

**Agenda**  
**Public Policy Committee**  
**November 16, 2018 – 8:00 am**  
**State Bar of Michigan, Room 2**

*For those joining by phone, the conference call number is  
1.877.352.9775, passcode 6516204165#.*

*Public Policy Committee.....Dennis M. Barnes, Chairperson*

**A. Reports**

1. Approval of September 26, 2018 minutes
2. Public Policy Report

**B. Court Rules**

**1. ADM File No. 2016-27: Proposed Amendment of MRPC 7.2**

The proposed amendment of MRPC 7.2 would require media lawyer advertisements to identify the name and contact information of at least one lawyer providing services. This proposal is being republished in light of the ABA's recent adoption of revisions of the model rules regarding attorney advertising.

Status: 01/01/19 Comment Period Expires.  
Referrals: 10/02/18 Civil Procedure & Courts Committee; Professional Ethics Committee.  
Comments: Civil Procedure & Courts Committee.  
Liaison: Victoria A. Radke

**2. ADM File No. 2016-05: Proposed Amendment of MCR 2.513**

The proposed amendment of MCR 2.513 would explicitly provide that a court must orally recite its preliminary and final jury instructions for the jury (in addition to providing them in writing). The proposed amendment would clarify that even though a juror is entitled to a written set of instructions, the judge must still orally instruct the jury. This proposed amendment would conform the rule to the opinion issued by the Court in *People v Traver*.

Status: 01/01/19 Comment Period Expires.  
Referrals: 10/02/18 Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Business Law Section; Consumer Law Section; Criminal Law Section; Litigation Section; Negligence Law Section.  
Comments: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.  
Liaison: Andrew F. Fink, III

**3. ADM File No. 2018-21: Proposed Administrative Order to Require Courts to Establish Security Committees**

This administrative order would direct courts to establish a standing courthouse security committee to be chaired by the chief judge or his/her designee. The attached appendix is a proposed model local administrative order developed by the SCAO.

Status: 01/01/19 Comment Period Expires.  
Referrals: 10/04/18 Civil Procedure & Courts Committee.  
Comments: Civil Procedure & Courts Committee.  
Comments provided to the Court included in materials.  
Liaison: E. Thomas McCarthy, Jr.

**4. ADM File No. 2002-37: Proposed Amendments of MCR 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618**

The proposed amendments are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

Status: 01/01/19 Comment Period Expires.  
Referrals: 10/02/18 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.  
Comments: Access to Justice Policy Committee; Alternative Dispute Resolution Section; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Probate & Estate Planning Section.  
Liaison: Shauna L. Dunnings

### **C. Legislation**

**1. HB 6110** (Iden) Occupations; individual licensing and regulation; use of criminal record to determine eligibility for occupational licensing; restrict. Amends title & secs. 1, 2, 3, 4, 5, 6 & 7 of 1974 PA 381 (MCL 338.41 et seq.).

Status: 10/03/18 Passed the House 106 to 1.  
Referrals: 10/02/18 Character & Fitness Committee.  
Comments: Character & Fitness Committee.  
Liaison: Joseph J. Baumann

**2. HB 6277** (LaFave) Courts; judges; judges to fully instruct jury of its authority; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 29b to ch. VIII.

Status: 06/12/18 Referred to House Committee on Judiciary.  
Referrals: 06/29/18 Criminal Jurisprudence & Practice Committee; Criminal Law Section.  
Comments: Criminal Jurisprudence & Practice Committee.  
Liaison: Hon. Cynthia D. Stephens

**3. SB 1092** (Jones) Courts; juries; postponement of jury service; allow for farmers during certain months. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335).

Status: 10/02/18 Reported out of Senate Judiciary without Amendment.  
Referrals: 10/02/18 Civil Procedure & Procedure Committee; Agricultural Law Section.  
Comments: Civil Procedure & Courts Committee.  
Liaison: Victoria A. Radke

**4. SB 1103** (Jones) Civil procedure; small claims; general amendments related to e-filing provisions; provide for. Amends secs. 8401a, 8402, 8403, 8404, 8405, 8406, 8409, 8412, 8420 & 8423 of 1961 PA 236 (MCL 600.8401a et seq.).

Status: 09/05/18 Referred to Senate Committee on Regulatory Reform.  
Referrals: 10/04/18 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Consumer Law Section; Negligence Law Section  
Comments: Civil Procedure & Courts Committee.  
Liaison: Richard D. McLellan

**Minutes**  
**Public Policy Committee**  
**September 26, 2018 – 12:00 pm – Amway Grand Plaza, Kendall Room**

Committee Members: Jennifer M. Grieco, Joseph J. Baumann, Shauna L. Dunnings, Kim Warren Eddie, James W. Heath, Daniel D. Quick, Victoria A. Radke, Judge Michael J. Riordan, Brian D. Shekell, Judge Cynthia D. Stephens, Erane C. Washington

Commissioner Guests: Dennis M. Barnes, Dennis G. Rockwell

SBM Staff: Janet K. Welch, Peter Cunningham, Kathryn L. Hennessey, Carrie Sharlow

**A. Reports**

1. Approval of Meeting Minutes

**The July 27, 2018 minutes were unanimously approved.**

2. Public Policy Report

**Governmental Relations staff provided a written report.**

**B. Court Rules**

**1. ADM File No. 2017-15: Proposed Amendment of Canon 7 of the Michigan Code of Judicial Conduct**

The proposed amendment of Canon 7 of the Code of Judicial Conduct would explicitly allow judicial campaign solicitation as permitted by law, eliminate the \$100 per lawyer limitation, and remove the disclaimer requirement. This change would bring Michigan's canons into conformity with the majority of states that have moved away from solicitation restrictions and instead opted to refer to statutory campaign provisions.

**The committee voted unanimously (8)<sup>1</sup> with two abstentions<sup>2</sup> to take no position.**

**C. Consent Agenda**

**1. M Crim JI 37.1, 37.1a, 37.2, and 37.2a**

The Committee proposes new instructions, M Crim JI 37.1, 37.1a, 37.2 and 37.2a for the bribery statutes found at MCL 750.117 through 750.120.

**2. M Crim JI 11.1 and 11.1a**

The Committee proposes amending M Crim JI 11.1, and adding a new instruction, M Crim JI 11.1a, to separate the distinct offenses found in MCL 750.227: carrying a concealed pistol, and carrying a pistol in a vehicle. The proposal aims to eliminate juror confusion created when the "concealed" language in M Crim JI 11.1 is read where the offense involves carrying a pistol in an automobile. Deletions are in strike-through, and new language is underlined.

**3. M Crim JI 12.2a**

The Committee proposes amending M Crim JI 12.2a, the instruction for delivery of a controlled substance causing death. The proposal adds causation language to the instruction and eliminates a Use Note to the effect that M Crim JI 16.15 applies to causation under MCL 750.317a, because the statute provides that the controlled substance must cause the death at issue, not the act of the defendant. Deletions are in strike-through, and new language is underlined.

**4. M Crim JI 17.9 and 17.10**

The Committee proposes amending M Crim JI 17.9, assault with a dangerous weapon, and M Crim JI 17.10, definition of dangerous weapon. The proposal aims to correct the language in paragraph (4) of M Crim JI 17.9 that removed from jury consideration the element whether the object charged as being a

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<sup>1</sup> Judge Cynthia D. Stephens left the teleconference before this vote.

<sup>2</sup> Judge Michael J. Riordan and Shauna L. Dunnings abstained.

dangerous weapon was, in fact, a dangerous weapon as determined by the jury. Language was added to that instruction to define a dangerous weapon for the jury's consideration. M Crim JI 17.10 was amended to conform to the added definition provided in M Crim JI 17.9. Deletions are in strike-through, and new language is underlined.

**5. M Crim JI 3.28**

The Committee proposes amending M Crim JI 3.28, the jury verdict form used for multiple counts against a defendant, because the current form fails to provide a general "not guilty" option for each charged count. See *People v Wade*, 283 Mich App 462 (2009). Deletions are in strike-through, and new language is underlined.



To: Members of the Public Policy Committee  
Board of Commissioners

From: Kathryn L. Hennessey, Public Policy Counsel

Date: November 7, 2018

Re: ADM 2016-27: Proposed Amendment of MRPC 7.2

ADM 2016-27 concerns amendments to Rule 7.2 of the Michigan Rules of Professional Conduct (MRPC) to address information that attorneys and law firms must disclose in certain advertisements. The Representative Assembly approved proposed changes to MRPC 7.2 at its April 2016 meeting. In response, the Michigan Supreme Court published for comment two alternative amendments; Alternative A was SBM’s proposal with some non-substantive modifications, and Alternative B was based on the ABA model rule language. SBM continued to support the RA-approved Alternative A version.

On May 30, 2018, the Court published an order adopting an amended version of MRPC 7.2(d) combining SBM’s proposed language with some of the ABA Model Rule language. The rule amendment had an effective date of September 1, 2018; however, the Court held this order in abeyance to consider newly-adopted amendments to the commentary language of ABA Model Rule 7.2.

The Court has now issued a new order for comment with revisions to MRPC 7.2 based on newly-adopted language in Comment 12 to ABA Model Rule 7.2.

**Comparison of Proposed Changes to MRPC 7.2** (changes to RA-approved version in bold)

RA-Approved Alternative A	<u>Services of a lawyer or law firm that are advertised under the heading of a phone number, web address, image, or icon shall identify the lawyers or law firm providing the services. Any website advertising the services of a lawyer or law firm must contain the name(s) of the attorney(s) providing the services.</u>
ABA Model Rule Alternative B	<u>Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.</u>
Court Language Adopted on May 30, 2018	<u>Services of a lawyer or law firm that are advertised under the heading of a phone number, web address, or <b>trade name</b> shall identify the <b>name, office address, and business telephone number of at least one lawyer responsible for the content of the advertisement.</b></u>
Newly- Proposed Court Language	<u><b>For purposes of media advertising, services of a lawyer or law firm that are advertised under the headings of a phone number, web address, or trade name shall identify the name and contact information of at least one lawyer responsible for the content of the advertisement.</b></u>

# Order

**Michigan Supreme Court  
Lansing, Michigan**

September 27, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2016-27

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

Proposed Amendment of  
Rule 7.2 of the Michigan  
Rules of Professional Conduct

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.2 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining  
and deleted text is shown by strikeover.]

Rule 7.2 Advertising

(a)-(c) [Unchanged.]

(d) For purposes of media advertising, services of a lawyer or law firm that are advertised under the heading of a phone number, web address, or trade name shall identify the name and contact information of at least one lawyer responsible for the content of the advertisement.

*Staff Comment:* The proposed amendment of MRPC 7.2 would require media lawyer advertisements to identify the name and contact information of at least one lawyer providing services. This proposal is being republished in light of the ABA's recent adoption of revisions of the model rules regarding attorney advertising.

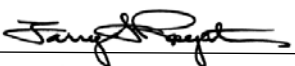
The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by January 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2016-27. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 27, 2018

  
Clerk

# Order

Michigan Supreme Court  
Lansing, Michigan

May 30, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2016-27

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

Amendment of Rule 7.2  
of the Michigan Rules of  
Professional Conduct

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.2 of the Michigan Rules of Professional Conduct is adopted, effective September 1, 2018.

