

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

Proposed Amendment of Rule 3.501 of the Michigan Court Rules

Proposed Amendment of Rule 8.115 of the Michigan Court Rules

Amendments of Rules 1.109 and 8.119 of the Michigan Court Rules

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

To read ADM File No. 2002-37, dated May 15, 2019; ADM File No. 2018-02, dated May 10, 2019; ADM File No. 2018-30, dated May 15, 2019; ADM File No. 2017-28, dated May 22, 2019; and ADM File No. 2017-17, dated May 22, 2019; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

### Amendment of Administrative Order 1999-4

(Dated May 22, 2019)

On order of the Court, the following order amending Administrative Order No. 1999-4 is adopted, effective January 1, 2021.

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

AO No. 1999-4—Establishment of Michigan Trial Court Case File Records Management Standards

In order to improve the administration of justice; to improve the service to the public, other agencies, and the judiciary; to improve the performance and efficiency of Michigan trial court operations; and to enhance the trial courts' ability to preserve ~~create and maintain~~ an accurate record of the trial courts' proceedings, decisions, orders, and judgments pursuant to statute and court rule, it is ordered that the State Court Administrator establish Michigan Trial Court Case File Records Management Standards for data, case records, and other court records and that trial courts conform to those standards. The State Court Administrative Office ~~shall~~ must enforce the standards and assist courts in adopting practices to conform to those standards.

Case records under MCR 8.119(D) must be made available electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not available to

the public. In order to protect privacy and address security concerns, it is ordered that protected personal identifying information, as defined in court rule, filed with the state courts of Michigan in any form or manner and for any purpose must be nonpublic. The State Court Administrative Office must establish standards and develop court forms that ensure all protected personal identifying information necessary to a given court case is provided to the court separately from filed documents except as otherwise required by law.

### Administrative Order No. 2019-2

Requirements for E-Filing Access Plans (Dated June 5, 2019)

On order of the Court, 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 addition of Administrative Order No. 2019-2 is adopted, effective September 1, 2019.

AO No. 2019-2—Trial Court Requirements for Providing Meaningful Access to the Court for Mandated Electronic Filers

To ensure that those individuals required to electronically file court documents have meaningful access to Michigan courts, the Michigan Supreme Court adopts this order requiring courts that seek permission to mandate that all litigants e-File to first submit an e-Filing Access Plan for approval by the State Court Administrative Office.

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 plan shall be submitted to and approved by the State Court Administrative Office as a local administrative order under MCR 8.112. The State Court Administrative Office may revoke approval of an e-Filing Access Plan due to litigant grievances.

### Proposed Amendment of Rule 2 of the Rules Concerning the State Bar of Michigan (Dated June 5, 2019)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2 of the Rules Concerning the State Bar of Michigan. 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 Membership

Subject to the provisions of these rules, Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan shall include active, inactive, law

student, affiliate, and emeritus members as defined by Rule 3, subject to the provisions of these rules. Law students may become law student section members of the State Bar. None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each attorney member, upon admission to the State Bar and in the annual dues notice statement, must provide the State Bar with the member's correct name, physical address, and email address(es), that can be used, among other things, for the annual dues notice and to effectuate electronic service as authorized by court rule, and such additional information as may be required. If the physical address provided is a mailing address only, the attorney member also must provide a street or building address for the member's business or residence. No attorney member shall practice law in this state until the ~~such~~ information required in this Rule has been provided. Members shall ~~notify the State Bar~~ promptly update the State Bar within writing of any change of name, physical address, or email address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office. Every active member shall annually provide a certification as to whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds. The certification shall be included ~~placed on the face of~~ the annual dues notice and shall require the member's signature or electronic signature.

STAFF COMMENT: The proposed amendment of Rule 2 of the Rules Concerning the State Bar of Michigan would update and expand the rule slightly to include reference to a member's email address.

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 October 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. 2018-31. 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 LCR 2.119 for the Court of Claims (Dated May 15, 2019)

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.

