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### Proposed Amendments of Rules 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119 of the Michigan Court Rules

#### Amendment of Rule 8.115 of the Michigan Court Rules

To read ADM File No 2002-37, dated December 18, 2019; and ADM File No. 2018-30, dated January 8, 2020; 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 No. 2014-23

(Dated December 18, 2019)

#### AO No. 2014-23—E-filing System for the Michigan Supreme Court and the Michigan Court of Appeals

On order of the Court, effective February 1, 2020, all documents filed by or on behalf of attorneys who are licensed to practice law in the State of Michigan or who are admitted to temporarily appear and practice under MCR 8.126(A), must be filed electronically with the Michigan Supreme Court (MSC) and the Michigan Court of Appeals (COA) using the MiFILE system unless excused by court order upon a motion showing good cause. Self-represented litigants may, but are not required to, electronically file their documents with the Court immediately, the Michigan Supreme Court (MSC) and the Michigan Court of Appeals (COA) are authorized to implement an electronic filing and electronic service system.

Although the Court of Appeals has had an e-filing system available for several years, this new system by ImageSoft, Inc., called TrueFiling, will enable filers to e-file documents with either the MSC or COA. The TrueFiling system allows for initiating a new case or e-filing a document into an existing case. The system is designed to maximize ease of its use and promote utility for e-filers, whether they are attorneys or self-represented litigants.

Under this system, e-filing will initially be voluntary for filers in all case types, but the Court anticipates that e-filing will eventually become mandatory in both courts. The experience gained from this voluntary program will help determine the future parameters of an expected mandatory program.

Although this order sets out the manner in which e-filed documents are submitted to the courts or served on other parties to an action, it does not change the time periods required for taking action under the Michigan Court Rules, except as explicitly provided.

#### I. Definitions

For purposes of this order:

- (A) “Authorized user” means a party, a party’s attorney, or court staff who is registered in the MiFILETrueFiling system (<https://mifile.courts.michigan.gov/> [www.truefiling.com](http://www.truefiling.com)) and who has satisfied the requirements imposed by the courts relating to electronic filing and service procedures.

A court may revoke user authorization for good cause as determined by the court, including but not limited to a security breach or failure to comply with system requirements. An authorized user must notify the court and ImageSoft, Inc., of any change in the authorized user’s firm name, delivery address, telephone number, fax number, e-mail address, or other required registration information. This notice must occur as soon as practicable but no later than 7 days after the effective date of the change.

(B)–(D) [Unchanged.]

#### II. Scope

(A) [Unchanged.]

(B) Registered users agree to accept e-service through the MiFILETrueFiling system unless and until the user’s registration is terminated. Service on nonregistered users must be accomplished in a manner allowed under the court rules, such as by first-class mail, hand delivery, or e-mail under MCR 2.107(C)(4).

#### III. Signatures [Unchanged.]

#### IV. Retention of Documents [Unchanged.]

#### V. Official Case Record [Unchanged.]

#### VI. Payment of Filing Fees and Costs

(A) [Unchanged.]

(B) Fees and costs are paid electronically through the MiFILETrueFiling system.

#### VII. Transmission Failures and System Outages

(A) [Unchanged.]

(1) [Unchanged.]

(2) the transmission failed because of the failure of the MiFILETrueFiling system to process the electronic document or because of the court’s computer system’s failure to receive the document; and

(3) [Unchanged.]

(B) Scheduled system outages, such as for system maintenance, shall be posted on the court and MiFILETrueFiling websites and will be scheduled before 9:00 a.m. or after midnight on business days whenever feasible.

(C) Notice will be provided on the court and MiFILETrueFiling websites if the MiFILETrueFiling system becomes unavailable for an extended or uncertain period. The notice shall indicate whether filers are responsible for filing the documents conventionally in order to meet the deadlines imposed by statute or court rule.

#### VIII. Filing Completion

(A) A document filed electronically shall be considered filed with the court when the transmission to the MiFILETrueFiling system is complete and the system reflects a “Filed” status.

(B) [Unchanged.]

(C) Upon completion of an e-filing transmission to the MiFILETrueFiling system, the system shall issue to the filer and to the court a notification that includes the date and time of the transmission.

## IX. Time for Filing

Filings may be transmitted to the ~~MiFILE~~TrueFiling system twenty-four hours a day, seven days a week (with the exception of the system's downtime required for periodic maintenance). However, a document electronically filed or served after 11:59 p.m. Eastern Time, or on a Saturday, Sunday, or court holiday (see MCR 8.110[D][2]) shall be deemed to have been filed or served on the next business day. See MCR 1.108.