[Additions to the text are indicated in underlining  
and deleted text is shown by strikeover.]

Rule: 7.2 Advertising

(a)-(c) [Unchanged.]

(d) Services of a lawyer or law firm that are advertised under the heading of a phone number, web address, or trade name shall identify the name, office address, and business telephone number of at least one lawyer responsible for the content of the advertisement.

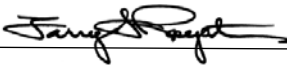
*Staff Comment:* The amendment of MRPC Rule 7.2 requires certain lawyer advertisements to identify the lawyer or law firm responsible for the advertisement's content. This new language is a revised version of a proposal submitted by the State Bar of Michigan Representative Assembly, and is intended to identify at least one lawyer responsible for the advertisement's content as a way to provide potential clients with important information when the services are advertised under the heading of a phone number, web address, or trade name.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 30, 2018

  
Clerk



# Order

**Michigan Supreme Court  
Lansing, Michigan**

January 10, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2016-27

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

Proposed Amendment of  
Rule 7.2 of the Michigan  
Rules of Professional Conduct

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On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 7.2 of the Michigan Rules of Professional Conduct. Before determining whether either of the alternative proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of either proposal in its present form.

[Additions to the text are indicated in underlining  
and deleted text is shown by strikeover.]

## **Alternative A**

Rule: 7.2 Advertising

(a)-(c) [Unchanged.]

(d) Services of a lawyer or law firm that are advertised under the heading of a phone number, web address, image, or icon shall identify the lawyers or law firm providing the services. Any website advertising the services of a lawyer or law firm must contain the name(s) of the attorney(s) providing the services.

## **Alternative B**

Rule: 7.2 Advertising

(a)-(c) [Unchanged.]

(d) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

*Staff Comment:* The first proposed amendment of Rule 7.2 of the Michigan Rules of Professional Conduct (Alternative A) would require certain lawyer advertisements to identify the lawyer or law firm providing services. This proposal was submitted by the State Bar of Michigan Representative Assembly. Alternative B is the model rule provision that relates to providing information about the lawyer or law firm responsible for the advertisement's content.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by April 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2016-27. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).

MCCORMACK, J. (*concurring*). This topic is worth the Court's consideration and I look forward to the public comment. I hope that the public comment process will, at a minimum, address and clarify the following questions:

(1) Is MRPC 7.1 already an adequate mechanism for protecting the public?

(2) Should the proposal's first sentence be targeted only to advertisements that solely consist of a web address or a telephone number, which is how the proposal was described by the State Bar of Michigan in its submission letter, or should it apply to all advertisements, which is how the proposal is currently styled? In other words, should the proposal read "Services of a lawyer or law firm that are advertised under the heading of a phone number, web address (i.e., law.com), image, or icon shall identify the lawyers or law firm providing the services," or should it read "Services of a lawyer or law firm that are advertised only under the heading of a phone number, web address (i.e., law.com), image, or icon shall identify the lawyers or law firm providing the services"?

(3) Will the proposal affect law offices that self-identify by solely listing their telephone number on their physical building or road sign, such as 1-800-LAW-FIRM in the attached photo?



(4) What is the scope of website advertising that would fall within this rule? For example, should it be limited to individual websites owned or managed by lawyers or lawfirms, or will it include third-party media advertising such as Craigslist listings, Facebook places, and Google places?

(5) What are the proper definitions of “image” and “icon” as used in the proposal?

(6) Will this rule regulate online advertising differently than the current rules regulate billboard, transit bus, television/cable, radio, and smartphone pop-up ads? If so, is that appropriate? If not, why not?



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 10, 2018

Clerk



p 517-346-6300

April 25, 2018

p 800-968-1442

f 517-482-6248

www.michbar.org

Larry Royster  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: ADM File No. 2016-27: Proposed Amendment of Rule 7.2 of the Michigan Rules of Professional Conduct**

Dear Clerk Royster:

At its April 20, 2018 meeting, the State Bar of Michigan Board of Commissioners (the Board) considered the above-referenced proposed rule amendment published by the Court for comment. The Representative Assembly (RA) originally recommended amendments to Rule 7.2 of the Michigan Rules of Professional Conduct (MRPC) to protect consumers from potentially misleading attorney advertisements that fail to disclose the names of the attorneys or law firm providing the advertised services. The RA's proposed amendments are set forth in the Court's Order as Alternative A.

After considering recommendations from the Professional Ethics Committee, Alternative Dispute Resolution Section, and Solo & Small Firm Section, the Board voted unanimously to support Alternative A.

The MRPC commentary recognizes that attorney advertising serves the public, particularly "persons of modest means," by expanding public knowledge about the availability of legal services.<sup>1</sup> The benefits of attorney advertising, however, must be balanced against "the risk of practices that are misleading or overreaching."<sup>2</sup> Indeed, the United States Supreme Court has recognized the need for regulating legal advertising to ensure that consumers are not misled, noting the important role that state bar associations play in "assuring that advertising by attorneys flows both freely and cleanly."<sup>3</sup>

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<sup>1</sup> MRPC Rule 7.2, Comment 1.

<sup>2</sup> *Id.*; see also ABA Model Rules of Professional Conduct Rule 7.2, Comment 1 ("[T]he public's need to know about legal services . . . is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of traditions. Nevertheless, advertising by lawyers entails the risk of practices that are misleading and overreaching.").

<sup>3</sup> *Bates v State Bar of Arizona*, 433 US 350, 383-384 (1977).

Although many states have adopted more expansive disclosure rules for attorney advertisements,<sup>4</sup> the State Bar has endorsed the more narrowly tailored Alternative A to focus on the truly problematic forms of legal service advertisements. Advertisements purporting to provide legal services under the heading of a telephone number, web address, image, or icon – without disclosing the attorney or law firm providing the service – have the unique potential to mislead and confuse consumers as to (1) the type of service being advertised, (2) who will perform the service, and (3) the geographic location of the lawyer or law firm.

### **Questions Posed by Justice McCormack**

#### **1. Is MPRC 7.1 already an adequate mechanism for protecting the public?**

No. MRPC 7.1 prohibits a communication from an attorney that “contain[s] a material misrepresentation of fact or law, or omit[s] a fact necessary to make the statement considered as a whole not materially misleading.” This prohibition does not adequately protect unsophisticated consumers of legal services to whom these types of vague advertisements are targeted. For example, consider a billboard advertisement simply setting forth a telephone number, such as 1-800-Law-Firm, or similar website address located by a Michigan highway. This advertisement, while vague, contains no material misrepresentations; however, such an advertisement may lead an unsophisticated legal consumer to assume that a law firm located in Michigan with attorneys licensed to practice in Michigan is offering its legal services, even if this is not actually the case. Without the proposed amendment, MRPC 7.1 would not bar such an advertisement, absent a showing

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<sup>4</sup> See, e.g., Fla Rules of Prof Conduct Rule 4-7.12(a)(1) (requiring all advertisements for legal employment to include “the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisements is for a lawyer referral service, or the lawyer direction if the advertisement is for a lawyer directory, responsible for the content of the advertisement[.]”); Fla Rules of Prof Conduct Rule 4-7.12(a)(2) (requiring all advertisements for legal employment to include “the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised”); NY Rules of Prof Conduct Rules 7.1(H) (“All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.”); SD Rules of Prof Conduct Rule 7.1(c)(11) (“A communication is false or misleading if it . . . fails to contain the name and address by city or town of the lawyer whose services are described in the communication[.]”); Kentucky Supreme Court Rule 3.130(3) (requiring attorney advertising to include “the name and office address of at least 1 lawyer or the name of a law firm”); La Rules of Prof Conduct Rule 7.2(a)(2) (requiring advertisements and unsolicited written communications to “disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyer who will actually perform the services advertised”); Pa Rules of Prof Conduct Rule 7.2(i) (“All advertisements and written communications shall disclose the geographic location by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law.”); SC Rules of Prof Conduct Rule 7.2(h) (“All advertisements shall disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law.”); Tex Disciplinary Rules of Prof Conduct Rule 7.04(j) (“A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer’s or firm’s principal office.”).

of a material misrepresentation. Therefore, to adequately protect legal consumers, the Board proposes amending the rule to require certain attorney advertisements to disclose the names of the attorneys or law firm that will be providing the services advertised.

- 2. Should the proposal's first sentence be targeted only to advertisements that solely consist of a web address or a telephone number, which is how the proposal was described by the State Bar of Michigan in its submission letter, or should it apply to all advertisements, which is how the proposal is currently styled?**

The Board supports omitting “only” from the rule language. After considering the public comments that have been submitted to the Court, the Board agrees with Mr. Norman Tucker that limiting the rule to advertisements that only contain a phone number, web address, image, or icon could lead to gamesmanship to circumvent the intent and effectiveness of the rule.

- 3. Will the proposal affect law offices that self-identify by solely listing their telephone number on their physical building or road sign, such as 1-800-Law-Firm?**

Yes. Signage, even if it is in front of or attached to a building, still advertises the services of a lawyer or law firm. Alternative A applies to “[s]ervices of a lawyer or law firm that are advertised under the heading of a phone number . . .” Similarly, Alternative B applies to “[a]ny communication made pursuant to [Rule 7.2] . . .” Rule 7.2 specifically governs the ability of attorneys to advertise. The term “advertise” as used in both alternative rule language, is defined as “to announce or praise (a produce, service, etc.) in some public medium of communication in order to induce people to buy or use it.” In this example, a sign with 1-800-Law-Firm, not only announces the attorney’s or law firm’s physical office location, but it also publicly announces legal services to induce people to use them.

- 4. What is the scope of website advertising that would fall within this rule?**

For website advertisements, the language in Alternative A was intended to require the names of the attorneys or law firm providing the services on that attorney’s or law firm’s website. For third party advertisements – such as Craigslist, Facebook, or Google – the advertisement could simply provide a link to the attorney’s or law firm’s website instead of explicitly disclosing that information in the third party advertisement as long as the linked website contained the information required by the rule.

- 5. What are the proper definitions of “image” or “icon” as used in the proposal?**

The Merriam-Webster Dictionary defines “image” in relevant part as “a tangible or visual representation.” “Icon” is defined in relevant part as “a usually pictorial representation” or “a sign (such as a word or graphic symbol) whose form suggests its meaning.”

Advertisements using an image or icon as a heading have the potential to mislead legal consumers because they can be so vague that the consumer is unable to ascertain the lawyer or law firm that will be providing the service.

**6. Will this rule regulate online advertising differently than the current rules regulate billboard, transit bus, television/cable, radio, and smartphone pop-up ads? If so, is that appropriate? If not, why not?**

Alternative A would regulate non-website advertising differently from website advertising. For print, radio, and television advertisements, under Alternative A, advertisements that fall within the regulated categories would be required to explicitly disclose the name of the attorney or law firm providing the service to allow legal consumers to further inquire as to the professionals offering the advertised services.

