

CHAPTER 1. GENERAL PROVISIONS

MICHIGAN COURT RULES OF 1985

Subchapter 1.100 Applicability; Construction

Rule 1.101 Title; Citation

These rules are the "Michigan Court Rules of 1985." An individual rule may be referred to as "Michigan Court Rule _____," and cited by the symbol "MCR _____. For example, this rule may be cited as MCR 1.101.

Rule 1.102 Effective Date

These rules take effect on March 1, 1985. They govern all proceedings in actions brought on or after that date, and all further proceedings in actions then pending. A court may permit a pending action to proceed under the former rules if it finds that the application of these rules to that action would not be feasible or would work injustice.

Rule 1.103 Applicability

The Michigan Court Rules govern practice and procedure in all courts established by the constitution and laws of the State of Michigan. Rules stated to be applicable only in a specific court or only to a specific type of proceeding apply only to that court or to that type of proceeding and control over general rules.

Rule 1.104 Statutory Practice Provisions

Rules of practice set forth in any statute, if not in conflict with any of these rules, are effective until superseded by rules adopted by the Supreme Court.

Rule 1.105 Construction

These rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties.

Rule 1.106 Catch Lines

The catch lines of a rule are not part of the rule and may not be used to construe the rule more broadly or more narrowly than the text indicates.

Rule 1.107 Number

Words used in the singular also apply to the plural, where appropriate.

Rule 1.108 Computation of Time

In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:

- (1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order.
- (2) If a period is measured by a number of weeks, the last day of the period is the same day of the week as the day on which the period began.
- (3) If a period is measured by months or years, the last day of the period is the same day of the month as the day on which the period began. If what would otherwise be the final month does not include that day, the last day of the period is the last day of that month. For example, "2 months" after January 31 is March 31, and "3 months" after January 31 is April 30.

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; and Access

(A) Court Records Defined.

(1) Court records are defined by MCR 8.119 and this subrule. Court records are recorded information of any kind that has been created by the court or filed with the court in accordance with Michigan Court Rules. Court records may be created using any means and may be maintained in any medium authorized by these court rules provided those records comply with other provisions of law and these court rules.

(a) Court records include, but are not limited to:

- (i) documents, attachments to documents, discovery materials, and other materials filed with the clerk of the court,
- (ii) documents, recordings, data, and other recorded information created or handled by the court, including all data produced in conjunction with the use of any system for the purpose of transmitting, accessing, reproducing, or maintaining court records.

(b) For purposes of this subrule:

- (i) Documents include, but are not limited to, pleadings, orders, and judgments.
- (ii) Recordings refer to audio and video recordings (whether analog or digital), stenotapes, log notes, and other related records.
- (iii) Data refers to any information entered in the case management system that is not ordinarily reduced to a document, but that is still recorded information.
- (iv) Other recorded information includes, but is not limited to, notices, bench warrants, arrest warrants, and other process issued by the court that do not have to be maintained on paper or digital image.

(2) Discovery materials that are not filed with the clerk of the court are not court records. Exhibits that are maintained by the court reporter or other authorized staff pursuant to MCR 2.518 or MCR 3.930 during the pendency of a proceeding are not court records.

(B) Document Defined. A document means a record produced on paper or a digital image of a record originally produced on paper or originally created by an approved electronic means, the output of which is readable by sight and can be printed to paper.

(C) Filing Standards.

(1) All pleadings and other documents prepared for filing in the courts of this state must comply with MCR 8.119(C) and be filed on good quality 8½ by 11 inch paper or transmitted through an approved electronic means or created electronically by the court and maintained in a digital image. The print must be no smaller than 10 characters per inch (nonproportional) or 12-point (proportional), except with regard to forms approved by the State Court Administrative Office.

(2) All other materials submitted for filing shall be prepared in accordance with this subrule and standards established by the state court administrative office. An attachment or discovery material that is submitted for filing shall be made part of the public case file unless otherwise confidential.

(3) All original documents filed on paper may be reproduced and maintained by the court as a digital image in place of the paper original in accordance with standards and guidelines established by the state court administrative office.

(4) A clerk of the court may reject nonconforming documents as prescribed by MCR 8.119.

(D) Signatures.

- (1) A signature, as required by these court rules and law, means a written signature as defined by MCL 8.3q or an electronic signature as defined by this subrule.
- (2) An electronic signature means an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (3) If a law or court rule requires a signature to be notarized or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law or court rule, is attached to or logically associated with the signature.
- (4) Retention of a signature electronically affixed to a document that will be retained by the court in electronic format must not be dependent upon the mechanism that was used to affix that signature.