### Proposed Amendment of Rule 3.106 of the Michigan Court Rules (Dated May 15, 2019)

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.

### Proposed Alternative Amendments of Rule 6.610 of the Michigan Court Rules (Dated June 5, 2019)

On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 6.610 of the Michigan Court Rules. Before determining whether either 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 proposals 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 either proposal in its present form.

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

#### ALTERNATIVE A

Rule 6.610 Criminal Procedure Generally

(A)–(D) [Unchanged.]

(E) Discovery in Misdemeanor Proceedings.

(1) The provisions of MCR 6.201, except for MCR 6.201(A), apply in all misdemeanor proceedings.

(2) MCR 6.201(A) only applies in misdemeanor proceedings, as set forth in this subrule, if a defendant elects to request discovery pursuant to MCR 6.201(A). If a defendant requests discovery pursuant to MCR 6.201(A) and the prosecuting attorney complies, then the defendant must also comply with MCR 6.201(A).

(E)–(H) [Relettered (F)–(I) but otherwise unchanged.]

#### ALTERNATIVE B

Rule 6.610 Criminal Procedure Generally

(A)–(E) [Unchanged.]

(F) Discovery

(1) At any time before trial the prosecutor must, on request:

(a) permit the defendant or defense counsel to inspect the police investigatory reports; and

(b) provide the defendant or defense counsel any exculpatory information or evidence known to the prosecuting attorney.

(2) Once a case is set for trial, the prosecutor must, on request, provide to defendant or defense counsel:

(a) a copy of the police investigatory reports, as well as copies of any dashcam, bodycam, or other video the prosecution intends to use at trial;

(b) any written or recorded statements by a defendant, co-defendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial; and

(c) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case.

(3) Each party must, on request, provide the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview.

(4) Any other discovery must be by consent of the parties or by motion to the court on good cause shown.

(5) This rule is applicable only to proceedings under this subchapter.

(F)–(H) [Relettered (G)–(I) but otherwise unchanged.]

STAFF COMMENT: The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant's duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

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 October 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 1.109 of the Michigan Court Rules (Dated June 5, 2019)

On order of the Court, 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 Rule 1.109 of the Michigan Court Rules is adopted, effective September 1, 2019.

[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)–(F) [Unchanged.]

(G) Electronic Filing and Service.

(1)–(2) [Unchanged.]

(3) Scope and Applicability.

(a)–(f) [Unchanged.]

(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 facility, or committed to a medical or mental health facility.

(i) 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.

(i) The request for an exemption must be on a form approved by the State Court Administrative Office and verified under MCR 1.109(D)(3). There is no fee for the request.

(ii) The request must specify the reasons that prevent the individual from filing electronically. The individual may file supporting documents along with the request for the court's consideration.

(iii) A judge must review the request and any supporting documentation and issue an order granting or denying the request within two business days of the date the request was filed.

(iv) The clerk of the court must promptly mail the order to the individual. The clerk must place the request, any supporting documentation, and the order in the case file. If there is no case file, the documents must be maintained in a group file.

(v) An exemption granted under this rule is valid only for the court in which it was filed and for the life of the case unless the individual exempted from filing electronically registers with the electronic-filing system. In that event, the individual waives the exemption and becomes subject to the rules of electronic filing and the requirements of the electronic-filing system. An individual who waives an exemption under this rule may file another request for exemption.

(4)–(7) [Unchanged.]

STAFF COMMENT: The amendment of MCR 1.109 provides a single statewide process for requesting an exemption from the requirement to e-File, including both an automatic exemption for certain persons, and a list of factors for the court to consider when determining whether to exempt a person from the requirement to e-File.

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.

### Amendments of Rules 1.111 and 8.127 of the Michigan Court Rules (Dated May 22, 2019)

On order of the Court, 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 Rules 1.111 and 8.127 of the Michigan Court Rules are adopted, effective September 1, 2019.

[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) [Unchanged.]