Alternative A would regulate website advertisements differently, requiring “[a]ny website advertising the services of a lawyer or law firm [to] contain the name(s) of the attorney(s) providing the service.” As discussed above, Alternative A was intended to require the names of the attorneys or law firm to be disclosed on the company’s website, but would only require third party web advertisements, including smart phone pop-up ads, to include a link to the company’s website that contains the names of the attorneys providing the services advertised.

This distinction of categories is appropriate. Website advertisements are unique in that the consumer can interact with the advertisement by clicking its links to find out more information, which is why a third party web advertisement would only need to contain a link to the attorney’s or law firm’s website as long as that website contained the names of the attorneys providing the service. Print, television, and radio advertisements, however, are static, which is why they need to disclose the identity of the law firm or attorneys providing the services in the actual advertisement.

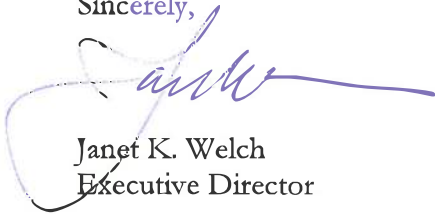
Alternative B appears to apply equally to non-website and website advertising, requiring the communication to disclose “the name and address of at least one lawyer or law firm responsible for its content.”

### **Conclusion**

At its core, this rule proposal was intended to protect consumers by providing them with more information about advertised legal services to allow them to ascertain the attorney or law firm providing the service, the location of the lawyer, and whether that lawyer is in good standing with the State Bar. While the State Bar endorses the more narrowly tailored Alternative A, it would not object to the broader version proposed in Alternative B. Both alternatives would be a positive step forward in protecting Michigan legal consumers.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Donald G. Rockwell, President, State Bar of Michigan





p 517-346-6300

September 6, 2016

p 800-968-1442

Larry Royster

f 517-482-6248

Clerk of the Court

www.michbar.org

Michigan Supreme Court

P.O. Box 30052

Lansing, MI 48909

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: Proposed Amendment of Rule 7.2 of the Michigan Rules of Professional Conduct**

Dear Clerk Royster:

The Representative Assembly of the State Bar of Michigan recommends changes to the Michigan Rules of Professional Conduct (MRPC) to add requirements that certain potentially misleading attorney advertisements disclose the name of the lawyer or law firm providing the advertised service and law firm websites disclose the names of the attorneys providing services. Developed by the State Bar's Civil Procedure & Courts Committee, this amendment to MRPC Rule 7.2 was approved by the Assembly at its meeting on April 30, 2016. We respectfully submit the changes, reflected below, for the Court's consideration:

Rule: 7.2 Advertising

(a) – (c) Unchanged

(d) Services of a lawyer or law firm that are advertised under the heading of a phone number, web address (i.e. law.com), image, or icon shall identify the lawyers or law firm providing the services. Any web site advertising the services of a lawyer or law firm must contain the name(s) of the attorney(s) providing the services.

The MRPC recognize that attorney advertising serves the public, particularly “persons of modest means,” by expanding public knowledge about the availability of legal services.<sup>1</sup> The benefits of attorney advertising, however, must be balanced against “the risk of practices that are misleading or overreaching.”<sup>2</sup> Indeed, the United States Supreme Court has recognized the need for regulating legal advertising to ensure that consumers are not misled and noted the important role that state bar associations play in “assuring that advertising by attorneys flows both freely and cleanly.”<sup>3</sup>

Advertisements purporting to provide legal services that contain only a telephone number, web address, image or icon have the grave potential to mislead and confuse consumers as to (1) the type of service being advertised, (2) the identity of the lawyer or law firm that will perform the

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<sup>1</sup> MRPC Rule 7.2, Comment 1.

<sup>2</sup> *Id.*; see also ABA Model Rules of Professional Conduct Rule 7.2, Comment 1 (“[T]he public’s need to know about legal services . . . is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of traditions. Nevertheless, advertising by lawyers entails the risk of practices that are misleading and overreaching.”).

<sup>3</sup> *Bates v State Bar of Arizona*, 433 US 350, 383-384 (1977).

service, and (3) the geographic location of the lawyer or law firm. In an effort to protect consumers from being misled by such advertisements, the proposed amendment to Rule 7.2 requires these attorney advertisements to disclose of the name of the lawyer or law firm providing the advertised service, which would give consumers the minimum amount of information necessary to investigate the location, reputation, and standing of attorneys advertising in the State of Michigan.

Likewise, websites that appear to be advertising legal services of a law firm but fail to list the names of the attorneys who will perform these services are misleading to consumers. Some of these purported law firms function merely as referral services and some even farm work out to individuals in foreign countries. Without a disclosure of the names of the attorneys who perform legal services on behalf of the law firm, consumers have no way of knowing if the individuals who will work on their behalf are (1) attorneys, (2) located in Michigan, (3) licensed to practice law in Michigan, (4) experienced in a particular area of law, and (5) in good standing with the State Bar of Michigan. Therefore, in an effort to provide consumers with the minimal amount of information they need to investigate the individual or attorney who will perform the work advertised, the proposed amendment to Rule 7.2 would require law firm websites to disclose the names of the attorneys who will provide the services.

The proposed rule is more narrowly tailored to the problem than rules of other states. Many states have adopted rules requiring that attorneys disclose identifying information in their advertisements. Some states have enacted disclosure rules explicitly requiring all attorney advertisements to disclose the name of the attorney or law firm offering services.<sup>4</sup> Other states require that attorney advertisements identify the geographic location of the lawyer or law firm who will perform the services advertised.<sup>5</sup> The American Bar Association (ABA) recommends that attorneys disclose identifying information in their advertisements; the ABA's Model Rules of Professional Conduct Rule 7.2 provides that "[a]ny communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its

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<sup>4</sup> See, e.g., Fla Rules of Prof Conduct Rule 4-7.12(a)(1) (requiring all advertisements for legal employment to include "the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisements is for a lawyer referral service, or the lawyer directory if the advertisement is for a lawyer directory, responsible for the content of the advertisement[.]"); NY Rules of Prof Conduct Rules 7.1(H) ("All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered."); SD Rules of Prof Conduct Rule 7.1(c)(11) ("A communication is false or misleading if it . . . fails to contain the name and address by city or town of the lawyer whose services are described in the communication[.]"); Kentucky Supreme Court Rule 3.130(3) (requiring attorney advertising to include "the name and office address of at least 1 lawyer or the name of a law firm").

<sup>5</sup> See, e.g., Fla Rules of Prof Conduct Rule 4-7.12(a)(2) (requiring all advertisements for legal employment to include "the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised"); La Rules of Prof Conduct Rule 7.2(a)(2) (requiring advertisements and unsolicited written communications to "disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyer who will actually perform the services advertised"); Pa Rules of Prof Conduct Rule 7.2(i) ("All advertisements and written communications shall disclose the geographic location by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law."); SC Rules of Prof Conduct Rule 7.2(h) ("All advertisements shall disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law."); Tex Disciplinary Rules of Prof Conduct Rule 7.04(j) ("A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office.").

content.” In addition to requiring the disclosure of identifying information, at least one state has gone a step further by enacting new detailed rules explicitly pertaining to internet marketing.<sup>6</sup> Thus, the Bar’s proposed amendment to Rule 7.2 is narrower than many other state rules because (1) the scope of the rule is limited to law firm websites and advertisements that only contain a telephone number, web address, image or icon and (2) the rule only requires the disclosure of the name of the lawyer or law firm that will perform the service. These limited disclosure requirements are narrowly tailored to require attorney advertisers to provide consumers with the minimal amount of information necessary for consumers to investigate the location, reputation, and standing of attorneys advertising in the State of Michigan.

Importantly, these proposed disclosure requirements will not violate the First Amendment protections of advertisers. The United States Supreme Court specifically addressed the constitutionality of regulating attorney advertising in *Bates v State Bar of Arizona*, in which the Court held that “advertising by attorneys may not be subjected to blanket suppression.”<sup>7</sup> The Court, however, explicitly noted that time, place, and manner restrictions on attorney advertisements may be justified to prevent false, deceptive, or misleading advertisements.<sup>8</sup> For regulations, like the proposed amendment to Rule 7.2, that require the disclosure of information in potentially misleading forms of advertisement, the required disclosure will not violate the First Amendment as long as the disclosure is “reasonably related to the State’s interest in preventing deception of consumers.”<sup>9</sup> Here, the disclosure requirement is reasonably related to preventing deception of consumers by requiring that advertisers provide the name of the lawyer or law firm that will provide the legal services to give consumers the minimum information necessary to investigate the location, reputation, and standing of attorneys advertising in the State of Michigan.

Thank you for your consideration. It is our hope that the Court will publish the proposed changes for comment and ultimately approve them as amendments to the Michigan Rules of Professional Conduct.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court

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<sup>6</sup> See, e.g., La Rules of Prof Conduct Rule 7.6 (setting forth disclosure requirements for websites and electronic mail).

<sup>7</sup> *Bates*, 433 US at 382-83.

<sup>8</sup> See *id.* at 383-84.

<sup>9</sup> *Zauderer v Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 US 626, 651 (1985) (holding that a regulation requiring disclosure if clients would be liable for legal costs in advertisement did not violate the First Amendment because the value to consumers of such factual and uncontroversial information outweighed lawyer’s “minimal” interest in not providing the information).

## **PROPOSED AMENDMENT TO 7.2 OF THE MICHIGAN RULES OF PROFESSIONAL CONDUCT**

### **Issue**

Should the Representative Assembly support an amendment to Rule 7.2 of the Michigan Rules of Professional Conduct?

Rule: 7.2 Advertising

- (a) Subject to the provisions of these rules, a lawyer may advertise.
- (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:
  - (i) pay the reasonable cost of advertising or communication permitted by this rule;
  - (ii) participate in, and pay the usual charges of, a not-for-profit lawyer referral service or other legal service organization that satisfies the requirements of Rule 6.3(b); and
  - (iii) pay for a law practice in accordance with Rule 1.17.
- (d) Services of a lawyer or law firm that are advertised under the heading of a phone number, web address (i.e. law.com), image, or icon shall identify the lawyers or law firm providing the services. Any web site advertising the services of a lawyer or law firm must contain the name(s) of the attorney(s) providing the services.

### **Synopsis**

The current version of MRPC 7.1 mandates that attorney communications with the public not be “false, fraudulent, misleading, or deceptive.” MRPC 7.2 specifies the manner in which attorney advertising is ethically proper. The proposal seeks to add a requirement that each advertisement prominently display the name of an active Michigan attorney as responsible for the advertisement.

### **Background**

On October 1, 2012, the chair of the Civil Procedure & Courts Committee received a letter from Board of Commissioner Jules B. Olsman suggesting the revision of MRPC 7.1 to address the issue of attorneys advertising using a phone number to solicit business without adequately disclosing the name of the actual attorneys or their firm. The concern is that consumers could be confused or misled as to the location of the subject lawyers and otherwise be deprived of information necessary for investigation of the location, reputation and standing of the attorneys.

