

## **PROPOSED AMENDMENT OF MCR 8.115 (CELL PHONE USAGE IN COURT FACILITIES)**

### **Issue**

On April 12, 2008, the Representative Assembly adopted a position regarding the use of electronic devices in courthouses by proposing an amendment to MCR 8.115. The Civil Procedure and Courts Committee would like to submit to the Supreme Court comments that advocate the stated-below revisions to the Assembly's position. Should the State Bar of Michigan grant the Civil Procedure and Courts Committee permission to advocate its proposed revisions?

### **Synopsis**

A copy of the position the Representative Assembly adopted on April 12, 2008, regarding the usage of electronic devices in courthouses is attached as Exhibit A. The Supreme Court published for public comment proposed amendments to MCR 8.115, as put forward by the State Bar of Michigan, with modifications. The Court published two alternatives as detailed in Exhibit B.

The Civil Procedure and Courts Committee has made revisions to the Assembly's position. Because the Civil Procedure and Courts Committee is an entity of the State Bar of Michigan, it must receive the Assembly's permission to advocate a position that differs from the one adopted by the State Bar. Therefore, the Committee now seeks Assembly permission to advocate its position and submit its comments.

### **Background**

This originated as a State Bar Proposal, which is essentially Alternative A in the Supreme Court's published proposal. It would permit attorneys to carry electronic devices into a courthouse but regulate their use in the courtroom. The Supreme Court added an Alternative B that would not allow any courtroom use.

The Committee supports a version of Alternative A. First, the realities of current practice make it essential that there be at least some use of electronic devices in a courtroom. The lack of a uniform rule has resulted in inconsistent practices in various courts. The Committee believes that it would be wise to have the rule explicitly mention electronic devices that have recording capabilities.

Second, the Committee believes that the rule should make a clear distinction between verbal and nonverbal communications on electronic devices, the former being far more disruptive.

Third, the Committee supports clarifying the court's general authority to restrict use of electronic devices as part of its general authority to control the courtroom.

The following is the Civil Procedure and Courts Committee's alternative draft language for file 2008-35, proposed amendment of MCR 8.115 regarding use of electronic devices in the courthouse:

- (C) Electronic Devices. Lawyers may carry cell phones or other portable electronic devices, including those with photographic, video or audio recording capabilities, into any court facility. ~~Cell phone or other portable~~

~~electronic~~ Such devices may be used ~~shall be allowed~~ anywhere outside the courtroom. When in any courtroom, all phones or other portable electronic devices shall either be turned off or silenced. If silenced, counsel shall make certain that any transmissions do not interfere with court proceedings. Individuals shall not verbally initiate or answer any calls while court is in session without the consent of the court. No photographs may be taken inside any courtroom without permission of the court. No photographs may be taken of any jurors or witnesses. ~~Individuals shall not initiate or answer any calls while court is in session without the consent of the court.~~ Nothing in this subrule limits the court's authority to impose other reasonable limitations on use of electronic devices where necessary to maintain conditions conducive to the orderly conduct of proceedings. Failure to comply with this subrule ~~section~~ may result in a fine, incarceration, or both for contempt of court.

### **Opposition**

None known.

### **Prior Action by Representative Assembly**

The Representative Assembly adopted the position with respect to the use of electronic device usage in courthouses at the April 12, 2008 meeting. Because the Civil Procedure and Courts Committee is an entity of the State Bar of Michigan, it must receive the Assembly's permission to advocate a position that differs from that adopted by the State Bar.

### **Fiscal and Staffing Impact on State Bar of Michigan**

None.

### **STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on April 18, 2009**

Should the Representative Assembly grant permission to the Civil Procedure and Courts Committee to submit its comments that advocate revisions to the Assembly's position on the usage of electronic devices in courthouses?

