

# CHAPTER 8. ADMINISTRATIVE RULES OF COURT

## MICHIGAN COURT RULES OF 1985

### Subchapter 8.100 General Administrative Orders

#### **Rule 8.101 Applicability of Administrative Rules**

The administrative rules of subchapter 8.100 apply to all courts established by the constitution and laws of Michigan, unless a rule otherwise provides.

#### **Rule 8.103 State Court Administrator**

The state court administrator, under the Supreme Court's supervision and direction, shall:

- (1) supervise and examine the administrative methods and systems employed in the offices of the courts, including the offices of the clerks and other officers, and make recommendations to the Supreme Court for the improvement of the administration of the courts;
- (2) examine the status of court calendars, determine the need for assistance to a court, and report to the Supreme Court;
- (3) on receipt of the quarterly reports as provided in MCR 8.110(C)(5), investigate each case in an effort to determine the reason for delays, recommend actions to eliminate delays, and recommend further actions to expedite process to insure speedy trials of criminal cases;
- (4) recommend to the Supreme Court the assignment of judges where courts are in need of assistance and carry out the direction of the Supreme Court as to the assignment of judges;
- (5) collect and compile statistical and other data, make reports of the business transacted by the courts, and transmit the reports to the Supreme Court so that the statistics and other data may be used in taking proper action in the administration of justice;
- (6) prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system;
- (7) obtain reports from courts, and the judges, clerks, and other officers of the courts, in accordance with rules adopted by the Supreme Court on cases and other judicial business conducted or pending in the courts, and report on them to the Supreme Court;
- (8) recommend to the Supreme Court policies for the improvement of the judicial system;
- (9) approve and publish forms as required by these rules, and such other recommended forms as the administrator deems advisable; and
- (10) attend to other matters assigned by the Supreme Court.

### **Rule 8.104 Judicial Meetings**

(A) Meetings to be Called by State Court Administrator. The state court administrator, under the Supreme Court's supervision and direction, may call

- (1) an annual statewide meeting of the circuit, recorder's, and Court of Appeals judges;
- (2) an annual statewide meeting of the probate judges;
- (3) an annual statewide meeting of the district judges; and
- (4) additional statewide or regional meetings of judges as may be desirable.

(B) Presiding Officer. The Chief Justice of the Supreme Court or another person designated by the Chief Justice shall preside at judicial meetings called by the state court administrator.

(C) Secretary. The state court administrator or deputy administrator acts as secretary at judicial meetings called by the state court administrator.

(D) Purposes. At the meetings, the judges are to

- (1) study the organization, rules, methods of procedure, and practice of the judicial system in general;
- (2) study the problems of administration confronting the courts and judicial system in general; and
- (3) make recommendations for
  - (a) modifying or ameliorating existing conditions,
  - (b) harmonizing and improving laws, and
  - (c) amending the rules and statutes relating to practice and procedure.

### **Rule 8.105 General Duties of Clerks**

(A) Office Hours. The office of the clerk of every court of record must be open, and the clerk or deputy clerk must be in attendance, during business hours on all days except Saturdays, Sundays, and legal holidays, and at other times that the court is in session.

(B) Court Records and Reporting Duties. The clerk of every circuit court shall maintain court records and make reports as prescribed by MCR 8.119.

(C) Notice of Judgments, Orders, and Opinions. Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk to the attorneys of record in the case, in the manner provided in MCR 2.107.

(D) Filing of Assurance of Discontinuance Under MCL 445.870. The clerk of every judicial circuit shall, without charge, receive and file an assurance of discontinuance accepted by the Attorney General under MCL 445.870.

### **Rule 8.106 Money Paid Into Court**

(A) When Court Order Required. Except as otherwise provided by law or when the money is in the form of cash bonds, the clerk may not perform services in handling money under MCL 600.2529(1)(f) without a signed order of the court.

(B) Disposition of Interest Earned. If the clerk deposits money in an interest-bearing account, the clerk retains as a fee one-tenth of the interest earned, but not more than \$100 each year or part of the year. The fee must be deposited in the county general fund, as required by law. The balance of the interest earned and the principal must be disbursed to the persons entitled to the balance.

(C) Accounts; Records. The accounts of the clerk with the banks in which the money is directed to be deposited must be kept in a single trust fund, with the designation of the rights in the fund appearing on the court's records.

(D) Orders to Pay out Funds. Orders on the banks for the payment of money out of court are made payable to the order of the person entitled to the money or of that person's duly authorized attorney, and must specify in what action or on what account the money is to be paid out, and the time when the judgment or order authorizing the payment was made.

(E) NSF Checks. A court may assess costs for reasonable expenses incurred for checks returned to the court due to nonsufficient funds.

### **Rule 8.107 Statement by Trial Judge as to Matters Undecided**

(A) Time. Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for presentation of briefs and affidavits and for production of transcripts. Decisions, when possible, should be made from the bench or within a few days of submission; otherwise a decision should be rendered no later than 35 days after submission. For the purpose of this rule, the time of submission is the time the last argument or presentation in the matter was made, or the expiration of the time allowed for filing the last brief or production of transcripts, as the case may be.

(B) Report as to Matters Undecided. On the first business day of January, April, July, and October of each year, every trial judge shall file a certified statement with the chief judge in the form prescribed by the state court administrator. The statement shall provide information on all matters pending during the reporting period that were not decided within 56 days from submission. The judge shall state the reason that a decision was not made within 56 days. A report is required regardless of whether there is any case to report. The chief judge shall sign and file, or electronically submit, the statement with the state court administrator.

### **Rule 8.108 Court Reporters and Recorders**

(A) Scope of Rule. This rule prescribes the duties of court reporters and recorders, the procedure for certifying them, the effect of noncertification, objections to certification, and display requirements.

(B) Attendance at Court; Taking Testimony.

(1) The court reporter or recorder shall attend the court sessions under the direction of the court and take a verbatim record of the following:

- (a) the voir dire of prospective jurors;
- (b) the testimony;
- (c) the charge to the jury;
- (d) in a jury trial, the opening statements and final arguments;
- (e) the reasons given by the court for granting or refusing any motion made by a party during the course of a trial; and
- (f) opinions and orders dictated by the court and other matters as may be prescribed by the court.

This subrule does not apply to actions tried in the small claims division of the district court or in the municipal courts. In the probate court proceedings, the reporter or recorder shall take a verbatim record of proceedings as required by law and chapter 5 of these rules.

(2) The court reporter or recorder who begins to record a case shall take the record of the entire case unless he or she shows good cause for failure to do so or is otherwise excused by the court.

(C) Records Kept. All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). The court reporter or recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case the reporter or recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in the court according to the Michigan Trial Court Case File Management Standards. If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript.

(D) Transfer of Records; Inspection. If the court reporter or recorder dies, resigns, is removed from office, or leaves the state, records he or she created and kept in each case pursuant to subrule (C) must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records in accordance with the Michigan Trial Court Case File Management Standards and MCR 8.119(F). On order of the court, a transcript shall be made from the records and filed as a part of the public record in the case.

(E) Furnishing Transcript. The court reporter or recorder shall furnish without delay, in legible English, a transcript of the records taken by him or her (or any part thereof) to any party on request. The reporter or recorder is entitled to receive the compensation prescribed in the statute on fees from the person who makes the request.

(F) Filing Transcript.

(1) On order of the trial court, the court reporter or recorder shall make and file in the clerk's office a transcript of his or her records, in legible English, of any civil or criminal case (or any part thereof) without expense to either party; the transcript is a part of the records in the case.

(2) Except when otherwise provided by contract, the court reporter or recorder shall receive from the appropriate governmental unit the compensation specified in the statute on fees for a transcript ordered by a court.