(E) Requests for access to public court records shall be granted in accordance with MCR 8.119(H).

Rule 1.110 Collection of Fines and Costs

Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown.

Rule 1.111 Foreign Language Interpreters

(A) Definitions

When used in this rule, the following words and phrases have the following definitions:

(1)"Case or Court Proceeding" means any hearing, trial, or other appearance before any court in this state in an action, appeal, or other proceeding, including any matter conducted by a judge, magistrate, referee, or other hearing officer.

(2)"Party" means a person named as a party or a person with legal decision-making authority in the case or court proceeding.

(3) A person is "financially able to pay for interpretation costs" if the court determines that requiring reimbursement of interpretation costs will not pose an unreasonable burden on the person's ability to have meaningful access to the court. For purposes of this rule, a person is financially able to pay for interpretation costs when:

(a) The person's family or household income is greater than 125% of the federal poverty level; and

(b) An assessment of interpretation costs at the conclusion of the litigation would not unreasonably impede the person's ability to defend or pursue the claims involved in the matter.

(4) "Certified foreign language interpreter" means a person who has:

(a) passed 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,

(b) met all the requirements established by the state court administrator for this interpreter classification, and

(c) registered with the State Court Administrative Office.

(5) "Interpret" and "interpretation" mean the oral rendering of spoken communication from one language to another without change in meaning.

(6) "Qualified foreign language interpreter" means:

- (a) A person who provides interpretation services, provided that the person has:
- (i) registered with the State Court Administrative Office; and
 - (ii) met the requirements established by the state court administrator for this interpreter classification; and
 - (iii) been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or
- (b) A person who works for an entity that provides in-person interpretation services provided that:
- (i) both the entity and the person have registered with the State Court Administrative Office; and
 - (ii) the person has met the requirements established by the state court administrator for this interpreter classification; and
 - (iii) the person has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or
- (c) A person who works for an entity that provides interpretation services by telecommunication equipment, provided that:
- (i) the entity has registered with the State Court Administrative Office; and
 - (ii) the entity has met the requirements established by the state court administrator for this interpreter classification; and
 - (iii) the person has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services

(B) Appointment of a Foreign Language Interpreter

- (1) If a person requests a foreign language interpreter and the court determines such services are necessary for the person to meaningfully participate in the case or court proceeding, or on the court's own determination that foreign language interpreter services are necessary for a person to meaningfully participate in the case or court proceeding, the court shall appoint a foreign language interpreter for that person if the person is a witness testifying in a civil or criminal case or court proceeding or is a party.
- (2) The court may appoint a foreign language interpreter for a person other than a party or witness who has a substantial interest in the case or court proceeding.
- (3) In order to determine whether the services of a foreign language interpreter are necessary for a person to meaningfully participate under subrule (B)(1), the court shall rely upon a request by an LEP individual (or a request made on behalf of an LEP individual) or prior notice in the record. If no such requests have been made, the court may conduct an examination of the person on the record to determine

whether such services are necessary. During the examination, the court may use a foreign language interpreter. For purposes of this examination, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

(C) Waiver of Appointment of Foreign Language Interpreter

A person may waive the right to a foreign language interpreter established under subrule (B)(1) unless the court determines that the interpreter is required for the protection of the person's rights and the integrity of the case or court proceeding. The court must find on the record that a person's waiver of an interpreter is knowing and voluntary. When accepting the person's waiver, the court may use a foreign language interpreter. For purposes of this waiver, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

(D) Recordings

The court may make a recording of anything said by a foreign language interpreter or a limited English proficient person while testifying or responding to a colloquy during those portions of the proceedings.

(E) Avoidance of Potential Conflicts of Interest

(1) The court should use all reasonable efforts to avoid potential conflicts of interest when appointing a person as a foreign language interpreter and shall state its reasons on the record for appointing the person if any of the following applies:

- (a) The interpreter is compensated by a business owned or controlled by a party or a witness;
- (b) The interpreter is a friend, a family member, or a household member of a party or witness;
- (c) The interpreter is a potential witness;
- (d) The interpreter is a law enforcement officer;
- (e) The interpreter has a pecuniary or other interest in the outcome of the case;
- (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;
- (g) The interpreter does have, or may have, a perceived conflict of interest;
- (h) The appointment of the interpreter creates an appearance of impropriety.

