

In the Hall of Justice

Any member who would like more information concerning the rationale for positions taken can refer to www.michbar.org/publicpolicy/home or contact Peter Cunningham at the State Bar of Michigan; 306 East Townsend Street; Lansing, MI 48933-2012 or at (800) 968-1442. For the most current status information, visit www.michiganlegislature.org.

Proposed Amendment of Rule 2.105 of the Michigan Court Rules (ADM File No. 2020-20)—Process; Manner of Service (See *Michigan Bar Journal* December 2020, p 70)

STATUS: Comment Period Expired 3/1/21;

Public Hearing 3/24/21.

POSITION: Support with additional amendment presented below:

(A)–(G) [Unchanged.]

(H) Limited Liability Company. Service of process on a limited liability company may be made by:

- (1) serving a summons and a copy of the complaint on a member manager or the resident agent;
- (2) serving a summons and a copy of the complaint on a member or person in charge of an office or business establishment of the limited liability company and sending a summons and a copy of the complaint by registered mail, addressed to the registered office of the limited liability company.
- (3) If a limited liability company fails to appoint or maintain an agent for service of process, or the agent for service of process cannot be found or served service under subsections (1) and (2) cannot be accomplished through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the director of the Department of Licensing and Regulatory Affairs administrator (as defined in MCL 450.4102(2)(a)) a summons and copy of the complaint.

(H)–(K) [Relettered (I)–(L) but otherwise unchanged.]

Proposed Addition of Rule 3.906 to the Michigan Court Rules (ADM File No. 2020-17)—Use of Restraint (See *Michigan Bar Journal* December 2020, p 71)

STATUS: Comment Period Expired 3/1/21;

Public Hearing 3/24/21.

POSITION: Support with additional amendment presented below in bold, underline, and strike-through:

- (A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may~~shall~~ not be used on a juvenile during a court proceeding and must be removed prior to the juvenile being brought into the courtroom ~~and/or~~ appearing before the court, unless the court finds by clear and convincing evidence that the use of restraints is necessary due to one of the following factors:

(1) The use of restraints is necessary for the following reasons:

~~(a)(1) Instruments of restraint are necessary to prevent~~
The prevention of physical harm to the juvenile or another person;

~~(b)(2) The juvenile's has a recent history of disruptive courtroom behavior that has either placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior;~~
or

~~(c)(3) There is a founded belief that the~~**The juvenile's recent behavior** presents a substantial risk of flight from the courtroom;

and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, participation by video or other electronic means, the presence of court personnel, law enforcement officers, or bailiffs, or the use of a support person or support animal. In determining alternatives to restraints, the court shall consider the juvenile's present mental health.

(3) When making a determination under subsection (1), the court shall consider the following factors:

(a) Any past escapes or attempted escapes by the juvenile;

(b) Evidence of a present plan of escape by the juvenile;

(c) Any believable threats by the juvenile to harm others during court;

(d) Any believable threats by the juvenile to harm himself or herself during court;

(e) Evidence of any self-injurious behavior on the part of the juvenile;

(f) The possibility of rescue attempts by other offenders still at large.

(B) The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall **make written state on the record or in writing its findings of fact in support of the order.**

(C) Any restraints shall allow the juvenile limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a juvenile be restrained using fixed restraints to a wall, floor, or furniture.

(D) If the only risk found by the court is that listed in (A)(1)(c), the court shall only authorize the use of leg restraints.