(G) Certification.

(1) Certification Requirement.

(a) Only reporters, recorders, or voice writers certified pursuant to this subrule may record or prepare transcripts of proceedings held in Michigan courts or of depositions taken in Michigan pursuant to these rules. This rule applies to the preparation of transcripts of videotaped courtroom proceedings or videotaped or audiotaped depositions, but not to the recording of such proceedings or depositions by means of videotaping. An operator holding a CEO certification under subrule (G)(7)(b) may record proceedings, but may not prepare transcripts.

(b) Proceedings held pursuant to MCR 6.102 or 6.104 need not be recorded by persons certified under this rule; however, transcripts of such proceedings must be prepared by court reporters, recorders, or voice writers certified pursuant to this rule.

(c) An indigent party who is represented by a nonprofit legal aid program providing free civil legal services to the indigent may use persons who are not certified pursuant to this rule to transcribe and file depositions taken by videotaping or audiotaping. Such depositions shall be otherwise prepared and certified in accordance with this rule.

(d) Any person who acts in the capacity of a court reporter or recorder shall not maintain an action in the courts of this state for the collection of compensation for the performance of an act for which certification is required by this rule without alleging and proving that the person was certified under this rule at the time of the performance of the act. "Person" refers to both individuals and the entity or entities for which a court reporter or recorder performs services.

(e) Any other court rule notwithstanding, an objection to the status of a court reporter's or recorder's certification or lack thereof must be placed on the record at the outset of the court proceeding or deposition or that objection is waived. If the objection is waived, the use of transcripts of the court proceeding or deposition for any purpose provided in these rules shall be allowed.

(f) Prior to the beginning of any deposition taken under these rules, the court reporter or recorder must display to all counsel initially present, and to each other person attending the deposition who is not represented by counsel, proof that the reporter or recorder has been certified as required by this rule. Proof of such certification, by certification number, shall also be

displayed on the title page and certificate page of each court and deposition transcript and on the stationery and business cards, if any, of each court reporter or recorder required to be certified by this rule.

(2) Court Reporting and Recording Board of Review.

(a) The Supreme Court shall appoint a Court Reporting and Recording Board of Review, composed of

- (i) a Court of Appeals judge, to be the chairperson;
- (ii) a circuit judge;
- (iii) a probate judge;
- (iv) a district judge;
- (v) a court reporter who is an employee of a Michigan court;
- (vi) a court recorder who is an employee of a Michigan court;
- (vii) a court reporter who is not an employee of a Michigan court;
- (viii) a court recorder who is not an employee of a Michigan court; and,
- (ix) an attorney.

(b) Appointments to the board shall be for terms of 4 years. A board member may be reappointed to a new term. Initial appointments may be of different lengths so that no more than 3 terms expire in the same year. The Supreme Court may remove a member at any time.

(c) If a position on the board becomes vacant because of death, resignation, or removal, or because a member is no longer employed in the capacity in which he or she was appointed, the board shall notify the Supreme Court Clerk and the Court shall appoint a successor to serve the remainder of the term.

(d) The state court administrator shall assign a staff person to serve as board secretary.

(3) Certification by Testing.

(a) At least twice each year the board shall administer an examination testing knowledge and speed, and, as to a recorder, operator, or voice writer, familiarity with basic logging techniques and minor repair and maintenance procedures. The board shall determine the passing score.

(b) In order to be eligible for registration for an examination, an applicant must

- (i) be at least 18 years of age,
- (ii) be a high school graduate, and
- (iii) not have been under sentence for a felony for a period of two years.

(c) In addition, an applicant for the certified shorthand reporter examination must have satisfactorily completed a post-high school approved, accredited,

or recognized course of study in court reporting and submit documentation of same prior to testing.

(d) An applicant for the CER/CSMR/CEO examination must have satisfactorily completed a post-high school board-approved workshop or course of study, or other board-approved curriculum and submit documentation of same prior to testing.

(e) All CERs/CSMRs/CEOs who are fully certified by December 31, 2005, are exempt from the requirements of subparagraph (d).

(f) The registration fee is \$60.

(4) Reciprocal Certification. A reporter, recorder, operator, or voice writer certified in another state may apply to the board for certification based on the certification already obtained.

(5) Temporary Certification. A new reporter, recorder, operator, or voice writer may receive one temporary certification to enable him or her to work until the results of the next test are released. If the person does not take the test, the temporary certification may not be extended unless good cause is shown. If the person takes the test and fails, the board may extend the temporary certification.

(6) Renewal, Review, and Revocation of Certification.

(a) Certifications under this rule must be renewed annually. The fee for renewal is \$30. Renewal applications must be filed by August 1. A renewal application filed after that date must be accompanied by an additional late fee of \$100. The board may require certified reporters, recorders, operators, and voice writers to submit, as a condition of renewal, such information as the board reasonably deems necessary to determine that the reporter, recorder, operator, or voice writer has used his or her reporting or recording skills during the preceding year.

(b) The board must review the certification of a reporter, recorder, operator, or voice writer who has not used his or her skills in the preceding year, and shall determine whether the certification of such a reporter, recorder, operator, or voice writer may be renewed without the necessity of a certification test.

(c) The board may review the certification of a reporter, recorder, operator, or voice writer and may impose sanctions, including revoking the certification, for good cause after a hearing before the board.

(d) If, after a reporter's, recorder's, operator's, or voice writer's certification is revoked or voided by the board and the reporter, recorder, operator, or voice writer applies to take the certification examination and passes, the board may issue a conditional certification for a prescribed period imposing restrictions or conditions that must be met for continued certification. At the end of the conditional period, an unconditional certification may be issued.

(7) Designations. The board shall assign an identification number to each person certified. A court reporter, recorder, operator, or voice writer must place

the identification number assigned on his or her communications with the courts, including certificates, motions, affidavits, and transcripts. The board will use the following certification designations:

- (a) certified electronic recorder (CER);
- (b) certified electronic operator (CEO);
- (c) certified shorthand reporter (CSR);
- (d) certified voice writer/stenomask reporter (CSMR).

The designations are to be used only by reporters, recorders, operators, or voice writers certified by the board. A reporter, recorder, operator, or voice writer may be given more than one designation by passing different tests.

### **Rule 8.109 Mechanical Recording of Court Proceedings**

(A) Official Record. Trial courts are authorized to use audio and video recording equipment for making a record of court proceedings. If a trial court uses audio or video recording equipment for making the record of court proceedings, it shall use only recording equipment that meet the standards as published by the State Court Administrative Office (i.e., the Standards for Digital Video Recording Systems, the Standards for Digital Audio Recording Systems), or analog equipment that the State Court Administrative Office has approved for use.

(B) Operating Standards. Trial courts that use audio or video recording equipment, whether digital or analog, must adhere to the audio and video recording operating standards published by the State Court Administrative Office.

(C) Other Recordings. On motion of an attorney or of a party appearing on his or her own behalf, a court may permit audio recording of a part or all of a proceeding and may permit photographic recording of visual exhibits. The court may regulate the manner of audio or photographic recording so that it does not disrupt the proceeding. An audio or photographic recording made under this rule may be used solely to assist in the prosecution or defense during the proceeding recorded; it may not be used publicly.

### **Rule 8.110 Chief Judge Rule**

(A) Applicability. This rule applies to all trial courts: i.e., the judicial circuits of the circuit court, the districts of the district court, the probate court in each county or a probate district established by law, and the municipal courts.