## X. Format of Documents

The ~~MiFILE~~TrueFiling system accepts the following file types for e-filed documents: Microsoft Word (DOC and DOCX), PDF, text files (TXT), images such as a TIFF, PNG or JPG. The courts strongly prefer that original pleadings be submitted as Word documents, text files, or searchable PDFs. Nonoriginal documents may be scanned into PDF as nonsearchable images.

### Proposed Amendment of Rule 7.118 of the Michigan Court Rules (Dated December 27, 2019)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.118 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 7.118 Appeals from the Michigan Parole Board

(A)–(C) [Unchanged.]

(D) Application for Leave to Appeal.

(1)–(2) [Unchanged.]

(3) Manner of Filing. An application for leave must comply with MCR 7.105, must include statements of jurisdiction and venue, and must be served on the parole board and the prisoner. If the victim seeks leave, the prosecutor must be served. If the prosecutor seeks leave, the victim must be served if the victim requested notification under MCL 780.771.

(a) [Unchanged.]

(b) Service on a prisoner incarcerated in a state correctional facility must be accomplished by serving the application for leave on the warden or administrator, along with the form approved by the State Court Administrative Office for personal service on a prisoner. Otherwise, service must be accomplished by certified mail, return receipt requested, as described in MCR 2.103(C) and MCR 2.104(A)(2) or in compliance with MCR 2.105(A)(2).

In addition to the pleadings, service on the prisoner must also include a notice in a form approved by the State Court Administrative Office advising the prisoner that:

(i) the prisoner may respond to the application for leave to appeal through ~~retained~~retained counsel or in propria persona, although no response is required, and that an indigent prisoner is entitled to appointment of counsel, and

(ii) [Unchanged.]

(c) [Unchanged.]

(d) If a prosecutor or victim files an application for leave to appeal, the circuit court shall appoint counsel for a prisoner who is indigent.

(4) [Unchanged.]

(E)–(J) [Unchanged.]

STAFF COMMENT: This proposal, suggested by the Prisons and Corrections Section of the State Bar of Michigan, would require counsel to be appointed to an indigent prisoner when an application for leave to appeal a grant of parole is filed by the prosecutor or victim. The right to counsel also would be included on the notice to be provided the prisoner.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 April 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADM comment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-13. 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 3.229 of the Michigan Court Rules (Dated December 27, 2019)

On order of the Court, the following amendment of Rule 3.229 of the Michigan Court Rules is adopted, effective January 1, 2020.

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

## Rule 3.229 Filing Confidential Materials

(A) If a party or interested party files any of the following items with the court, the party shall identify the document as a confidential document and the items shall be served on the other parties in the case and maintained in a nonpublic file in accordance with subrule (B):

(1)–(8) [Unchanged.]

(B) Any item filed and identified under subrule (A) is nonpublic and must be maintained separately from the legal file. The filer

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waives any claim of confidentiality to any item filed under sub-rule (A) that is not identified by the filer as confidential. The nonpublic file must be made available for any appellate review.

STAFF COMMENT: The amendment of MCR 3.229 requires the filer to identify nonpublic documents when they are submitted to the clerk, and stipulates that the filer waives any claim of confidentiality where such documents are filed without a designation of confidentiality. These amendments update the language originally adopted by the Court as part of the civil discovery rules proposal in ADM File No. 2018-19.

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 (Dated December 18, 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 8.110 of the Michigan Court Rules is adopted, effective January 1, 2020.

[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. Any judge seeking appointment as chief judge shall complete and submit an application for chief judge on the form available on SCAO's website. The application will describe the criteria for selection of chief judges. SCAO will also provide an opportunity for any judge or judges to provide information to the Court (which will be kept confidential) regarding the selection of a particular person as chief judge. When SCAO is considering whether to consolidate recommending appointment of a chief judge of a specific group of courts under the supervision of a single chief judge, SCAO shall inform and seek input from those courts. SCAO may seek additional information as needed from any court or judge during the appointment process, and will give respectful consideration to all applicants and to any information it receives. 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.

(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 ~~may be expected to~~ take an annual vacation leave of 20 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 ~~1530~~ 1530 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)–(e) [Unchanged.]

(4)–(6) [Unchanged.]

STAFF COMMENT: The amendments of this rule expand and clarify the chief judge selection process, modify the judicial vacation standard as it relates to the number of carryover days and when they may be used, and allow the State Court Administrator to require a chief judge to attend training.

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 to the Attorney Discipline Board (Dated January 22, 2020)

On order of the Court, pursuant to MCR 9.110, Peter Smit (attorney member) is appointed to the Attorney Discipline Board for the remainder of a term commencing immediately and ending on October 1, 2021.