Many jurisdictions have a much more robust rule regarding the contents of attorney advertising. See, e.g., New York Rule of Professional Responsibility 7.1 (<http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/NYRulesofProfessionalConduct4109.pdf>) and NY DR 2-101 and 2-102 ([http://www.law.cornell.edu/ethics/ny/code/NY\\_CODE.HTM](http://www.law.cornell.edu/ethics/ny/code/NY_CODE.HTM)). Most of those more thorough rules include a requirement that the name of the attorney or firm be included. E.g.:

- NY Rule 7.1(H): “All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.”)
- Kentucky Supreme Court Rules SCR 3.130(7.01–7.60), which includes numerous provisions, including the following (as summarized by the Kentucky State Bar at [http://www.kybar.org/documents/obc/aac\\_faq.pdf](http://www.kybar.org/documents/obc/aac_faq.pdf)): “If you advertise a toll free number, the advertisement must indicate the location of the bona fide office(s) where a substantial amount of the services will be performed. In addition, an advertisement must not include a telephone number in a manner that misrepresents the geographic location of the office where the advertised legal services will be performed. If an advertisement includes a telephone number with an area code for a geographic region in which the lawyer or law firm does not maintain a bona fide office, the advertisement must include a statement that the lawyer or firm does not maintain an office within the area code indicated by the telephone number.”

In light of these much more comprehensive schemes, including new rules addressing internet marketing, the proposal is a modest addition to the rules which simply requires publication of the attorney’s name or law firm.

This original proposal was changed to an amendment to MRPC 7.2 and went before the Assembly as listed under Prior Action by Representative Assembly.

On January 16, 2016, Jules Olsman re-presented his proposal to the Civil Procedure & Court Committee.

### **Opposition**

At the September 19, 2013 meeting of the Assembly, several members noted that naming an individual Michigan attorney might cause issues for national advertising.

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

At the April 27, 2013 meeting, the Assembly reviewed a similar proposal to amend Rule 7.2 of the Michigan Rules of Professional Conduct that added the following language:

(d) advertise the lawyer’s services under the heading of a phone number, image or icon without also prominently including the full name of the lawyer or law firm.

The proposal sought to add a fourth, relating to the use in advertising of a custom phone number, image or icon without also adequately displaying the name of the attorney or law firm.

The proposal was postponed to the September 19, 2013 meeting, during which the proposal was amended to read:

(d) advertise the lawyer's services under the heading of a phone number, image or icon without also prominently including the name of the sponsoring law firm or an active member in good standing.

The amendment passed the Assembly, though not unanimously. A letter was sent to the Michigan Supreme Court on October 25, 2013 with the following language:

(d) Any communication made pursuant to this rule shall prominently include the name and office address of an active member in good standing of the State Bar of Michigan who is responsible for its content, using the name and office address provided to the State Bar of Michigan.

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

None known.

**STATE BAR OF MICHIGAN POSITION  
By vote of the Representative Assembly on April 30, 2016**

Should the Representative Assembly support an amendment to Rule 7.2 of the Michigan Rules of Professional Conduct?

(a) Yes

or

(b) No

# Order

Michigan Supreme Court  
Lansing, Michigan

September 27, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2016-05

Proposed Amendment of  
Rule 2.513 of the Michigan  
Court Rules

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Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.513 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and  
deleted text is shown by strikeover.]

## Rule 2.513 Conduct of Jury Trial

(A) Preliminary Instructions. After the jury is sworn and before evidence is taken, the court shall orally provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be orally instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall also provide each juror with a written copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions.

(B)-(M) [Unchanged.]

(N) Final Instructions to the Jury.

(1) Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their



closing arguments. After closing arguments are made or waived, the court must orally instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may orally instruct the jury before the parties make closing arguments. After jury deliberations begin, the court may give additional instructions that are appropriate.

- (2) Solicit Questions about Final Instructions. As part of the final jury instructions, the court shall advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during deliberations. ~~Upon concluding the final instructions~~ After orally delivering the final jury instructions, the court shall invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate.

(3)-(4) [Unchanged.]

(O)-(P) [Unchanged.]

*Staff Comment:* The proposed amendment of MCR 2.513 would explicitly provide that a court must orally recite its preliminary and final jury instructions for the jury (in addition to providing them in writing). The proposed amendment would clarify that even though a juror is entitled to a written set of instructions, the judge must still orally instruct the jury. This proposed amendment would conform the rule to the opinion issued by the Court in *People v Traver*.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2019 at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2016-05. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 27, 2018

Clerk



**Public Policy Position  
ADM File No. 2016-05**

**Support**

**Explanation**

The Civil Procedure & Courts Committee supports the proposed amendments to require the court to orally provide jury instructions.

**Position Vote:**

Voted For position: 22

Voted against position: 0

Abstained from vote: 0

Did not vote: 5

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)

**Public Policy Position**  
**ADM File No. 2016-05**

**Explanation**

The committee supports the proposed amendment to Rule 2.513 as it would have the rule explicitly conform with the Court's decision in *People v Traver*.

**Position Vote:**

Voted For position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote: 6

**Contact Persons:**

Sofia V. Nelson

[snelson@sado.org](mailto:snelson@sado.org)

Michael A. Tesner

[mtesner@co.geneseo.mi.us](mailto:mtesner@co.geneseo.mi.us)

**Public Policy Position  
ADM File No. 2016-05**

**SUPPORT**

**Position Vote:**

Voted For position: 20

Voted against position: 0

Abstained from vote:

Did not vote: 5

**Contact Person:** Judge Hugh B. Clarke, Jr.

**Email:** [hugh.clarke@lansingmi.gov](mailto:hugh.clarke@lansingmi.gov)

# Order

Michigan Supreme Court  
Lansing, Michigan

October 3, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2018-21

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

Proposed Administrative Order  
to Require Courts to Establish  
Security Committees

---

On order of the Court, this is to advise that the Court is considering the adoption of an Administrative Order requiring courts to establish security committees. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

Administrative Order No. 2018-XX — Establishment of Court Security Committees

The issue of courthouse security is of vital importance to ensure the safety of the public, litigants, and the judicial employees of this state. Accordingly, the Supreme Court issues the following order regarding the administrative responsibilities of each chief judge in Michigan as they relate to courthouse security.

It is ordered that each chief judge or, in any facility with multiple chief judges, one chief judge as designated by consensus of the chief judges, establish a standing courthouse security committee to be chaired by the chief judge or his/her designee. The members of the committee shall include representatives of the court's funding unit, local law enforcement, the Clerk of Court, and other facility stakeholders. The courthouse security committee is responsible for creating and promoting policies and procedures to improve the safety and security of the courthouse.

Each court shall submit to the State Court Administrative Office (SCAO) a local administrative order that establishes the courthouse security committee in accordance with the model local administrative order developed by the SCAO. Courts with multiple chief judges in one location and courts that have multiple locations must follow the instructions provided by the SCAO for establishing the standing courthouse security committee. In developing the security committee, courts are directed to work with local funding units and to collaborate with other entities in shared facilities, where appropriate.

Proposed local administrative orders must be submitted to the SCAO no later than (MM/DD/YYYY).

*Staff Comment:* This administrative order would direct courts to establish a standing courthouse security committee to be chaired by the chief judge or his/her designee. The attached appendix is a proposed model local administrative order developed by the SCAO.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-21. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 3, 2018

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

## APPENDIX

State Court Administrative Office  
Model Local Administrative Order XX - Establishment of a Courthouse Security Committee

[LOCAL COURT LETTERHEAD]

Administrative Order [Year] - [Number]

### **ESTABLISHMENT OF A COURTHOUSE SECURITY COMMITTEE**

This administrative order is issued in accordance with Michigan Supreme Court Administrative Order No. 2018-XX. The purpose of this order is to establish a courthouse security committee.

#### **IT IS ORDERED:**

1. At the direction of the chief judge (*if a court location has more than one chief judge, the chief judges must decide which one of them shall take the lead. If the chief judges are unable to determine a lead chief judge, the SCAO regional administrator shall select one. If the jurisdiction is a multi-county circuit, each county must have a security committee. The multi-county chief judge can appoint a presiding judge in a county to form the committee.*), a courthouse security committee is established effective (*date of establishment*). The chairperson of the committee is (*either chief judge or his/her designee; if the chair is not the chief judge, identify the position of the person designated, for example, "court administrator."*).
2. Members of the Security Committee shall include representatives of (*name of funding unit, county sheriff and/or local law enforcement, Clerk of the Court, and other entities/stakeholders in the court facility. If there are multiple court locations, identify each and the members of the committee from each location*)
3. The security committee shall:
  - Develop and promote security policies and procedures regarding court security and emergency management;
  - Establish goals and objectives specific to improving physical security, emergency preparedness, and employee training;
  - Review all courthouse security incidents and take appropriate corrective measures to mitigate and/or eliminate any security vulnerabilities to prevent future reoccurrences.
4. The chairperson of the committee shall:
  - Facilitate communication, coordination, and decision-making among members

APPENDIX

(e.g., facility stakeholders) on policies and procedures affecting court security and emergency management;

- Seek member advice and input on goals, objectives, priorities, and issues involving court security and emergency management;
- Work in consultation with local law enforcement and emergency management professionals. The SCAO regional administrator will be kept apprised of meeting times and locations and be consulted as necessary.
- Submit a report to the State Court Administrative Office within one year of the first committee meeting and an updated report every two years thereafter concerning the actions taken by the committee under subsection 3. The report shall describe the court’s current security policies and procedures, the goals and objectives established by the committee to improve courthouse security, and a summary of any courthouse security incidents occurring during the reporting period and related corrective measures taken by the court.

5. The security committee shall meet (provide intervals of meetings, but no less than four times per calendar year).

Date: \_\_\_\_\_

\_\_\_\_\_  
CHIEF CIRCUIT JUDGE

Date: \_\_\_\_\_

\_\_\_\_\_  
CHIEF PROBATE JUDGE

Date: \_\_\_\_\_

\_\_\_\_\_  
CHIEF DISTRICT JUDGE

Date: \_\_\_\_\_

\_\_\_\_\_  
MULTI-COURT CHIEF JUDGE

*(Strike or add lines as needed)*

**Public Policy Position  
ADM File No. 2018-21**

**No Position**

**Explanation**

The Civil Procedure & Courts Committee took no position on the Court's proposal to establish Court Security committees.

The committee, however, urges the Board of Commissioners to request that the Michigan Supreme Court implement statewide uniform procedures for attorneys to access courts, including cell phone use by attorneys.

**Position Vote:**

Voted For position: 21

Voted against position: 1

Abstained from vote: 0

Did not vote: 5

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)



**From:** [Bob Dossetto](#)  
**To:** [ADMcomment](#)  
**Subject:** Courthouse Security Committees  
**Date:** Thursday, October 04, 2018 1:16:56 PM  
**Attachments:** [Bob Dossetto.vcf](#)

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I wholeheartedly support creating local courthouse security committees. What is also needed is a funding mechanism for the committees to be able to make much needed security upgrades, such as locks, duress alarms, cameras, weapon screening equipment, etc. This is especially true for rural counties with a small tax base. Having such a statewide rule would standardize best practices and court security training.

Michigan needs a state wide court security training program conducted annually to train new court security officers. This could/should be accomplished in partnership with the Michigan Municipal Risk Management Authority(MMRMA). Training is vitally important to the impartial administration of justice.