(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. When SCAO is considering recommending appointment of a chief judge of a specific group of courts, SCAO shall inform and seek input from those courts. 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) Unless a chief judge pro tempore or presiding judge is named by the Supreme Court, the chief judge shall select a chief judge pro tempore and a presiding judge of any division of the trial court. The chief judge

pro tempore and any presiding judges shall fulfill such functions as the chief judge assigns.

(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.

(4) The Supreme Court may appoint a judge of another court to serve as chief judge of a trial court.

(a) Apart from the duties of a chief judge described under this rule, the chief probate judge has various obligations imposed by statute. If the chief judge of a probate court is not a probate judge, the senior probate judge shall serve as the chief probate judge in meeting the statutory obligations of a chief probate judge.

(b) The senior probate judge is the judge with the longest service as a probate judge. If two judges have the same number of years of service, the judge who received the highest number of votes in the first election is the senior probate judge.

(C) Duties and Powers of Chief Judge.

(1) A chief judge shall act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules, and should freely solicit the advice and suggestions of the other judges of his or her bench and geographic jurisdiction. If a local court management council has adopted the by-laws described in AO 1998-5 the chief judge shall exercise the authority and responsibilities under this rule in conformity with the provisions of AO 1998-5.

(2) As the presiding officer of the court, a chief judge shall:

(a) call and preside over meetings of the court;

(b) appoint committees of the court;

(c) initiate policies concerning the court's internal operations and its position on external matters affecting the court;

(d) meet regularly with all chief judges whose courts are wholly or partially within the same county;

(e) represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions;

(f) counsel and assist other judges in the performance of their responsibilities; and

(g) cooperate with all investigations conducted by the Judicial Tenure Commission.

(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:

- (a) supervise caseload management and monitor disposition of the judicial work of the court;
- (b) direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111;
- (c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their presence to perform that work;
- (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;
- (e) coordinate judicial and personnel vacations and absences, subject to the provisions of subrule (D);
- (f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting;
- (g) request assignments of visiting judges and direct the assignment of matters to the visiting judges;
- (h) effect compliance by the court with all applicable court rules and provisions of the law; and
- (i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.

(4) If a judge does not timely dispose of his or her assigned judicial work or fails or refuses to comply with an order or directive from the chief judge made under this rule, the chief judge shall report the facts to the state court administrator who will, under the Supreme Court's direction, initiate whatever corrective action is necessary.

(5) The chief judge of the court in which criminal proceedings are pending shall have filed with the state court administrator a quarterly report listing the following cases in a format prescribed by the state court administrator:

- (a) felony cases in which there has been a delay of more than 301 days between the order binding the defendant over to circuit court and adjudication;
- (b) misdemeanor cases and cases involving local ordinance violations that have criminal penalties in which there has been a delay of more than 126 days between the date of the defendant's first appearance on the warrant and complaint or citation and adjudication;
- (c) In computing the 126-day and 301-day periods, the court shall exclude periods of delay

- (1) between the time a preadjudication warrant is issued and a defendant is arraigned;
- (2) between the time a defendant is referred for evaluation to determine whether he or she is competent to stand trial and the receipt of the report; or
- (3) during the time a defendant is deemed incompetent to stand trial.
- (4) during the time an order is in effect that stays the disposition or proceedings of the case pending interlocutory appellate review.

(6) A chief judge may delegate administrative duties to a trial court administrator or others.

(7) Where a court rule or statute does not already require it, the chief judge may, by administrative order, direct the clerk of the court to provide litigants and attorneys with copies of forms approved by the state court administrator. In addition, except when a court rule or statute specifies that the court or clerk of the court must provide certain forms without charge, the administrative order may allow the clerk to provide the forms at the cost of reproduction to the clerk.

(D) Court Hours; Court Holidays; Judicial Absences.

(1) Court Hours. The chief judge shall enter an administrative order under MCR 8.112(B) establishing the court's hours.

(2) Court Holidays; Local Modification.

(a) The following holidays are to be observed by all state courts, except those courts which have adopted modifying administrative orders pursuant to MCR 8.112(B):

New Year's Day, January 1;

Martin Luther King, Jr., Day, the third Monday in January in conjunction with the federal holiday;

Presidents' Day, the third Monday in February;

Memorial Day, the last Monday in May;

Independence Day, July 4;

Labor Day, the first Monday in September;

Veterans' Day, November 11;

Thanksgiving Day, the fourth Thursday in November; Friday after Thanksgiving;

Christmas Eve, December 24;

Christmas Day, December 25;

New Year's Eve, December 31;

(b) When New Year's Day, Independence Day, Veterans' Day, or Christmas Day falls on Saturday, the preceding Friday shall be a holiday. When New

Year's Day, Independence Day, Veterans' Day, or Christmas Day falls on Sunday, the following Monday shall be a holiday. When Christmas Eve or New Year's Eve falls on Friday, the preceding Thursday shall be a holiday. When Christmas Eve or New Year's Eve falls on Saturday or Sunday, the preceding Friday shall be a holiday.

(c) Courts are encouraged to promulgate a modifying administrative order if appropriate to accommodate or achieve uniformity with the holiday practices of local governmental units regarding local public employees.

(d) With the prior approval of the chief judge, a judge may continue a trial in progress or dispose of judicial matters on any of the listed holidays if he or she finds it to be necessary.

(e) Any action taken by a court on February 12, Lincoln's birthday, or on the second Monday in October, Columbus Day, shall be valid.

(3) **Judicial Vacation Standard.** A judge is 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 30 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) attendance at Michigan judicial conferences;

(b) attendance, with the chief judge's approval, at educational meetings or seminars;

(c) attendance, with the chief judge's approval, at meetings of judicial committees or committees substantially related to judicial administration of justice;

(d) absence due to illness; or

(e) administrative leave, with the chief judge's approval.

(4) **Judicial Education Leave Standard.** A judge is expected to take judicial education leave of 2 weeks every 3 years to participate in continuing legal education and training at Michigan judicial training programs and nationally recognized judicial education programs, including graduate and refresher courses. Judicial education leave does not include judicial conferences for which attendance is required. The use of judicial education leave approved by the chief judge does not affect a judge's annual leave.

(5) **Judicial Professional Leave Standard.** Judges are encouraged, as part of their regular judicial responsibilities, to participate in professional meetings and conferences that advance the administration of justice or the public's understanding of the judicial system; to serve on commissions and committees of state and national organizations that contribute to the improvement of the law or that advance the interests of the judicial system; and to serve on Supreme Court-appointed or in-house assignments or committees. The use of

judicial professional leave approved by the chief judge does not affect a judge's annual leave or education leave.

(6) Approval of Judicial Absences. A judge may not be absent from the court without the chief judge's prior approval, except for personal illness. In making the decision on a request to approve a vacation or other absence, the chief judge shall consider, among other factors, the pending caseload of the judge involved. The chief judge shall withhold approval of vacation, judicial education, or judicial professional leave that conforms to these standards only if withholding approval is necessary to ensure the orderly conduct of judicial business. The chief judge shall maintain records of absences to be available at the request of the Supreme Court.

### **Rule 8.111 Assignment of Cases**

(A) Application. The rule applies to all courts defined in subrule 8.110(A), regardless whether the court is acting in the capacity of a trial court or an appellate court.

(B) Assignment. All cases must be assigned by lot, unless a different system has been adopted by local court administrative order under the provisions of subrule 8.112. Assignment will occur at the time the case is filed or before a contested hearing or uncontested dispositional hearing in the case, as the chief judge directs. Civil actions must be assigned within appropriate categories determined by the chief judge. The chief judge may receive fewer assignments in order to perform the duties of chief judge.

(C) Reassignment.

