

ACCESS TO COURT RECORDS COURT RULE

ISSUE:

Should the Representative Assembly request that the Michigan Supreme Court amend court rule MCR 8.119(H) to grant access to court recordings to any person seeking access that has a special interest warranting access and/or receipt of the court record, including a party or representative of the party?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to grant access to court recordings to any person having a special interest warranting access.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment to Chapter 8 of the Michigan Court Rules by amending MCR 8.119(H), as follows:

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk shall not permit any case record to be taken from the court without the order of the court. A court may provide access to the public case history information through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039; however, all other public information in its case files may be provided through electronic means only upon request. The court **SHALL** provide access to any case record that is not available in paper or digital image, as defined by MCR 1.109(B), **to any person having a special interest warranting access, including a party or representative of the party**. Any materials filed with the court pursuant to MCR 1.109(D), in a medium for which the court does not have the means to readily access and reproduce those materials, **SHALL** be made available for public inspection using court equipment only. The court is not required to provide the means to ~~access or~~ reproduce the contents of those materials if the means is not already available.

(2) Every court shall adopt an administrative order pursuant to MCR 8.112(B) to

(b) establish a policy ~~for whether~~ to provide access for records defined in subrule (F) and ~~if access is to be provided~~, outline the procedure for accessing those records;

(emphasis added).

SYNOPSIS

The proposed addition to the Michigan Court Rules ensures the common-law right to access to public records. Currently, a local court administrative order may summarily deny any person access to the court recording of a public hearing. The proposed addition eliminates the court's ability to circumvent blanket prohibitions on access to public records.

BACKGROUND

The proposed rule amendment is based upon Michigan Supreme Court cases *Burton v Tuite*, 78 Mich 363; 44 NW 282 (1889) and *Nowack v Auditor General*, 243 Mich 200; 219 NW 749 (1928), which recognize the common-law right to access to public records to persons showing a special interest warranting receipt (or access) to the records requested.

OPPOSITION

None known.

PRIOR ACTION BY REPRESENTATIVE ASSEMBLY

None known.

FISCAL AND STAFFING IMPACT ON STATE BAR OF MICHIGAN

None known.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on September 18, 2021

Should the Representative Assembly request that the Michigan Supreme Court amend MCR 8.119(H) to comply with common-law requirements allowing access to court records?

(a) Yes

or

(b) No