(a) Yes

or

(b) No

# PROPOSAL TO ADD MCR 8.115(C) USE OF CELL PHONES BY LAWYERS IN COURTHOUSES

## Issue

Should the Representative Assembly recommend that the Michigan Supreme Court adopt the following addition to MCR 8.115:

### **RULE 8.115 COURTROOM DECORUM**

#### **(C) Cell phones.**

Lawyers may carry cell phones, including those with recording devices, and electronic pocket schedulers into any building housing a court facility. Cell phone use shall be allowed anywhere outside of a courtroom. When inside any courtroom, lawyers shall ensure that their phones are either off or silenced. If silenced, counsel shall make certain that any transmissions do not interfere with court recordings. No photographs may be taken inside any courtroom without permission of the presiding judge. No photographs may be taken of any jurors or witnesses. Individuals shall not answer any calls while court is in session, without the consent of the court. Failure to comply with this section may result in a fine, incarceration, confiscation of the cell phone or a combination thereof for contempt of court.

## Synopsis

This rule allows for lawyers to carry cell phones into courthouses and use them in a properly limited manner.

## Background

Many attorneys in litigation and criminal defense practitioners occasionally encounter judges who entirely prohibit even possession of cellular phones and electronic organizers. Lack of access to calendars and phones can hinder the orderly conduct of business. Only Oakland County has published a local rule on this issue, which is similar to the proposal. It is published as Local Rule 8.115 (C)6.

## Opposition

None known.

## Prior Action by Representative Assembly

None known.

## Fiscal and Staffing Impact on State Bar of Michigan

None except for the cost of the ink in publishing the new rule.

**STATE BAR OF MICHIGAN POSITION**  
**By vote of the Representative Assembly on April 12, 2008**

Should the Representative Assembly recommend that the Michigan Supreme Court adopt the above addition to MCR 8.115, on the use of cell phones by lawyers in courthouses?

UNANIMOUSLY APPROVED AS AMENDED.

# Order

Michigan Supreme Court  
Lansing, Michigan

January 14, 2009

Marilyn Kelly,  
Chief Justice

ADM File No. 2008-35

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

Proposed Amendment  
of Rule 8.115 of the  
Michigan Court Rules  
(Cell Phone Usage  
in Court Facilities)

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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. **Please note that the order contains alternative options for the proposed language of MCR 8.115(C).** 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 [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

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 are indicated by underlining and deletions are indicated by strikeover.]

Rule 8.115 Courtroom Decorum

(A)-(B)[Unchanged.]

## Alternative A

(C) Electronic Devices. Lawyers may carry cell phones or other portable electronic devices into any court facility. Cell phone or other portable electronic device use shall be allowed anywhere outside the courtroom. When in any courtroom, all phones or other portable electronic devices shall either be turned off or silenced.

EXHIBIT B

If silenced, counsel shall make certain that any transmissions do not interfere with court proceedings. No photographs may be taken inside any courtroom without permission of the court. No photographs may be taken of any jurors or witnesses. Individuals shall not initiate or answer any calls while court is in session without the consent of the court. Failure to comply with this section may result in a fine, incarceration, or both for contempt of court.

### **Alternative B**

- (C) Electronic Devices. Lawyers may carry cell phones or other portable electronic devices into any court facility. Cell phone or other portable electronic device use shall be allowed anywhere outside the courtroom. When in any courtroom during court proceedings, all phones or other portable electronic devices shall be turned off. No photographs may be taken inside any courtroom without permission of the court. No photographs may be taken of any jurors or witnesses. No text message shall be sent or received. Failure to comply with this section may result in a fine, incarceration, or both for contempt of court.

Staff Comment: Alternative A, submitted by the State Bar of Michigan but with several clarifying revisions, would allow attorneys to bring cell phones into a courthouse, but would limit their use in courtrooms during court proceedings. In addition, the proposal would allow a court to impose sanctions for failure to comply with cell phone usage restrictions. Alternative B, similar to one submitted by the State Bar of Michigan, would allow attorneys to bring cell phones into a courthouse, but would prohibit their use in courtrooms during court proceedings. In addition, the proposal would allow a court to impose sanctions for failure to comply with cell phone usage restrictions.

The staff comment is not an authoritative construction by the 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 these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2008-35. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, 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.

January 14, 2009

*Corbin R. Davis*

Clerk

**EXHIBIT B**