If a judge is disqualified or for other good cause cannot undertake an assigned case, the chief judge may reassign it to another judge by a written order stating the reason. To the extent feasible, the alternate judge should be selected by lot. The chief judge shall file the order with the trial court clerk and have the clerk notify the attorneys of record. The chief judge may also designate a judge to act temporarily until a case is reassigned or during a temporary absence of a judge to whom a case has been assigned.

(2) If a judge is reassigned under a concurrent jurisdiction plan or a family court plan, the successor judge will be assigned all cases filed after the date of reassignment, any pending matters, and postjudgment matters that relate to disposed cases. The chief judge shall submit a local administrative order under MCR 8.112 identifying the revised caseload distribution.

(D) Actions Arising out of Same Transaction or Occurrence. Subject to subrule 8.110(C),

(1) if one of two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge;

(2) if an action arises out of the same transaction or occurrence as a civil action previously dismissed or transferred, the action must be assigned to the judge to whom the earlier action was assigned;

(3) the attorney for the party bringing the other action under subrule (1) or the new action under subrule (2) shall notify the clerk of the fact in writing in the manner prescribed in MCR 2.113(C)(2). An attorney who knowingly fails to do so is subject to disciplinary action.

(4) The chief judge may reassign cases, other than those encompassed by subrule 8.111(D)(1), in order to correct docket control problems resulting from the requirements of this rule.

### **Rule 8.112 Local Court Rules; Administrative Orders**

#### (A) Local Court Rules.

(1) A trial court may adopt rules regulating practice in that court if the rules are not in conflict with these rules and regulate matters not covered by these rules.

(2) If a practice of a trial court is not specifically authorized by these rules, and

- (a) reasonably depends on attorneys or litigants being informed of the practice for its effectiveness, or
- (b) requires an attorney or litigant to do some act in relation to practice before that court, the practice, before enforcement, must be adopted by the court as a local court rule and approved by the Supreme Court.

(3) Unless a trial court finds that immediate action is required, it must give reasonable notice and an opportunity to comment on a proposed local court rule to the members of the bar in the affected judicial circuit, district, or county. The court shall send the rule and comments received to the Supreme Court clerk.

(4) If possible, the number of a local court rule supplementing an area covered by these rules must correspond with the numbering of these rules and bear the prefix LCR. For example, a local rule supplementing MCR 2.301 should be numbered LCR 2.301.

#### (B) Administrative Orders.

(1) A trial court may issue an administrative order governing only internal court management.

(2) Administrative orders must be sequentially numbered during the calendar year of their issuance. E.g., Recorder's Court Administrative Orders Nos. 1984-1, 1984-2.

(3) Before its effective date, an administrative order must be sent to the state court administrator. If the state court administrator directs, a trial court shall stay the effective date of an administrative order or shall revoke it. A trial court may submit such an order to the Supreme Court as a local court rule.

### **Rule 8.113 Requests for Investigation of Courts**

(A) Submission of Request. A request for investigation of a court may be submitted to the state court administrator.

(B) Action by State Court Administrator. The state court administrator may

- (1) attempt to informally resolve the dispute,
- (2) inform the complainant that an investigation pursuant to this rule is not appropriate under the circumstances,
- (3) direct the complainant to the Judicial Tenure Commission or the Attorney Grievance Commission,
- (4) request an investigation by the Judicial Tenure Commission or the Attorney Grievance Commission,
- (5) refer a matter to the Supreme Court for possible exercise of the Supreme Court's power of superintending control over the judiciary, or
- (6) take any other appropriate action.

(C) Cooperation With Inquiry. Judges, court employees, and members of the bar shall cooperate with the state court administrator on request for assistance in inquiries pursuant to this rule.

(D) Review Prohibited; Action Without Prejudice to Other Proceedings. There is no appeal from or review of any action taken by the state court administrator under this rule, but nothing in this rule limits the right of any person to request an investigation by the Judicial Tenure Commission or the Attorney Grievance Commission or to file an action for superintending control in an appropriate court.

### **Rule 8.115 Courtroom Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices**

(A) Display of Flags. The flags of the United States and of the State of Michigan must be displayed in a conspicuous place adjacent to the bench at all times when court is in session.

(B) Judicial Robe. When acting in his or her official capacity in the courtroom, a judge shall wear a black robe.

(C) Establishment of a Policy Regarding Portable Electronic Communication Devices.

(1) A facility that contains a courtroom may determine use of electronic equipment in nonjudicial areas of the facility.

(2) The chief judge may establish a policy regarding the use of cell phones or other portable electronic communication devices within the court, except that no photographs may be taken of any jurors or witnesses, and no photographs may be taken inside any courtroom without permission of the court. The policy regarding the use of cell phones or other portable electronic communication devices shall be posted in a conspicuous location outside and inside each courtroom. Failure to comply with this section or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both for contempt of court.

### **Rule 8.116 Sessions of Court**

(A) Opening Court; Recesses. A definite time must be set for all court sessions, and the judge shall promptly open a session. Recesses shall be taken regularly, but should be short, and court must resume on time.

(B) Participants to be Punctual. Persons having business with a court must be in court and ready to begin at the opening of the session, and must otherwise be punctual for all court business.

(C) Staggered Scheduling. A judge shall stagger the docket schedule so that an attorney or party may be heard within a time reasonably close to the scheduled time, and, except for good cause, the docket shall be called in order.

(D) Access to Court Proceedings.

(1) Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.

(2) Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

(3) Whenever the court enters an order limiting access to a proceeding that otherwise would be public, the court must forward a copy of the order to the State Court Administrative Office.

### **Rule 8.117 Case Classification Codes**

Use of Case-Type Code. As required by MCR 2.113(C)(1)(c), the plaintiff must assign one case-type code from a list provided by the State Court Administrator according to the principal subject matter of the action (not the nature of the proceedings), and include this code in the caption of the complaint. The case code must be included in the caption of all papers thereafter filed in the case.

[The current case classification codes may be found at

[http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf\\_casetypecodes.pdf](http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_casetypecodes.pdf)

## **Rule 8.119 Court Records and Reports; Duties of Clerks**

(A) Applicability. This rule applies to all records in every trial court. For purposes of this rule, records are as defined in MCR 1.109, MCR 3.218, MCR 3.903, and MCR 8.119(D)-(G).

(B) Records Standards. The clerk of the court shall comply with the records standards in this rule, MCR 1.109, and as otherwise prescribed by the Michigan Supreme Court.

(C) Filing of Documents and Other Materials. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Documents and other materials filed with the court as defined in MCR 2.107(G) must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may only reject documents that do not meet the following minimum filing requirements:

- (1) standards prescribed by MCR 1.109,
- (2) legibility and language as prescribed by MCR 2.113(B) and MCR 5.113,
- (3) captioning prescribed by MCR 2.113(C)(1) and MCR 5.113,
- (4) signature prescribed by MCR 2.114(C) and MCR 5.114, and
- (5) the filing fee is not paid at the time of filing, unless waived or suspended by court order.

(D) Records Kept by the Clerk of the Court. The clerk of the court shall keep the following case records in accordance with Michigan Supreme Court records standards and local court plans. Documents and other materials made confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated as confidential and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court pursuant to subrule (I) that makes a document or other materials in that case confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

(1) Indexes and Case Files. Except for civil infractions, the clerk shall keep and maintain records of each case consisting of a numerical index, an alphabetical index, a register of actions, and a case file in such form and style as may be prescribed by the Supreme Court. Each case shall be assigned a case number on receipt of a complaint, petition, or other initiating document. The case number shall comply with MCR 2.113(C)(1)(c) or MCR 5.113(A)(1)(b)(ii) as applicable. In addition to the case number, a separate petition number shall be assigned to each petition filed under the Juvenile Code as required under MCR 5.113(A)(1)(b)(ii). The case number (and petition number if applicable) shall be recorded on the register of actions, file, numerical index, and alphabetical index. The records shall include the following characteristics:

- (a) Numerical Index. The clerk shall maintain a numerical index as a list of consecutive case numbers on which the date of filing and the names of the parties are recorded. The index may be maintained either as a central index

for all cases filed in the court or as separate lists for particular types of cases or particular divisions of the court.