**Bob Dossetto, Bailiff**  
**25th Judicial Circuit Court**  
**234 W. Baraga Avenue**  
**Marquette, MI 49855**  
**Tel. 906-4225-8209**  
**Fax 906-225-8215**  
**email: [bdossetto@mqtco.org](mailto:bdossetto@mqtco.org)**

**From:** [Brit Weber](#)  
**To:** [ADMcomment](#)  
**Subject:** RE: Local Courthouse Security Committees  
**Date:** Friday, October 05, 2018 11:45:44 AM

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To Whom It May Concern:

I strongly support the mandating of each Michigan courthouse forming a security committee!

My background originated in law enforcement (Michigan State Police and oversees in Kosovo) followed by working in public and private sectors as consultant/instructor specializing in crime prevention, security, criminal justice, critical incident management and governmental-business collaboration on preparedness, prevention, mitigation, response and recovery. Equally, since 2002, I have taught workshops on and performed numerous risk/threat/vulnerability assessments on public and private sector facilities, including courthouses, jails, police stations, city halls and similar entities.

I'm positive that the research/questioning of staff, vendors, visitors and users would identify numerous gaps and shortfalls in local courthouse security across the state. However, what has always been the problem with establishing courthouse security has generally been a judge, court administrator or other key person in a facility refusing to implement various common-sense techniques, procedures, policies and/or hardware. Equally, costs and resources are also a concern when looking to strengthen courthouse security.

I believe that the first step of preparedness in courthouse security is the formation of a security committee that should include at least one sitting judge, court administrator, clerical staff, security staff, facility manager and from the areas in the courthouse of staff who deals with the public and staff who routinely handles money transactions. Though magistrates could also sit on the committee they should not be allowed to take the position of the judge slot on the committee.

If a security committee is mandated on all courthouses versus recommended by the state, than annually each courthouse should complete a form that lists committee members that is sent to the state court administrative office. Equally, on the form it should list the number of expected meetings for the upcoming year. Also, it should list the previous year's total number of expected meetings and also the actual number of meetings that were held. Plus, it should list the designated names and job titles of committee members. The state could also supply a tentative agenda of topics that are typically discussed and acted on at the local level. My assumption is that the state would also provide the reasons why a courthouse must have a security committee.

If the state doesn't want to mandate certain actions be taken, such as hiring of security and/or implementation of hardware and software but leave this to the local level than the follow-up question becomes should the local level also send either their committee minutes or list of key actions to the state annually? I suspect that the more information that would have to be sent in annually to the state by each courthouse that this reporting mandate would hopefully create an impetus to further enhance those weak areas throughout the state.

On a personal level, as a former law enforcement officer, I've been in many courthouses and seen the lack of security. Equally, when doing risk assessments of courthouse facilities, I

recall times when the courthouse overall's security was reasonable but yet, there would be a judge who doesn't like security thus leaving his/her courtroom vulnerable. Of course, there are those other occasions when certain departments within a courthouse are vulnerable, which is usually because either: department manager isn't interested; lack of importance in following procedures leading to apathy; unawareness of more up-to-date and cost effective solutions that could be implemented; conflicting opinions by key staff on the importance and/or how to; and, so on.

Thank you for the opportunity to offer just a few thoughts. Of course, on this topic one can easily drill down much deeper, which I assume would be done at the stage of formalizing that all courthouses shall have a security committee.

If I can be of other assistance, feel free to contact me anytime.

Brit Weber  
15937 Park Lake Road  
East Lansing, MI 48823  
517.206.1640  
[brit.weber@gmail.com](mailto:brit.weber@gmail.com)

# Order

Michigan Supreme Court  
Lansing, Michigan

September 27, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2002-37

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

Proposed Amendments of Rules 1.109,  
2.102, 2.104, 2.106, 2.107, 2.117, 2.119,  
2.403, 2.503, 2.506, 2.508, 2.518, 2.602,  
2.603, 2.621, 3.101, 3.104, 3.203, 3.205,  
3.210, 3.302, 3.607, 3.613, 3.614, 3.705,  
3.801, 3.802, 3.805, 3.806, 4.201, 4.202,  
4.303, 4.306, 5.001, 5.104, 5.105, 5.107,  
5.108, 5.113, 5.117, 5.118, 5.119, 5.120,  
5.125, 5.126, 5.132, 5.162, 5.202, 5.203,  
5.205, 5.302, 5.304, 5.307, 5.308, 5.309,  
5.310, 5.311, 5.313, 5.402, 5.404, 5.405,  
5.409, 5.501, and 5.784 and new rule  
3.618 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and  
deleted text is shown by strikeover.]

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

(A)-(F) [Unchanged.]

## (G) Electronic Filing and Service.

(1)-(2) [Unchanged.]

## (3) Scope and Applicability.

(a)-(e) [Unchanged.]

(f) For the required case types, attorneys must electronically file documents in courts where electronic filing has been implemented. All other filers are required to electronically file documents only in courts that have been granted approval to mandate electronic filing by the State Court Administrative Office under AO 2018-XX.

(4) [Unchanged.]

## (5) Electronic-Filing Process.

(a) [Unchanged.]

(b) Time and Effect of Electronic Filing. A document submitted electronically is deemed filed with the court when the transmission to the electronic-filing system is completed and the required filing fees have been paid or waived. If a document is submitted with a request to waive the filing fees, the document is deemed filed on the date the document was submitted to the court. A transmission is completed when the transaction is recorded as prescribed in subrule (c). Regardless of the date a filing is accepted by the clerk of the court, the date of filing is the date submitted. Electronic filing is not restricted by the operating hours of a court and any document submitted at or before 11:59 p.m. of a business day is deemed filed on that business day. Any document submitted on a weekend, legal holiday, or day on which the court is closed pursuant to court order~~court holiday~~ is deemed filed on the next business day.

(c)-(d) [Unchanged.]

(6)-(7) [Unchanged.]

## Rule 2.102 Summons; Expiration of Summons; Dismissal of Action for Failure to Serve

(A) [Unchanged.]

(B) Form. A summons must be issued “In the name of the people of the State of Michigan,” under the seal of the court that issued it. It must be directed to the defendant, and include

(1)-(2) [Unchanged.]

(3) the ~~file~~case number,

(4)-(11) [Unchanged.]

(C) [Unchanged.]

(D) Expiration. A summons expires 91 days after the date the ~~complaint is filed~~summons is issued. However, within those 91 days, on a showing of due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the ~~complaint is filed~~summons is issued. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the 91-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E)-(G) [Unchanged.]

#### Rule 2.104 Process; Proof of Service

(A) Requirements. Proof of service may be made by

(1)-(2) [Unchanged.]

(3) ~~an affidavit stating~~written statement of the facts of service, verified under MCR 1.109(D)(3). The statement shall include~~ing~~ the manner, time, date, and place of service, and ~~indicat~~ing the process server’s official capacity, if any.

The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location.

(B)-(C) [Unchanged.]

## Rule 2.106 Notice by Posting or Publication

(A)-(F) [Unchanged.]

(G) Proof of Service. Service of process made pursuant to this rule may be proven as follows:

(1) [Unchanged.]

(2) Posting must be proven by an ~~affidavit~~verified statement of the person designated in the order under subrule (E) attesting that a copy of the order was posted for the required time in the courthouse in a conspicuous place open to the public and in the other places as ordered by the court.

(3) Mailing must be proven by ~~affidavit~~verified statement. The affiant must attach a copy of the order as mailed, and a return receipt.

## Rule 2.107 Service and Filing of Pleadings and Other Documents

(A) Service; When Required.

(1) Unless otherwise stated in this rule, every party who has filed a pleading, an appearance, or a motion must be served with a copy of every ~~paper~~document later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with ~~papers~~documents that relate to that motion.

(2) Except as provided in MCR 2.603, after a default is entered against a party, further service of ~~papers~~documents need not be made on that party unless he or she has filed an appearance or a written demand for service of ~~papers~~documents. However, a pleading that states a new claim for relief against a party in default must be served in the manner provided by MCR 2.105.

(3) [Unchanged.]

(4) All ~~papers~~documents filed on behalf of a defendant must be served on all other defendants not in default.

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

- (a)-(b) [Unchanged.]
  - (c) After a final judgment or final order has been entered and the time for an appeal of right has passed, ~~papers~~documents must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;
  - (d) [Unchanged.]
  - (e) If an attorney files a notice of limited appearance under MCR 2.117 on behalf of a self-represented party, service of every ~~paper~~document later filed in the action must continue to be made on the party, and must also be made on the limited scope attorney for the duration of the limited appearance. At the request of the limited scope attorney, and if circumstances warrant, the court may order service to be made only on the party.
- (2) If two or more attorneys represent the same party, service of ~~papers~~documents on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a ~~paper~~document.
  - (3) If a party prosecutes or defends the action on his or her own behalf, service of ~~papers~~documents must be made on the party in the manner provided by subrule (C).
- (C) Manner of Service. Except under MCR 1.109(G)(6)(a), ~~S~~service of a copy of a ~~paper~~document on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Except under MCR 1.109(G)(6)(a), ~~S~~service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.
- (1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means
    - (a) handing it to the attorney personally, servicing it electronically under MCR 1.109(G)(6)(a), or, if agreed to by the parties, e-mailing it to the attorney as allowed under MCR 2.107(C)(4);
    - (b)-(c) [Unchanged.]



- (2) Delivery to Party. Delivery of a copy to a party within this rule means
- (a) handing it to the party personally, serving it electronically under MCR 1.109(G)(6)(a), or, if agreed to by the parties, e-mailing it to the party as allowed under MCR 2.107(C)(4); or
  - (b) [Unchanged.]
- (3) [Unchanged.]
- (4) ~~E mail. Some or all of the parties may agree to e mail service among themselves by filing a stipulation in that case. Some or all of the parties may agree to e mail service by a court by filing an agreement with the court to do so. E mail service shall be subject to the following conditions:~~
- (a) ~~The stipulation or agreement for service by e mail shall set forth the e mail addresses of the parties or attorneys that agree to e mail service, which shall include the same e mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e mail address shall be the e mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties and attorneys who have stipulated or agreed to service by e mail under this subsection shall immediately notify all other parties and the court if the party's or attorney's e mail address changes.~~
  - (b) ~~The parties shall set forth in the stipulation or agreement all limitations and conditions concerning e mail service, including but not limited to:~~
    - (i) ~~the maximum size of the document that may be attached to an e mail;~~
    - (ii) ~~designation of exhibits as separate documents;~~
    - (iii) ~~the obligation (if any) to furnish paper copies of e mailed documents; and~~
    - (iv) ~~the names and e mail addresses of other individuals in the office of an attorney of record designated to receive e mail service on behalf of a party.~~

- ~~(c) Documents served by e-mail must be in PDF format or other format that prevents the alteration of the document contents.~~
- ~~(d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).~~
- ~~(e) Each e-mail that transmits a document shall include a subject line that identifies the case by court, party name, case number, and the title or legal description of the document(s) being sent.~~
- ~~(f) An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).~~
- ~~(g) A party may withdraw from a stipulation or agreement for service by e-mail if that party notifies the other party or parties and the court in writing at least 28 days in advance of the withdrawal.~~
- ~~(h) Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the e-mail address of the intended recipient. If an e-mail is returned as undeliverable, the party, attorney, or court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the e-mail was undeliverable. A party, attorney, or court must also retain a notice that the e-mail was undeliverable.~~
- ~~(i) The e-mail sender shall maintain an archived record of sent items that shall not be purged until the conclusion of the case, including the disposition of all appeals.~~

(4) Alternative Electronic Service

- (a) Except as provided by MCR 1.109(G)(6)(a)(ii), the parties may agree to alternative electronic service among themselves by filing a stipulation in that case. Some or all of the parties may also agree to alternative electronic service of notices and court documents by a court or a friend of the court by filing an agreement with the court or

friend of the court. Alternative electronic service may be by any of the following methods:

- (i) e-mail,
- (ii) text message, or
- (iii) sending an e-mail or text message to log into a secure website to view notices and court papers.