(2) A court employee may interpret legal proceedings as follows:

(a) The court may employ a person as an interpreter. The employee must meet the minimum requirements for interpreters established by subrule (A)(4). The state court administrator may authorize the court to hire a person who does not meet the minimum requirements established by subrule (A)(4) for good cause including the unavailability of a certification test for the foreign language and the absence of certified interpreters for the foreign language in the geographic area in which the court sits. The court seeking authorization from the state court administrator shall provide proof of the employee's competency to act as an interpreter and shall submit a plan for the employee to meet the minimum requirements established by subrule (A)(4) within a reasonable time.

(b) The court may use an employee as an interpreter if the employee meets the minimum requirements for interpreters established by this rule and is not otherwise disqualified.

(F) Appointment of Foreign Language Interpreters

(1) When the court appoints a foreign language interpreter under subrule (B)(1), the court shall appoint a certified foreign language interpreter whenever practicable. If a certified foreign language interpreter is not reasonably available, and after considering the gravity of the proceedings and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in (A)(6). The court shall make a record of its reasons for using a qualified foreign language interpreter.

(2) If neither a certified foreign language interpreter nor a qualified foreign language interpreter is reasonably available, and after considering the gravity of the proceeding and whether the matter should be rescheduled, the court may appoint a person whom the court determines through voir dire to be capable of conveying the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding without prejudice to the limited English proficient person.

(3) The court shall appoint a single interpreter for a case or court proceeding. The court may appoint more than one interpreter after consideration of the nature and duration of the proceeding; the number of parties in interest and witnesses requiring an interpreter; the primary languages of those persons; and the quality of the remote technology that may be utilized when deemed necessary by the court to ensure effective communication in any case or court proceeding.

(4) The court may set reasonable compensation for interpreters who are appointed by the court. Court-appointed interpreter costs are to be paid out of funds provided by law or by the court.

(5) If a party is financially able to pay for interpretation costs, the court may order the party to reimburse the court for all or a portion of interpretation costs.

(6) Any doubts as to eligibility for interpreter services should be resolved in favor of appointment of an interpreter.

(7) At the time of determining eligibility, the court shall inform the party or witness of the penalties for making a false statement. The party has the continuing obligation to inform the court of any change in financial status and, upon request of the court, the party must submit financial information.

(G) Administration of Oath or Affirmation to Interpreters

The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following: "Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?"

(H) Request for Review

(1) Any time a court denies a request for the appointment of a foreign language interpreter or orders reimbursement of interpretation costs, it shall do so by written order.

(2) An LEP individual may immediately request review of the denial of appointment of a foreign language interpreter or an assessment for the reimbursement of interpretation costs. A request for review must be submitted to the court within 56 days after entry of the order.

(a) In a court having two or more judges, the chief judge shall decide the request for review *de novo*.

(b) In a single-judge court, or if the denial was issued by a chief judge, the judge shall refer the request for review to the state court administrator for assignment to another judge, who shall decide the request *de novo*.

(c) A pending request for review under this subrule stays the underlying litigation.

(d) A pending request for review under this subrule must be decided on an expedited basis.

(e) No motion fee is required for a request for review made under this subrule.

Subchapter 1.200 Amendment of Michigan Court Rules

Rule 1.201 Amendment Procedure

(A) Notice of Proposed Amendment. Before amending the Michigan Court Rules or other sets of rules within its jurisdiction, the Supreme Court will notify the secretary of the State Bar of Michigan and the state court administrator of the proposed amendment, and the manner and date for submitting comments. The notice also will be posted on the Court's website,
<http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/default.aspx>.

(B) Notice to Bar. The state bar secretary shall notify the appropriate state bar committees or sections of the proposed amendment, and the manner and date for submitting comments. Unless otherwise directed by the Court, the proposed amendment shall be published in the Michigan Bar Journal.

(C) Notice to Judges. The state court administrator shall notify the presidents of the Michigan Judges Association, the Michigan District Judges Association, and the Michigan Probate and Juvenile Court Judges Association of the proposed amendment, and the manner and date for submitting comments.

(D) Exceptions. The Court may modify or dispense with the notice requirements of this rule if it determines that there is a need for immediate action or if the proposed amendment would not significantly affect the delivery of justice.

(E) Administrative Public Hearings. The Court will conduct a public hearing pursuant to Supreme Court Administrative Order 1997-11 before acting on a proposed amendment that requires notice, unless there is a need for immediate action, in which event the amendment will be considered at a public hearing following adoption. Public hearing agendas will be posted on the Court's website.