(b) Alphabetical Index. The clerk shall maintain a central alphabetical index or separate alphabetical indexes for particular types of cases or particular divisions of the court on which the date of filing, names of all parties, and the case number are recorded.

(c) Register of Actions. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre- and post-judgment information. When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:

- (i) the offense (if one);
- (ii) the judge assigned to the case;
- (iii) the fees paid;
- (iv) the date and title of each filed item;
- (v) the date process was issued and returned, as well as the date of service;
- (vi) the date of each event and type and result of action;
- (vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;
- (viii) the orders, judgments, and verdicts;
- (ix) the judge at adjudication and disposition;
- (x) the date of adjudication and disposition; and
- (xi) the manner of adjudication and disposition.

Each notation shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

(d) Case File. The clerk of the court shall maintain a paper and/or electronic file for each action, bearing the case number assigned to it, in which the clerk shall keep all pleadings, process, written opinions and findings, orders, and judgments filed in the action. Additionally, the clerk shall keep in the file all other materials prescribed by court rule, statute, or as ordered by the court to be filed with the clerk of the court. If other records of a case file are maintained separately from the file, the clerk shall keep them as prescribed by trial court case file management standards.

(2) Calendars. The clerk may maintain calendars of actions. A calendar is a schedule of cases ready for court action that identifies times and places of activity.

(3) Abolished Records.

(a) Journals. Except for recording marriages, journals shall not be maintained.

(b) Dockets. A register of actions replaces a docket. Wherever these rules or applicable statutes require entries on a docket, those entries shall be entered on the register of actions.

(E) Other Case Records. The clerk or other persons designated by the chief judge of the court shall keep in the manner prescribed by these rules, other materials filed with or handled by the court for purposes of case processing, including but not limited to wills for safekeeping, case evaluations, exhibit logs, probation files, and friend of the court records.

(F) Court Recordings, Log Notes, Jury Seating Charts, and Media. Court recordings, log notes, jury seating charts, and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(2)(b).

(G) Other Court Records. All court records not included in subrules (D), (E), and (F) are considered administrative and fiscal records or nonrecord materials and are not subject to public access under subrule (H). These records are defined in the approved records retention and disposal schedule for trial courts.

(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 may 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 information in a register of actions 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 records may be provided through electronic means only upon request. The court may provide access to any case record that is not a document, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(C)(2), in a medium in which the court does not have the means to readily access and reproduce those materials, may 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.

(1) Unless access to a case record or information contained in a record as defined in subrule (D) is restricted by statute, court rule, or an order entered pursuant to subrule (I), any person may inspect that record and may obtain copies as provided in subrule (J). In accordance with subrule (J), the court may collect a fee for the cost of this service, including the cost of providing the new record in a particular medium.

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

(a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

(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;

(c) specify the reasonable cost of reproduction of records provided under subrule (J); and

(d) specify the process for determining costs under subrule (J).

(I) Sealed Records.

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless

(a) a party has filed a written motion that identifies the specific interest to be protected,

(b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and

(c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(2) In determining whether good cause has been shown, the court must consider,

(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

(b) the interest of the public.

(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.

(4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C). Materials that are subject to a motion to seal a **record in whole or in part shall be held under seal pending the court's** disposition of the motion.

(5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is

filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).

(7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

(J) Access and Reproduction Fees.

(1) A court may not charge an access or reproduction fee for a case record that the court is required by law or court rule to provide without charge to a person or other entity, irrespective of the medium in which the case record is retained, the manner in which access to the case record is provided, and the technology used to create, store, retrieve, reproduce, and maintain the case record.

(2) The court may provide access to its public case records in any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403. If a court maintains its public records in electronic format only,

(a) the court may not charge a fee to access those case records when access is made on-site through a public terminal or when a verbal request for public information is made on-site to the clerk.

(b) the court or a contracted entity may charge a fee, in accordance with Supreme Court order, to access those case records when the access is made off-site through a document management, imaging, or other electronic records management system.

(3) Reproduction of a case record means the act of producing a copy of that record through any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403.

(a) A court may charge only for the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal, to reproduce a case record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce a case record.

(b) If a person wishes to obtain copies of documents in a file, the clerk shall provide copies upon receipt of the actual cost of reproduction.

(c) Except as otherwise directed by statute or court rule, a standard fee may be established, pursuant to (H)(2), for providing copies of documents on file.

(4) A court is not required to create a new record out of its existing records. A new record means the compilation of information into a format that does not currently exist or that cannot be generated electronically using predefined **formats available through a court's case management system**. Providing access to documents or furnishing copies of documents in an existing file does not constitute creation of a new record, even when the output appears in a format different than the format of the original record or document because the output is the result of predefined formats.

(a) A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record

created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (I).

(b) A court may charge only for the actual cost of labor and supplies and the actual use of the system to develop, generate, and validate the accuracy of a new record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the information or documents for creating a new record.

(c) If a court creates a new record, the clerk shall provide access to the new record upon receipt of the actual cost of creating the record.

(K) Retention Periods.

For purposes of retention, the records of the trial courts include: (1) administrative and fiscal records, (2) case records, (3) and nonrecord material. The records of the trial courts shall be retained in the medium prescribed by MCR 1.109. The records of a trial court may not be destroyed except upon order by the chief judge of that court. Before destroying records subject to the order, the court shall first transfer to the Archives of Michigan any records specified as such by State Archives in the Michigan trial courts approved records retention and disposal schedule. An order of destruction shall comply with the retention periods established by the State Court Administrative Office and approved by the state court administrator, Attorney General, State Administrative Board, and Archives and Records Management Services of the Department of Management and Budget, in accordance with MCL 399.5.

(L) Reporting Duties.

(1) The clerk of every court shall submit reports and records as required by statute and court rule.

(2) The clerk of every court shall submit reports or provide records as required by the State Court Administrative Office, without costs.

**Rule 8.120 Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, and Legal Training Programs**

(A) Legal Aid Clinics; Defender Offices. Effective legal service for each person in Michigan, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to the whole citizenry. Law students and recent law graduates, under supervision by a member of the state bar, may staff public and nonprofit defender offices, and legal aid clinics that are organized under a city or county bar association or an accredited law school or for the primary purpose of providing free legal services to indigent persons.

(B) Legal Training Programs. Law students and recent law graduates may participate in legal training programs organized in the offices of county prosecuting attorneys, county corporation counsel, city attorneys, the Attorney Grievance Commission, and the Attorney General.

(C) Eligible Students. A student in a law school approved by the American Bar Association who has received a passing grade in law school courses and has

completed the first year is eligible to participate in a clinic or program listed in subrules (A) and (B) if the student meets the academic and moral standards established by the dean of that school. For the purpose of this rule, a "recent law graduate" is a person who has graduated from law school within the last year. The student or graduate must certify in writing that he or she has read and is familiar with the Michigan Rules of Professional Conduct and the Michigan Court Rules, and shall take an oath which is **reasonably equivalent to the Michigan Lawyer's Oath** in requiring at a minimum the promise to: (a) support the Constitution of the United States; (b) support the Constitution of the State of Michigan; (c) maintain the respect due to courts of justice and judicial officers; (d) never seek to mislead a judge or jury by any artifice or false statement of fact or law; (e) maintain the confidence and preserve inviolate the secrets of the client; (f) abstain from all offensive personality; (g) advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause; and (h) in all other respects conduct himself or herself personally and professionally in conformity with the high standards of conduct imposed upon members of the state bar of Michigan.