(b) Obligation to Provide and Update Information.

(i) The agreement for alternative electronic service shall set forth the e-mail addresses or phone numbers for service. Attorneys who agree to e-mail service shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have agreed to alternative electronic service under this subrule shall immediately notify the court or the friend of the court if the e-mail address or phone number for service changes.

(ii) The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to service by text message or text message alert under this subrule shall immediately notify the court or the friend of the court if the phone number for service changes.

(c) The party or attorney shall set forth in the agreement all limitations and conditions concerning e-mail or text message service, including but not limited to:

- (i) the maximum size of the document that may be attached to an e-mail or text message,
- (ii) designation of exhibits as separate documents,
- (iii) the obligation (if any) to furnish paper copies of e-mailed or text message documents, and

- (iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.
- (d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.
- (e) A document served by alternative electronic service that the court or friend of the court or his or her authorized designee is required to sign may be signed in accordance with MCR 1.109(E).
- (f) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent.
- (g) An alternative electronic service transmission sent at or before 11:59 p.m. shall be deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.
- (h) A party or attorney may withdraw from an agreement for alternative electronic service by notifying the party or parties, court, and the friend of the court, as appropriate, in writing at least 28 days in advance of the withdrawal.
- (i) Alternative electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If an alternative electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.
- (j) The party, court, or friend of the court shall maintain an archived record of sent items that shall not be purged until a judgment or final order is entered and all appeals have been completed.

(k) This rule does not require the court or the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.

(D) [Unchanged.]

(E) Service Prescribed by Court. When service of ~~papers~~documents after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made.

(F) Numerous Parties. In an action in which there is an unusually large number of parties on the same side, the court on motion or on its own initiative may order that

(1) they need not serve their ~~papers~~documents on each other;

(2)-(4) [Unchanged.]

A copy of the order must be served on all parties in the manner the court directs.

#### Rule 2.117 Appearances

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service.—~~The party's address and telephone number must be included in the appearance.~~

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to ~~receive copies of~~be served with all ~~pleadings and papers~~documents as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) [Unchanged.]

## (2) Notice of Appearance.

- (a) If an appearance is made in a manner not involving the filing of a ~~paper~~document with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. ~~The attorney's address and telephone number must be included in the appearance.~~
- (b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to ~~service of pleadings and papers~~be served with all documents as provided by MCR 2.107(A).

(c)-(d) [Unchanged.]

## (3) Appearance by Law Firm.

- (a) A pleading, appearance, motion, or other ~~paper~~document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a ~~paper~~document in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.
- (b) [Unchanged.]

(C) [Unchanged.]

(D) Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other ~~papers~~documents without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a ~~paper~~document.

(E) Service of Documents After Removal of Appearance. If an attorney has filed a limited appearance or the attorney is removed from the case for any other reason, the attorney shall not continue to be served with documents in the case after the limited appearance ends or after an order is entered removing the attorney from the case.

## Rule 2.119 Motion Practice

- (A) [Unchanged.]
- (B) Form of Affidavits.
  - (1) [Unchanged.]
  - (2) Sworn or certified copies of all ~~papers~~documents or parts of ~~papers~~documents referred to in an affidavit must be attached to the affidavit unless the ~~papers or copies~~documents:
    - (a)-(d) [Unchanged.]
- (C) Time for Service and Filing of Motions and Responses.
  - (1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard ex parte), notice of the hearing on the motion, and any supporting brief or affidavits must be served as follows:
    - (a) at least 9 days before the time set for the hearing, if served by first-class mail, or
    - (b) at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2) or MCR 1.109(G)(6)(a).
  - (2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be served as follows:
    - (a) at least 5 days before the hearing, if served by first-class mail, or
    - (b) at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1) or (2) or MCR 1.109(G)(6)(a).
  - (3)-(4) [Unchanged.]
- (D)-(G) [Unchanged.]

## Rule 2.403 Case Evaluation

(A)-(J) [Unchanged.]

(K) Decision.

- (1) Within 14 days after the hearing, the panel will make an evaluation and ~~notifysubmit~~ submit the evaluation to the court. If an evaluation is made immediately following the hearing, the panel will provide a copy to the attorney for each party of its evaluation in writing. If an evaluation is not made immediately following the hearing, the evaluation must be served by the ADR clerk on each party within 14 days after the hearing. If an award is not unanimous, the evaluation must so indicate.

(2)-(5) [Unchanged.]

(L)-(O) [Unchanged.]

## Rule 2.503 Adjournments

(A)-(C) [Unchanged.]

(D) Order for Adjournment; Costs and Conditions.

(1) [Unchanged.]

- (2) In granting an adjournment, the court may impose costs and conditions. When an adjournment is granted conditioned on payment of costs, the costs may be taxed summarily to be paid on demand of the adverse party or the adverse party's attorney, and the adjournment may be vacated if nonpayment is shown by ~~affidavit~~ written statement verified under MCR 1.109(D)(3).

(E)-(F) [Unchanged.]

## Rule 2.506 Subpoena; Order to Attend

(A) [Unchanged.]

(B) Authorized Signatures.

(1) [Unchanged.]



- (2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, ~~or lithographed,~~ or executed under MCR 1.109(E)(4).

(C)-(I) [Unchanged.]

#### Rule 2.508 Jury Trial of Right

(A) [Unchanged.]

(B) Demand for Jury.

- (1) A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. The demand for jury must be filed as a separate document. ~~A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading.~~ The jury fee provided by law must be paid at the time the demand is filed.

(2)-(3) [Unchanged.]

(C)-(D) [Unchanged.]

#### Rule 2.518 Receipt and Return or Disposal of Exhibits

- (A) Receipt of Exhibits. Except as otherwise required by statute or court rule, materials that are intended to be used as evidence at or during a trial shall not be filed with the clerk of the court, but shall be submitted to the judge for introduction into evidence as exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by Michigan Supreme Court trial court ~~case file~~ records management standards. As defined in MCR 1.109, exhibits received and accepted into evidence under this rule are not court records.

(B)-(C) [Unchanged.]

#### Rule 2.602 Entry of Judgments and Orders

- (A) Signing; Statement; Date of Entry.

(1) Except as provided in this rule and in MCR 2.603, all judgments and orders must be in writing, signed by the court, and dated with the date they are signed.

(2)-(3) [Unchanged.]

(4) Where electronic filing is implemented, judgments and orders must be issued under the seal of the court.

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

(1)-(2) [Unchanged.]

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the notice and proof of service along with original of the proposed judgment or order ~~and proof of its service on the other parties.~~

(a) If no written objections are filed within 7 days of the date of service of the notice, the ~~clerk shall submit the judgment or order to the court, and the court~~ judge shall then sign it the judgment or order if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(b)-(c) [Unchanged.]

(d) The court must schedule the hearing upon filing of the first objection. Other parties to the action may file objections with the court through the end of the 7-day period. The court must schedule a hearing for all objections within 14 days after the first objection is filed or as soon as is practical afterward.

(4) A party may prepare a proposed judgment or order and notice it for settlement before the court. A court shall not charge a motion fee if the order is dispositive except as directed in 2.116(B)(1), 2.603(B)(3) and 3.210(B)(4).

- (C) [Unchanged.]
- (D) ~~Filing~~Placement in Case File. The ~~original of the~~signed judgment or order must be placed in the case file.
- (E) [Unchanged.]

#### Rule 2.603 Default and Default Judgment

- (A) Entry of Default; Notice; Effect.
  - (1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is ~~made to appear by affidavit or otherwise~~filed with the court in a request verified in the manner prescribed by MCR 1.109(D)(3), the clerk must enter the default of that party.
  - (2) Notice that the default has been entered must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.
    - (a) ~~In the district court, the court clerk shall send the notice.~~
    - (b) ~~In all other courts, t~~The notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.
  - (3) ~~Once~~After the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.
- (B) Default Judgment.
  - (1) [Unchanged.]
  - (2) Default Judgment Entered by Clerk. On written request of the plaintiff ~~supported by an affidavit~~verified under MCR 1.109(D)(3) as to the amount due, the clerk may sign and enter a default judgment for that amount and costs against the defendant, if

- (a) [Unchanged.]
  - (b) the default was entered because the defendant failed to appear; ~~and~~
  - (c) the defaulted defendant is not an infant or incompetent person; and
  - (d) [Unchanged.]
- (3) [Unchanged.]
- (4) Notice of Entry of Default Judgment. ~~The court clerk must promptly mail notice of entry of a default judgment to party who sought entry of the default judgment must promptly serve all parties with the default judgment.~~ The notice to the defendant default judgment shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given. Proof of service must be filed with the court.
- (C) [Unchanged.]
- (D) Setting Aside Default or Default Judgment.
- (1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and ~~an affidavit~~ a verified statement of facts showing a meritorious defense is filed.
  - (2)-(4) [Unchanged.]
- (E) [Unchanged.]

#### Rule 2.621 Proceedings Supplementary to Judgment

- (A)-(G) [Unchanged.]
- (H) Appeal; Procedure; Bonds. A final order entered in a supplementary proceeding may be appealed in the usual manner. The appeal is governed by the provisions of chapter 7 of these rules except as modified by this subrule.
- (1)-(2) [Unchanged.]
  - (3) If the order appealed from directs the assignment or delivery of ~~papers or~~ documents by the appellant, the ~~papers~~ documents must be delivered to the

clerk of the court in which the proceeding is pending or placed in the hands of an officer or receiver, as the judge who entered the order directs, to await the appeal, subject to the order of the appellate courts.

(4) [Unchanged.]

#### Rule 3.101 Garnishment After Judgment

(A)-(G) [Unchanged.]

(H) Disclosure. The garnishee shall ~~mail or deliver to~~ file with the court, and deliver to the plaintiff, and ~~the~~ defendant, a verified disclosure within 14 days after being served with the writ.

(1)-(2) [Unchanged.]

(I)-(T) [Unchanged.]

