annulment, or affirmation of marriage, is qualified for a waiver of filing fees under subrule (C), (D), or (E) and is also entitled to an order requiring the other party to pay attorney fees, the court shall order ~~suspension~~ waiver of payment of those fees and costs and shall require the other party to pay them, unless the other party is also qualified to have filing fees waived under subrule (C) or (D) or (E). ~~required to be paid by a party and order that they be paid by the spouse, if that party~~

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

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

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

- ~~(F)~~(H) Payment of Service Fees and Costs of Publication for Indigent Individuals ~~Persons~~. If payment of fees and costs has been waived or suspended for an individual party and service of process must be made by an official process server or by publication, the court shall order the service fees or costs of publication paid by the county or funding unit in which the action is pending, if the individual party files ~~submits~~ an ex parte affidavit stating facts showing the necessity for that type of service of process. If known at the time, the affidavit may be included in or with the request to waive fees.

- ~~(G)~~(I) Reinstatement of Requirement to Pay for Payment of Fees and Costs. If the payment of fees or costs has been waived

~~or suspended~~ under this rule, the court may on its own initiative order the individual person for whom the fees ~~or costs~~ were waived ~~or suspended~~ to pay those fees ~~or costs~~ when, upon a finding of fact, the court determines the reason for the waiver ~~or suspension~~ no longer exists. If an order to reinstate fees is entered, the individual must pay the fees as ordered. If fees are reinstated, the court shall not delay entry of orders or judgments or in any other way delay the progress of the case pending payment of the fees.

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

STAFF COMMENT: This order clarifies and updates MCR 2.002 (regarding determination of indigence for purposes of filing fees) by establishing a more streamlined procedure to be used in an e-Filing (and paper) environment, creating a threshold level of indigence (125% of the federal poverty level) and implementing a de novo review procedure.

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.

Amendment of Rule 8.110 of the Michigan Court Rules

On order of the Court, dated December 5, 2018, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of MCR 8.110 is adopted, effective January 1, 2019.

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

Rule 8.110 Chief Judge Rule

(A)–(B) [Unchanged.]

(C) Duties and Powers of Chief Judge.

(1)–(4) [Unchanged.]

(5) A chief judge may relieve the judge from presiding over some or all of the judge's docket with approval of the state court administrator.

(6)–(7) [Renumbered (7)–(8) but otherwise unchanged.]

(D) [Unchanged.]

STAFF COMMENT: The amendment of MCR 8.110 explicitly provides that a chief judge, with approval of the state court administrator, may relieve a judge from presiding over some or all of the

judge's caseload. 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.

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.

Supreme Court Appointments to the Committee on Model Civil Jury Instructions

On order of the Court, dated November 28, 2018, pursuant to Administrative Order No. 2001-6, the following persons are reappointed to the Committee on Model Civil Jury Instructions for terms beginning January 1, 2019, and ending December 31, 2021:

Robert L. Avers
Benjamin J. Aloia
C. Thomas Ludden
Donald J. Gasiorek
Judith A. Susskind

In addition, the Court appoints Hon. Michael F. Gadola and Hilary A. Ballentine for terms beginning January 1, 2019, and ending December 31, 2021.

Supreme Court Appointments to the Committee on Model Criminal Jury Instructions

On order of the Court, dated November 28, 2018, pursuant to Administrative Order No. 2013-13, the following persons are reappointed to the Committee on Model Criminal Jury Instructions for terms beginning January 1, 2019, and ending December 31, 2021:

Hon. Hala Y. Jarbou
Hon. Joyce A. Draganchuk
Hon. Paul J. Cusick
Laura L. Moody
John P. Hunt
Charles F. Justian

Supreme Court Appointments to the Foreign Language Board of Review

On order of the Court, dated November 28, 2018, pursuant to MCR 8.127, the following persons are reappointed to the Foreign Language Board of Review for terms beginning January 1, 2019, and ending December 31, 2021:

Hon. Thomas K. Byerley
Melanie L. B. Wandji

In addition, the Court appoints Rebeca Ontiveros-Chavez to a new term beginning January 1, 2019, and ending December 31, 2021.