(D) Scope; Procedure.

(1) A member of the legal aid clinic, in representing an indigent person, is authorized to advise the person and to negotiate and appear on the person's behalf in all Michigan courts except the Supreme Court. Except as otherwise provided in this rule, the indigent person that will be assisted by the student must consent in writing to the representation. In a situation in which a law student provides short-term, limited-scope legal advice by telephone in the context of a clinical program intended to assist indigent persons offered as part of a law school curriculum, the clinic patron shall be informed that:

- (a) the advice provided may be rendered by a law student, and
- (b) by proceeding to the consultation following notification that the advice may be provided by a law student, the clinic patron consents to such representation.

(2) Representation must be conducted under the supervision of a state bar member. Supervision by a state bar member includes the duty to examine and sign all pleadings filed. It does not require the state bar member to be present

- (a) while a law student or graduate is advising an indigent person or negotiating on the person's behalf, or
- (b) during a courtroom appearance of a law student or graduate, except
  - (i) during an appellate argument or
  - (ii) in a criminal or juvenile case exposing the client to a penalty of imprisonment.

The supervising attorney shall assume all personal professional **responsibility for the student's or graduate's** work, and should consider purchasing professional liability insurance to cover the practice of such student or graduate.

(3) A law student or graduate may not appear in a case in a Michigan court without the approval of the judge or a majority of the panel of judges to which the case is assigned. If the judge or a majority of the panel grants approval, the judge or a majority of the panel may suspend the proceedings at any stage if the judge or a majority of the panel determines that the representation by the law student or graduate

- (a) is professionally inadequate, and
- (b) substantial justice requires suspension.

In the Court of Appeals, a request for a law student or graduate to appear at oral argument must be submitted by motion to the panel that will hear the case. The panel may deny the request or establish restrictions or other parameters for the representation on a case-by-case basis.

(4) A law student or graduate serving in a prosecutor's, county corporation counsel's, city attorney's, Attorney Grievance Commission's, or Attorney General's program may be authorized to perform comparable functions and duties assigned by the prosecuting attorney, county attorney, city attorney, Attorney Grievance Commission attorney, or Attorney General, except that

- (a) the law student or graduate is subject to the conditions and restrictions of this rule; and
- (b) the law student or graduate may not be appointed as an assistant prosecutor, assistant corporation counsel, assistant city attorney, assistant Attorney Grievance Commission attorney, or assistant Attorney General.

### **Rule 8.121 Contingent Fees in Claims or Actions for Personal Injury, Wrongful Death, and No-Fault Benefits**

(A) Allowable Contingent Fee Agreements. In any claim or action for personal injury or wrongful death based upon the alleged conduct of another or for no-fault benefits, in which an attorney enters into an agreement, expressed or implied, whereby the attorney's compensation is dependent or contingent in whole or in part upon successful prosecution or settlement or upon the amount of recovery, the receipt, retention, or sharing by such attorney, pursuant to agreement or otherwise, of compensation which is equal to or less than the fee stated in subrule (B) is deemed to be fair and reasonable. The receipt, retention, or sharing of compensation which is in excess of such a fee shall be deemed to be the charging of a "clearly excessive fee" in violation of MRPC 1.5(a), unless such fee is received as a result of an award of attorney fees payable pursuant to MCL 500.3148, or other award or sanction made pursuant to statute, court rule, or the common law.

(B) Maximum Fee. The maximum allowable fee for the claims and actions referred to in subrule (A) is one-third of the amount recovered.

(C) Computation.

(1) The amount referred to in subrule (B) shall be computed on the net sum recovered after deducting from the amount recovered all disbursements properly chargeable to the enforcement of the claim or prosecution of the

action. In computing the fee, the costs as taxed and any interest included in or upon the amount of a judgment shall be deemed part of the amount recovered.

(2) In the case of a settlement payable in installments, the amount referred to in subrule (B) shall be computed using the present value of the future payments.

(a) If an annuity contract will be used to fund the future payments, "present value" is the actual cost of purchasing the annuity contract. The attorney for the defendant must disclose to the court and the parties the amount paid for the annuity contract, after any rebates or other discounts.

(b) If the defendant will make the future payments directly, "present value" is the amount that an entity of the same financial standing as the defendant would pay for an annuity contract. The court may appoint an independent expert to certify the "present value" as defined in this paragraph. The court may base its findings on the expert's testimony or affidavit.

(D) Agreements for Lower Fees. An attorney may enter into contingent fee arrangements calling for less compensation than that allowed by subrule (B).

(E) Advice to Client. An attorney must advise a client, before entering into a contingent fee arrangement, that attorneys may be employed under other fee arrangements in which the attorney is compensated for the reasonable value of the services performed, such as on an hourly or per diem basis. The method of compensation used by an individual attorney remains the attorney's option, and this rule does not require an attorney to accept compensation in a manner other than that chosen by the attorney.

(F) Agreements to be in Writing. Contingent fee arrangements made by an attorney with a client must be in writing and a copy provided to the client.

(G) Applicability. This rule does not apply to agreements reduced to writing before May 3, 1975. The one-third provision of subrule (B) applies to contingent fee agreements entered into after July 9, 1981. Earlier agreements are subject to the rule in effect at the time the agreement was made.

### **Rule 8.122 Claims by Clients Against Attorneys**

Attorneys are officers of Michigan's one court of justice and are subject to the summary jurisdiction of the court. The circuit court of the county in which an attorney resides or maintains an office has jurisdiction, on verified written complaint of a client, and after reasonable notice and hearing, to enter an order for the payment of money or for the performance of an act by the attorney which law and justice may require. All courts have like jurisdiction over similar complaints regarding matters arising from actions or proceedings in those courts.

### **Rule 8.123 Counsel Appointments; Procedure and Records**

(A) Applicability. This rule applies to all trial courts, which means all circuit courts, district courts, probate courts, and municipal courts.

(B) Plan for Appointment. Each trial court must adopt a local administrative order that describes the court's procedures for selecting, appointing, and compensating counsel who represent indigent parties in that court.

(C) Approval by State Court Administrator. The trial court must submit the local administrative order to the State Court Administrator for review pursuant to MCR 8.112(B)(3). The State Court Administrator shall approve a plan if its provisions will protect the integrity of the judiciary.

(D) Required Records. At the end of each calendar year, a trial court must compile an annual electronic report of the total public funds paid to each attorney for appointments by that court.

This subrule applies to appointments of attorneys in any capacity, regardless of the indigency status of the represented party. Trial courts that contract for services to be provided by an affiliated group of attorneys may treat the group as a single entity when compiling the required records.

The records required by this subrule must be retained for the period specified by the State Court Administrative Office's General Schedule 16.

(E) Public Access to Records. The records must be available at the trial court for inspection by the public, without charge. The court may adopt reasonable access rules, and may charge a reasonable fee for providing copies of the records.

(F) Reports to State Court Administrator. A trial court must submit its annual electronic report to the state court administrator in the form specified by the state court administrator. When requested by the state court administrator, a trial court must cooperate in providing additional data on an individual attorney, judge, or attorney group for a period specified by the request, including the number of appointments by each judge, the number of appointments received by an individual attorney or attorney group, and the public funds paid for appointments by each judge.