#### Rule 3.104 Installment Payment Orders

(A) Motion for Installment Payment Order. A party against whom a money judgment has been entered may move for entry of an order permitting the judgment to be paid in installments in accordance with MCL 600.6201 *et seq.* A copy of the motion must be served on the plaintiff, ~~by the clerk of the court in district court and by the party who filed the objection in circuit or probate court.~~

(B) Consideration of Motion. The motion will be granted without further hearing unless the plaintiff files, and serves on the defendant, written objections within 14 days after the service date of the defendant's motion. If objections are filed, the clerk must promptly present the motion and objections to the court. The court will decide the motion based on the ~~papers~~ documents filed or notify the parties that a hearing will be required. Unless the court schedules the hearing, the moving party is responsible for noticing the motion for hearing.

(C)-(D) [Unchanged.]

#### Rule 3.203 Service of Notice and Court ~~Papers~~ Documents in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1) [Unchanged.]

- (2) court ~~papers~~documents and notice for which the statute or court rule does not specify the manner of service must be served as provided in MCR 2.107, except that service by mail shall be to a party's last known mailing address.
- (3) Alternative Electronic Service
- (a) A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney in accordance with MCR 2.107(C)(4).~~by any of the following methods:~~
- (i) ~~e-mail;~~
  - (ii) ~~text message;~~
  - (iii) ~~sending an e-mail or text message alert to log into a secure website to view notices and court papers.~~
- (b) ~~Obligation to Provide and Update Information~~
- (i) ~~The agreement for service by e-mail or e-mail alert shall set forth the e-mail addresses for service. Attorneys who agree to e-mail service shall include the same email address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have agreed to service by e-mail or email alert under this subsection shall immediately notify the friend of the court if the e-mail address for service changes.~~
  - (ii) ~~The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to service by text message or text message alert under this subsection shall immediately notify the friend of the court if the phone number for service changes.~~
- (c) ~~The party or attorney shall set forth in the agreement all limitations and conditions concerning e-mail or text message service, including but not limited to:~~

- ~~(i) the maximum size of the document that may be attached to an e-mail or text message;~~
  - ~~(ii) designation of exhibits as separate documents;~~
  - ~~(iii) the obligation (if any) to furnish paper copies of emailed or text message documents; and~~
  - ~~(iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.~~
- ~~(d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.~~
- ~~(e) A paper served by alternative electronic service that the friend of the court or an authorized designee is required to sign may include the actual signature or a signature block with the name of the signatory accompanied by “s/” or “/s/.” That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).~~
- ~~(f) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the case by court, party name, case number, and the title or legal description of the document(s) being sent.~~
- ~~(g) An alternative electronic service transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service under this subrule is treated as service by delivery under MCR 2.107(C)(1).~~
- ~~(h) A party or attorney may withdraw from an agreement for alternative electronic service by notifying the friend of the court in writing at least 28 days in advance of the withdrawal.~~
- ~~(i) Alternative electronic service is complete upon transmission, unless the friend of the court learns that the attempted service did not reach the intended recipient. If an alternative electronic service~~

~~transmission is undeliverable, the friend of the court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The friend of the court must also retain a notice that the electronic transmission was undeliverable.~~

- ~~(j) The friend of the court shall maintain an archived record of sent items that shall not be purged until a judgment or final order is entered and all appeals have been completed.~~
- ~~(k) This rule does not require the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.~~

(B)-(C) [Unchanged.]

(D) Administrative Change of Address. The friend of the court office may change a party's address administratively pursuant to the policy established by the state court administrator for that purpose when:

- (1) [Unchanged.]
- (2) notices and court ~~papers~~documents are returned to the friend of the court office as undeliverable or the friend of the court determines that a federal automated database has determined that mail is not deliverable to the party's listed address.

(E) Service on Nonparties. Notice to a nonparty must be provided as set forth in the statute requiring the notice. Absent statutory direction, the notice may be provided by regular mail. Absent statutory direction, court ~~papers~~documents initiating an action against nonparties to enforce a notice must be served in the same manner as a summons and complaint pursuant to MCR 2.105.

(F) Confidential Addresses. When a court order makes a party's address confidential, the party shall provide an alternative address for service of notice and court ~~papers~~documents.

(G) Notice to Friend of the Court. Except where electronic filing is implemented, ~~if~~ a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, or if child support or spousal support is requested, the parties must provide the friend of the court with a copy of all pleadings and other ~~papers~~documents filed in the action. The copy must be marked "friend of the court" and submitted to the court clerk at the time of filing. The court clerk must



send the copy to the friend of the court. Where electronic filing is implemented, the court and the friend of the court shall determine the manner in which pleadings and other documents filed in the action will be made available to the friend of the court.

- (H) Notice to Prosecuting Attorney. In an action for divorce or separate maintenance in which a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, the plaintiff must serve a copy of the summons and complaint on the prosecuting attorney when required by law.—~~Service must be made at the time of filing by providing the court clerk with an additional copy marked “prosecuting attorney”. The court clerk must send the copy to the prosecuting attorney.~~

(I)-(J) [Unchanged.]

#### Rule 3.205 Prior and Subsequent Orders and Judgments Affecting Minors

(A) [Unchanged.]

(B) Notice to Prior Court, Friend of the Court, Juvenile Officer, and Prosecuting Attorney.

(1) [Unchanged.]

(2) If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, the plaintiff or other initiating party must ~~mail-writ~~send notice of proceedings in the subsequent court ~~to the attention of~~

(a)-(b) [Unchanged.]

(3) The notice must be ~~mailed~~sent at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be ~~given~~sent immediately when it becomes known.

(4) [Unchanged]

(C)-(D) [Unchanged.]

#### Rule 3.210 Hearings and Trials

(A) [Unchanged.]

(B) Default Cases.

(1) [Unchanged.]

(2) Entry of Default.

(a) A party may request the entry of a default of another party for failure to plead or otherwise defend. ~~Upon presentation of an affidavit by a party asserting facts setting forth proof of service and failure to plead or otherwise defend in a written request verified under MCR 1.109(D)(3).~~ On filing of the request, the clerk must enter a default of the party.

(b)-(d) [Unchanged.]

(e) A party in default must be served with the notice of default and a copy of every ~~paper~~document later filed in the case as provided by MCR 3.203, and the person serving the notice or other ~~paper~~document must file a proof of service with the court.

(3)-(7) [Unchanged.]

(C)-(E) [Unchanged.]

### Rule 3.302 Superintending Control

(A)-(D) Unchanged

(E) Procedure for Superintending Control in Circuit Court.

(1)-(2) [Unchanged.]

(3) Issuance of Order; Dismissal.

(a)-(b) [Unchanged.]

(c) The court may require in an order to show cause that additional records and ~~papers~~documents be filed.

(d) [Unchanged.]

Rule 3.607 Proceedings to Restore Lost Records or ~~Papers~~Documents in Courts of Record

(A)-(D) [Unchanged.]

Rule 3.613 Change of Name

(A)-(B) [Unchanged.]

(C) Notice to Noncustodial Parent. Service on a noncustodial parent of a minor who is the subject of a petition for change of name shall be made in the following manner.

(1) Address Known. If the noncustodial parent's address or whereabouts is known, that parent shall be served with a copy of the petition and a notice of hearing at least 14 days before the hearing in a manner prescribed by MCR 2.107(C).

(2) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 3.614 Health Threats to Others

(A) [Unchanged.]

(B) Service of ~~Papers~~Documents. The moving party is responsible for service when service is required.

(C)-(E) [Unchanged.]

[New] Rule 3.618 Emancipation of Minor

(A) Interested Persons. The persons interested in a petition for emancipation of a minor are

(1) the minor,

(2) parents of the minor,

(3) the affiant on an affidavit supporting emancipation, and

(4) any guardian or conservator.

(B) Summons.

- (1) A summons in an emancipation proceeding must be served on an interested person at least 14 days before the date of hearing unless the interested person has waived his or her right to service.
- (2) The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must identify the nature of hearing.

(C) Manner of Serving Summons and Petition.

- (1) Except as provided in subrule (C)(2), a summons and petition for emancipation must be served by personal service.
- (2) If service of the summons and petition cannot be made under subrule (C)(1) because the whereabouts of an interested person could not be ascertained after diligent inquiry, the petitioner must file proof of the efforts made to locate the interested person in a statement verified under MCR 1.109(D)(3). If the court finds, on reviewing the statement, that a reasonable attempt was made, the court may issue an ex parte order directing another manner of service reasonably calculated to give notice of the proceedings, including notice by publication under subrule (3).
- (3) Service by Publication.
  - (a) Requirements. A notice of hearing or other notice required to be made by publication must be published in a newspaper as defined by MCR 2.106(F) at least one time 21 days before the date of hearing. Publication shall be in the county in which the court is located.
  - (b) Contents of Notice. The published notice must include the name of the individual to whom the notice is given, a statement describing the nature of the hearing, and a statement that the hearing may affect the individual's interest in the matter. If an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.
  - (c) Service of Notice. A copy of the notice shall be mailed to the individual to whom the notice is given at his or her last known address. If the last known address of the individual cannot be

ascertained after diligent inquiry, mailing a copy of the notice is not required.

- (d) Proof of service under this subrule shall be made according to MCR 2.106(G).

(D) Time of Service.

- (1) A summons shall be personally served at least 14 days before hearing on a petition of emancipation, except as allowed under subrule (C)(2).
- (2) If the summons is served by registered mail, it must be sent at least 21 days before hearing if the interested person to be served resides in Michigan, or at least 28 days before hearing if the interested person to be served resides outside of Michigan.

- (E) Other Service. The clerk of the court shall serve an order issued by the court. If notice of the petition and hearing was given to an interested person by publication, a copy of an order issued by the court need not be served on that interested person.

(F) Proof of Service

- (1) Summons and Petition. Proof of service of the summons and petition must be made in the manner provided in MCR 2.104(A).
- (2) Other Documents. Proof of service of other documents permitted or required to be served under this rule must be made in the manner provided in MCR 2.107(D).

Rule 3.705 Issuance of Personal Protection Orders

(A) Ex Parte Orders.

- (1) The court must rule on a request for an ex parte order within ~~24 hours~~ one business day of the filing date of the petition.

(2)-(5) [Unchanged.]

(B)-(C) [Unchanged.]

Rule 3.801 ~~Papers~~ Documents, Execution

(A)-(B) [Unchanged.]

### Rule 3.802 Manner and Method of Service

#### (A) Service of ~~Papers~~Documents.

- (1) [Unchanged.]
- (2) Notice of a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a noncustodial parent, must be served on the individual or the individual's attorney in the manner provided in:
  - (a) ~~MCR 5.105(B)(1)(a) or (b)~~2.107(C)(1) or (2), or
  - (b) MCR 2.105(A)(2), but service is not made for purpose of this subrule until the individual or the individual's attorney receives the notice or petition.
- (3) [Unchanged.]
- (4) Except as provided in subrules (B) and (C), all other ~~papers~~documents may be served by mail under MCR 2.107(C)(3), e-mail under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a).

#### (B) Service When Identity or Whereabouts of Father is Unascertainable

- (1) If service cannot be made under subrule (A)(2) because the identity of the father of a child born out of wedlock or the whereabouts of the identified father has not been ascertained after diligent inquiry, the petitioner must file proof ~~by affidavit or by declaration under MCR 1.109(D)(3), of the attempt~~of the efforts made to identify or locate the father in a statement verified under MCR 1.109(D)(3). No further service is necessary before the hearing to identify the father and to determine or terminate his rights.
- (2) [Unchanged.]