(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

(ii)–(iii) [Renumbered (iii)–(iv) but otherwise unchanged.]

(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: The amendments of MCR 1.111 and 8.127 require additional testing for qualified interpreters and include a minor revision in the timing for recertification applications. The amendments, proposed by the Foreign Language Board of Review, promote greater confidence that a qualified foreign language interpreter is proficient in the language and reduce the possibility that renewals are delayed.

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 6.425 of the Michigan Court Rules (Dated May 15, 2019)

On order of the Court, 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 Rule 6.425 of the Michigan Court Rules is adopted, effective September 1, 2019.

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

#### Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)–(D) [Unchanged.]

(E) Sentencing Procedure.

(1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:

(a)–(d) [Unchanged.]

(e) if the sentence imposed is not within the guidelines range, articulate the substantial and compelling reasons justifying that specific departure, and

(f) [Unchanged.]

(2)–(3) [Unchanged.]

(F) Advice Concerning the Right to Appeal; Appointment of Counsel.

(1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a)–(b) [Unchanged.]

(c) the request for a lawyer must be filed~~made~~ within 42 days after sentencing.

(2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a)–(b) [Unchanged.]

(c) the request for a lawyer must be filed~~made~~ within 42 days after sentencing.

(3) The court also must give the defendant a request for counsel form containing an instruction informing the defendant that the form must be completed and filed~~returned to the court~~ within 42 days after sentencing if the defendant wants the court to appoint a lawyer. The court must give the defendant an opportunity to tender a completed request for counsel form at sentencing if the defendant wishes to do so.

(4) A request for counsel must be deemed filed on the date on which it is received by the court or the Michigan Appellate Assigned Counsel System (MAACS), whichever is earlier.

(54) [Renumbered but otherwise unchanged.]

(G) Appointment of Lawyer and Preparation of Transcript; Scope of Appellate Lawyer’s Responsibilities.

(1) Appointment of Lawyer and Preparation of Transcript.

(a) All requests for the appointment of appellate counsel must be granted or denied on forms approved by the State Court Administrative Office and provided by ~~through the Michigan Appellate Assigned Counsel System (MAACS).~~

(b)–(d) [Unchanged.]

(e) In a case involving a conviction following a trial, if the defendant’s request for a lawyer was filed~~made~~ within the time for filing a claim of appeal, the order must be entered on an approved form entitled “Claim of Appeal

and Appointment of Counsel.” Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

(f)–(g) [Unchanged.]

(2) [Unchanged.]

STAFF COMMENT: The amendment of MCR 6.425 makes the rule consistent 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. It also removes the requirement for a sentencing judge to articulate substantial and compelling reasons to deviate from the guidelines range, pursuant to *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).

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 Appointment of Commissioner-at-Large to the State Bar of Michigan Board of Commissioners (Dated June 5, 2019)

On order of the Court, pursuant to State Bar Rule 5, Section 2, Valerie R. Newman is appointed commissioner-at-large to the State Bar of Michigan Board of Commissioners, effective immediately,

to serve the remainder of a three-year term, concluding at the 2021 annual meeting of the outgoing Board of Commissioners.

#### Appointments to the Michigan Tribal State Federal Judicial Forum and Identification of New Liaison (Dated May 15, 2019)

On order of the Court, effective July 1, 2019, the following members of the Michigan Tribal State Federal Judicial Forum are reappointed for terms ending July 1, 2022:

Hon. Susan L. Dobrich  
Hon. Terence J. Ackert  
Hon. Jeffrey C. Nellis  
Hon. Beth A. Gibson

The Court also appoints the following new members, effective immediately, to the Michigan Tribal State Federal Judicial Forum for terms ending July 1, 2022:

Hon. Stuart Black  
Hon. Valerie Snyder  
Hon. Tracey Yokich  
Hon. Maarten Vermaat

Further, effective immediately, Justice Megan K. Cavanagh will serve as the Michigan Supreme Court Tribal Liaison.

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