### **Rule 8.125 Electronic Filing of Citation**

(A) Applicability. This rule applies to all civil infraction and misdemeanor actions initiated by a Michigan Uniform Law Citation or a Michigan Uniform Municipal Civil Infraction Citation.

(B) Citation; Complaint; Filing. A citation may be filed with the court either on paper or electronically. The filing of a citation constitutes the filing of a complaint. An electronic citation must contain all the information that would be required if the citation were filed on paper. A citation that contains the full name of the police officer or authorized local official who issued it will be deemed to have been signed pursuant to MCL 257.727c(3), 600.8705(3), or 600.8805(3).

(C) Contested Actions. If an electronic citation is contested, the court may decline to hear the matter until the citation is signed and filed on paper. A citation that is not signed and filed on paper, when required by the court, will be dismissed with prejudice.

## **Rule 8.126 Temporary Admission to the Bar**

(A) Temporary Admission. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may appear and practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.

### (1) Procedure.

(a) Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out-of-state attorney is associated shall file with the court or administrative tribunal or agency an appearance and a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out-of-state attorney is licensed and eligible to practice and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify

(i) the jurisdictions in which the attorney is or has been licensed or has sought licensure;

(ii) the jurisdiction where the attorney is presently eligible to practice;

(iii) that the attorney is not disbarred, or suspended in any jurisdiction, and is not the subject of any pending disciplinary action, and that the attorney is licensed and is in good standing in all jurisdictions where licensed; and

(iv) that he or she is familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules, and the Michigan Rules of Evidence.

The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions, and a copy of the acknowledgment letter supplied by the State Bar of Michigan showing that the required fee has been paid. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-**state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-**state attorney's representations are true, and agrees to ensure that**** the procedures of this rule are followed. The motion shall also include the addresses of both attorneys.

(b) The Michigan attorney shall send a copy of the motion and supporting affidavit to the Attorney Grievance Commission. Within seven days after receipt of the copy of the motion, the Attorney Grievance Commission must notify the court, administrative tribunal or agency, or arbitrator and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. No order or other writing granting permission to appear in a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the notification is received from the Attorney Grievance Commission.

(c) Order. Following notification by the Attorney Grievance Commission, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases within the past 365 days, the court, administrative tribunal or agency, or arbitrator may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, the court, administrative tribunal or agency, or arbitrator shall send a copy of the order or writing to the Michigan attorney, the out-of-state attorney, and the Attorney Grievance Commission.

(d) Fee. In each case in which an out-of-state attorney seeks temporary admission in Michigan, a fee equal to the discipline and client-protection portions of a bar member's **annual dues** must be paid. The discipline portion of the fee shall be paid to the State Bar of Michigan for allocation to the attorney discipline system, and the client-protection portion shall be paid to the State Bar of Michigan for allocation to the Client Protection Fund. Upon receipt of payment of the fee, the State Bar of Michigan shall within three business days send to the out-of-state attorney an acknowledgment letter that the fee has been paid.

(e) By seeking permission to appear under this rule, an out-of-state **attorney consents to the jurisdiction of Michigan's attorney disciplinary system.**

### **Rule 8.127 Foreign Language Board of Review and Regulation of Foreign Language Interpreters**

#### (A) Foreign Language Board of Review

(1) The Supreme Court shall appoint a Foreign Language Board of Review, which shall include:

- (a) a circuit judge;
- (b) a probate judge;
- (c) a district judge;
- (d) a court administrator;

(e) a fully-certified foreign language interpreter who practices regularly in Michigan courts;

(f) an advocate representing the interests of the limited English proficiency populations in Michigan;

(g) a prosecuting attorney in good standing and with experience using interpreters in the courtroom;

(h) a criminal defense attorney in good standing and with experience using interpreters in the courtroom;

(i) a family law attorney in good standing and with experience using interpreters in the courtroom

(2) Appointments to the board shall be for terms of three years. A board member may be appointed to no more than two full terms. Initial appointments may be of different lengths so that no more than three terms expire in the same year. The Supreme Court may remove a member at any time.

(3) If a position on the board becomes vacant because of death, resignation, or removal, or because a member is no longer employed in the capacity in which he or she was appointed, the board shall notify the state court administrator who will recommend a successor to the Supreme Court to serve the remainder of the term.

(4) The state court administrator shall assign a staff person to serve as executive secretary to the board.

## (B) Responsibilities of Foreign Language Board of Review

The Foreign Language Board of Review has the following responsibilities:

(1) The board shall recommend to the state court administrator a Michigan Code of Professional Responsibility for Court Interpreters, which the state court administrator may adopt in full, in part, or in a modified form. The Code shall govern the conduct of Michigan court interpreters.

(2) The board must review a complaint that the State Court Administrative Office schedules before it pursuant to subrule (D). The board must review the complaint and any response and hear from the interpreter and any witnesses at a meeting of the board. The board shall determine what, if any, action it will take, which may include revoking certification, prohibiting the interpreter from obtaining certification, suspending the interpreter from participating in court proceedings, placing the interpreter on probation, imposing any fines authorized by law, and placing any remedial conditions on the interpreter.

### (3) Interpreter Certification Requirements

The board shall recommend requirements for interpreters to the state court administrator that the state court administrator may adopt in full, in part, or in a modified form concerning the following:

(a) requirements for certifying interpreters as defined in MCR 1.111(A)(4). At a minimum, those requirements must include that the applicant is at least 18 years of age and not under sentence for a felony for at least two years and that the interpreter attends an orientation program for new interpreters.

(b) requirements for interpreters to be qualified as defined in MCR 1.111(A)(6).

(c) requirements under which an interpreter certified in another state or in the federal courts may apply for certification based on the certification already obtained. The certification must be a permanent or regular certification and not a temporary or restricted certification.

(d) requirements for interpreters as defined in MCR 1.111(A)(4) to maintain their certification.

(e) requirements for entities that provide interpretation services by telecommunications equipment to be qualified as defined in MCR 1.111(A)(6).

### (C) Interpreter Registration

(1) Interpreters who meet the requirements of MCR 1.111(A)(4) and MCR 1.111(A)(6)(a) and (b) must register with the State Court Administrative Office and renew their registration before October 1 of each year in order to maintain their status. The fee for registration is \$60. The fee for renewal is \$30. The renewal application shall include a statement showing that the applicant has used interpreting skills during the 12 months preceding registration. Renewal applications must be filed or postmarked on or before September 30. Any application filed or postmarked after that date must be accompanied by a late fee of \$100. Any late registration made after December 31 or any application that does not demonstrate efforts to maintain proficiency shall require board approval.

(2) Entities that employ a certified foreign language interpreter as defined in MCR 1.111(A)(4), or a qualified foreign language interpreter as defined in MCR 1.111(A)(6) must also register with the State Court Administrative Office and pay the registration fee and renewal fees.

### (D) Interpreter Misconduct or Incompetence

(1) An interpreter, trial court judge, or attorney who becomes aware of misconduct on the part of an interpreter committed in the course of a trial or other court proceeding that violates the Michigan Code of Professional Responsibility for Court Interpreters must report details of the misconduct to the State Court Administrative Office.

(2) Any person may file a complaint in writing on a form provided by the State Court Administrative Office. The complaint shall describe in detail the incident and the alleged incompetence, misconduct, or omission. The State Court Administrative Office may dismiss the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not violate this rule. If the complaint is not dismissed, the State Court Administrative Office shall send the complaint to the interpreter by regular mail or electronically at the address on file with the office.

(3) The interpreter shall answer the complaint within 28 days after the date the complaint is sent. The answer shall admit, deny, or further explain each allegation in the complaint. If the interpreter fails to answer, the allegations in the complaint are considered true and correct.

(4) The State Court Administrative Office may review records and interview the complainant, the interpreter, and witnesses, or set the matter for a hearing before the Foreign Language Board of Review. Before setting the matter for a hearing, the State Court Administrative Office may propose a resolution to which the interpreter may stipulate.

(5) If the complaint is not resolved by stipulation, the State Court Administrative Office shall notify the Foreign Language Board of Review, which shall hold a hearing. The State Court Administrative Office shall send notice of the date, time, and place of the hearing to the interpreter by regular mail or electronically. The hearing shall be closed to the public. A record of the proceedings shall be maintained but shall not be public.

(6) **The interpreter may attend all of the hearings except the board's** deliberations. The interpreter may be represented by counsel and shall be permitted to make a statement, obtain testimony from the complainant and witnesses, and comment on the claims and evidence.

(7) The State Court Administrative Office shall maintain a record of all interpreters who are sanctioned for incompetence or misconduct. If the interpreter is certified in Michigan under MCR 1.111(A)(5) because of certification pursuant to another state or federal test, the state court administrator shall report the findings and any sanctions to the certification authority in the other jurisdiction.

(8) This subrule shall not be construed to:

(a) restrict an aggrieved person from seeking to enforce this rule in the proceeding, including an appeal; or

(b) require exhaustion of administrative remedies.

(9) The State Court Administrative Office shall make complaint forms readily available and shall also provide complaint forms in such languages as determined by the State Court Administrative Office.

(10) Entities that employ interpreters are subject to the same requirements and procedures established by this subrule.

## Subchapter 8.200 Administrative Rules Applicable in District Court

### **Rule 8.201 Allocation of Costs in Third-Class Districts**

#### (A) Duties of Clerks of Each Third-Class Control Unit Having a Clerk.

(1) On the last day of March, June, September, and December of each year, the clerk of each third-class control unit having a clerk (see MCL 600.8281) shall determine the total number of civil and criminal cases filed during the preceding three months in the district and each political subdivision of the district under subrule (B). These figures are the total number of cases entered and commenced in that district and each political subdivision.

(2) The clerk shall determine the total cost of maintaining, financing, and operating the district court within the district.

(3) The clerk shall determine the proper share of the costs to be borne by each political subdivision by use of the following formula: (the number of cases entered and commenced in each political subdivision divided by the total number of cases entered and commenced in the district) multiplied by the total cost of maintaining, financing, and operating the district court.

(4) The clerk shall determine the proper share of the salary of the court reporter or recorder under MCL 600.8621(1) by use of the following formula: (the number of cases entered and commenced in each political subdivision divided by the total number of cases entered and commenced in the district) multiplied by the total salary of the court reporter or recorder.

(5) The clerk shall certify the figures determined under subrules (A)(3) and (4) to the treasurer of each political subdivision in the district. Payment by each political subdivision of any unpaid portion of its certified share of the cost and salaries is then due.

#### (B) Determination of Cases Entered and Commenced.

(1) In the District. The total number of cases entered and commenced in the district is the total number of civil and criminal cases filed in the district for the time period in question, excepting those cases not attributable to a specific political subdivision under subrules (B)(2)(b) and (B)(3)(b).

(2) In Each Political Subdivision Having a District Court Clerk. The total number of cases entered and commenced in each political subdivision having a district court clerk is the total number of civil and criminal cases filed in the political subdivision for the time period in question, excepting those cases involving a filing plaintiff and one or more defendants whose residences are outside the political subdivision where filed.

(a) Cases in which a filing plaintiff and one or more defendants reside in the same political subdivision are deemed to have been entered and commenced in that political subdivision, even though filed elsewhere for purposes of MCL 600.8104.

(b) Cases in which the filing plaintiff and one or more defendants reside outside the political subdivision where the case was filed, but none of the defendants resides in the same political subdivision as the plaintiff, are to be disregarded for purposes of this rule and MCL 600.8104.

(3) In Each Political Subdivision Having No District Court Clerk.

(a) The total number of cases entered and commenced for the time period in question in each political subdivision having no district court clerk is the total number of civil and criminal cases in which the filing plaintiff and one or more defendants reside in the political subdivision, no matter where the case is filed.

(b) If more than one political subdivision qualifies under subrule (B)(3)(a), all are credited with one case for purposes of this rule and MCL 600.8104.

### **Rule 8.202 Payment of Assigned Attorneys and Transcript Costs**

(A) Misdemeanor Cases. The political subdivision or subdivisions responsible for maintaining, financing, and operating the appointing court are responsible for paying assigned attorneys, regardless of whether the defendant is charged with violating a state law or an ordinance, and regardless of whether a fine or costs are actually assessed. If a county board of commissioners has taken or takes formal action to relieve cities or townships of part or all of the cost of paying assigned attorneys, that formal action shall control the payment of assigned attorneys in that county.

(B) Appeals. If an indigent defendant appealing to circuit court from a district or municipal court conviction is entitled to an assigned attorney or a transcript, the cost shall be paid by the same political subdivision or divisions that were responsible for or would have been responsible for paying an assigned attorney under subrule (A).

### **Rule 8.203 Records and Entries Kept by Clerk**

The clerk of every district court shall maintain court records and make reports as prescribed by MCR 8.119.

### **Rule 8.204 Bonds for Clerks, Deputies, Magistrates, and Official Process Servers**

All clerks, deputy clerks, magistrates, and official process servers of the district court must file with the chief judge a bond approved by the chief judge in a penal sum determined by the state court administrator, conditioned that the officer will

(1) perform the duties as clerk, deputy clerk, magistrate, or process server of that court; and

(2) account for and pay over all money which may be received by the officer to the person or persons lawfully entitled.

The bonds must be in favor of the court and the state.

**Rule 8.205 Magistrates**

The court shall provide the name, address, and telephone number of each magistrate to the clerk of the district court for the district in which the magistrate serves.

## Subchapter 8.300 Administrative Rules Applicable in Probate Court

### **Rule 8.301 Powers of Register of Probate, Deputy Registers, and Clerks**

(A) Judicial Responsibility. The judges of probate are responsible for the direction and supervision of the registers of probate, deputy registers of probate, probate clerks, and other personnel employed by the court to assist in the work of the court.

(B) Entry of Order Specifying Authority.

(1) To the extent authorized by the chief judge of a probate court by a general order, the probate register, the deputy probate register, the clerks of the probate court, and other court employees designated in the order, have the authority, until the further order of the court, to do all acts required of the probate judge except judicial acts in a contested matter and acts forbidden by law to be performed by the probate register.

(2) The order of the chief judge may refer to the power

(a) to set the time and place for hearings in all matters; take acknowledgements; administer oaths; sign notices to fiduciaries, attorneys, and sureties; sign citations and subpoenas; conduct conferences with fiduciaries required to ensure prompt administration of estates; and take testimony as provided by law or court rule; and

(b) to sign or by device indicate the name of a judge to all orders and letters of authority of the court, with the same force and effect as though the judge had signed them. In all such cases, the register or the designated deputy must place his or her initials under the name of the judge.

(C) Statutory Authority. In addition to the powers which may be granted by order of the chief judge, the probate registers and deputy registers have the authority granted by statute and may take acknowledgments to the same extent as a notary public.

### **Rule 8.302 Documents and Files**

Original orders and letters of authority, after being recorded, must be placed in the files of the court. For security purposes, testamentary documents of deceased persons, bonds, orders, and such other documents as the court directs must be copied by microfilming or other means promptly after filing or issuance and preserved in the records of the court separately from the files. In addition, the clerk of every probate court shall maintain court records and make reports as prescribed by MCR 8.119.