#### (C) Service When Whereabouts of Noncustodial Parent Is Unascertainable.

If service of a petition to terminate the parental rights of a noncustodial parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2) because the whereabouts of the noncustodial parent has not been ascertained after diligent inquiry, the petitioner must file proof, ~~by affidavit or by declaration under MCR 1.109(D)(3), of the attempt~~of the efforts made to locate the noncustodial parent in a statement verified under MCR 1.109(D)(3). If the court finds, on reviewing the

~~statement, affidavit or declaration~~, that service cannot be made because the whereabouts of the person has not been determined after reasonable efforts, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

(D) Service by Publication.

- (1) Requirements. A notice of hearing or other notice required to be made by publication must be published in a newspaper as defined by MCR 2.106(F) at least one time 21 days before the date of the hearing. Publication shall be in the county in which the court is located.
- (2) Contents of Notice. The published notice must include the name of the individual to whom the notice is given, a statement describing the nature of the hearing, and a statement that the result of the hearing may affect the individual's interest in the matter, including possible termination of parental rights.
- (3) Service of Notice. A copy of the notice shall be mailed to the individual to whom the notice is given at his or her last known address. If the last known address of the individual cannot be ascertained after diligent inquiry, mailing a copy of the notice is not required.
- (4) Proof of service under this subrule shall be made according to MCR 2.106(G).

Rule 3.805 Temporary Placements, Time for Service of Notice of Hearing to Determine Disposition of Child

- (A) ~~Time for Personal Service.~~ ~~Personal s~~Service of notice of hearing on a petition for disposition of a child pursuant to under MCL 710.23e(1) must be served at least:
  - (1) 3 days before the date set for hearing for personal service under MCR 2.107(C)(1) or (2), e-mail service under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a); or
  - (2) 7 days before the date set for hearing when served by first-class mail under MCR 2.107(C)(3).
- (B) ~~Time for Service by Mail.~~ ~~Service by mail must be made at least 7 days before the date set for hearing.~~

(~~EB~~) Interested Party, Whereabouts Unknown. If the whereabouts of an interested party, other than the putative father who did not join in the temporary placement, is unknown, service on that interested party will be sufficient if ~~personal service or service by mail~~ is attempted at the last known address of the interested party.

(~~DC~~) [Relettered but otherwise unchanged.]

#### Rule 3.806 Rehearings

(A) Filing, Notice and Response. A party may seek rehearing under MCL 710.64(1) by timely filing a petition stating the basis for rehearing. Immediately upon filing the petition, the petitioner must give all interested parties notice of its filing in accordance with MCR ~~5.105~~3.802. Any interested party may file a response within 7 days of the date of service of notice on the interested party.

(B)-(D) [Unchanged.]

#### Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(B) [Unchanged.]

(C) Summons.

(1) [Unchanged.]

(2) The summons must also include the following advice to the defendant:

(a)-(c) [Unchanged.]

(d) The defendant has a right to a jury trial which will be lost unless it is demanded in the first defense response, written or oral. The jury trial fee must be paid when the demand is made, unless payment of fees is waived ~~or suspended~~ under MCR 2.002.

(D) Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant ~~by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served~~ in one of the following ways:

(1) [Unchanged.]



- (2) By delivering the ~~papers~~documents at the premises to a member of the defendant's household who is
- (a)-(b) [Unchanged.]
- (c) asked to deliver the ~~papers~~documents to the defendant; or
- (3) After diligent attempts at personal service have been made, by securely attaching the ~~papers~~documents to the main entrance of the tenant's dwelling unit. A return of service made under this subrule ~~(D)(3)~~ must list the attempts at personal service. Service under this subrule ~~(D)(3)~~ is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made. An officer who files proof that service was made under this subrule ~~(D)(3)~~ is entitled to the regular personal service fee.
- (E) [Unchanged.]
- (F) Appearance and Answer; Default.
- (1) Appearance and Answer. The defendant or the defendant's attorney must appear and answer the complaint by the date on the summons. Appearance and answer may be made as follows:
- (a) [Unchanged.]
- (b) By orally answering each allegation in the complaint at the hearing. The answers must be recorded ~~or noted on the complaint.~~
- (2)-(3) [Unchanged.]
- (4) Default.
- (a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (K). ~~The plaintiff must mail the default judgment must be mailed to the defendant and file a proof of service with the court. by the court clerk and~~ The default judgment must inform the defendant that (if applicable)
- (i)-(ii) [Unchanged.]

(b)-(c) [Unchanged.]

(5) [Unchanged.]

(G)-(O) [Unchanged.]

#### Rule 4.202 Summary Proceedings; Land Contract Forfeiture

(A)-(G) [Unchanged.]

(H) Answer; Default.

(1) [Unchanged.]

(2) Default.

- (a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (J). The plaintiff must mail the default judgment ~~must be mailed~~ to the defendant and file a proof of service with the court. ~~by the court clerk and~~ The default judgment must inform the defendant that (if applicable)

(i)-(ii) [Unchanged.]

(b)-(c) [Unchanged.]

(3) [Unchanged.]

(I)-(L) [Unchanged.]

#### Rule 4.303 Notice

(A)-(B) [Unchanged.]

- (C) Notice Not Served. If it appears that notice was not received by the defendant at least 7 days before the appearance date and the defendant does not appear, the clerk must, at the plaintiff's request, issue further notice without additional cost to the plaintiff, setting the hearing for a future date. The further notice may be served as provided in MCR 2.105.

### Rule 4.306 Removal to Trial Court

- (A) [Unchanged.]
- (B) Order; Fee. On receiving a demand for removal, the court shall, by a written order filed in the action, direct removal to the trial court for further proceedings.
  - (1) [Unchanged.]
  - (2) ~~A copy of the order must be mailed to each party by the clerk~~The party demanding removal must promptly serve the order on the opposing party and file proof of service with the court.
  - (3) [Unchanged.]
- (C)-(E) [Unchanged.]

### Rule 5.001 Applicability

- (A) Applicability of Rules. Procedure in probate court is governed by the general rules set forth in chapter one and by the rules applicable to other civil proceedings set forth in chapter two, except as modified by the rules in this chapter.
- (B) [Unchanged.]

### Rule 5.104 Proof of Service; Waiver and Consent; Unopposed Petition

- (A) Proof of Service.
  - (1) Whenever service is required by statute or court rule, a proof of service must be filed promptly and ~~at the latest~~ before a hearing to which the ~~paper~~document relates. ~~If the document does not involve a hearing, a proof of service must be filed with the document or at the time the paper is required to be filed with the court if the paper does not relate to a hearing.~~ The proof of service must include a description of the ~~papers~~documents served, the date of service, the manner and method of service, and the person or persons served.
  - (2) Except as otherwise provided by rule, proof of service of a ~~paper~~document required or permitted to be served may be by

- (a) including it at the end a copy of the notice of hearing or other documents being filed with the court, or, if any;
- (b) a written statement by the individual who served the notice of hearing or other documents, verified under MCR 1.109(D)(3). copies of other paper served with the notice of hearing, with a description of the paper in the proof of service;
- (c) authentication under MCR 1.109(D)(3) of the person making service.

(3)-(4) [Unchanged.]

(B) Waiver and Consent.

(1) [Unchanged.]

(2) Consent. The relief requested in an application, petition, or motion may be granted by consent. An interested person who consents to an application, petition, or motion does not have to be served with or waive notice of hearing on the application, petition, or motion. The consent must

(a) [Unchanged.]

(b) be in a writing which is dated and signed by the interested person or someone authorized to consent on the interested person's behalf and must contain a ~~declaration~~statement that the person signing has received a copy of the application, petition, or motion.

(3)-(4) [Unchanged.]

(C) Unopposed Petition. If a petition is unopposed at the time set for the hearing, the court may either grant the petition on the basis of the recitations in the petition or conduct a hearing. However, an order determining heirs based on an uncontested petition to determine heirs may only be entered on the basis of ~~sworn testimony~~ or a ~~sworn testimony~~verified statement identifying heirs form. An order granting a petition to appoint a guardian may only be entered on the basis of testimony at a hearing.

Rule 5.105 Manner and Method of Service

(A) Manner of Service.

- (1) [Unchanged.]
- (2) Unless another method of service is required by statute, court rule, or special order of a probate court, service may be made:
  - (a) to the current address of an interested person by registered, certified, or ordinary first-class mail, or
  - (b) by electronic service in accordance with MCR 1.109(G)(6)(a).

Foreign consul and the Attorney General may be served by mail or by electronic service in accordance with MCR 1.109(G)(6)(a).

- (3) An interested person whose address or whereabouts is not known may be served by publication, if ~~an affidavit or a declaration of intent to give notice by publication, verified~~ under MCR 1.109(D)(3) is filed with the court. The declaration must set forth facts showing ~~asserting~~ that the address or whereabouts of the interested person could not be ascertained on diligent inquiry. Except in proceedings seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2), after an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.

- (4) [Unchanged.]

(B) Method of Service.

(1) Personal Service.

- (a) On an Attorney. Personal service of a ~~paper~~document on an attorney must be made by
  - (i)-(iii) [Unchanged.]
  - (iv) sending the ~~paper~~document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the ~~paper~~document.
- (b) On Other Individuals. Personal service of a ~~paper~~document on an individual other than an attorney must be made by

(i)-(ii) [Unchanged.]

(iii) sending the ~~paper~~document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the ~~paper~~document.

(c) [Unchanged.]

(2)-(3) [Unchanged.]

(4) E-mail. Unless otherwise limited or provided by this court rule or MCR 1.109(G)(6)(a)(ii), parties to a civil action or interested persons to a proceeding may agree to service by e-mail in the manner provided in and governed by MCR 2.107(C)(4).

(5) Electronic Service. Electronic service of a document shall be made in accordance with MCR 1.109(G)(6)(a) when required.

(C) Petitioner, Service Not Required. For service of notice of hearing on a petition, the petitioner, although otherwise an interested person, is presumed to have waived notice and consented to the petition, unless the petition expressly indicates that the petitioner does not waive notice and does not consent to the granting of the requested prayers without a hearing. Although a petitioner or a fiduciary may in fact be an interested person, the petitioner need not indicate, either by written waiver or proof of service, that the petitioner has received a copy of any ~~paper~~document required by these rules to be served on interested persons.

(D) [Unchanged.]

(E) Service on Beneficiaries of Future Interests. A notice that must be served on unborn or unascertained interested persons not represented by a fiduciary or guardian ad litem is considered served on the unborn or unascertained interested persons if it is served as provided in this subrule.

(1) If an interest is limited to persons in being and the same interest is further limited to the happening of a future event to unascertained or unborn persons, notice and ~~papers~~documents must be served on the persons to whom the interest is first limited.

(2) If an interest is limited to persons whose existence as a class is conditioned on some future event, notice and ~~papers~~documents must be served on the persons in being who would comprise the class if the required event had

taken place immediately before the time when the ~~papers~~documents are served.

- (3) If a case is not covered by subrule (E)(1) or (2), notice and ~~papers~~documents must be served on all known persons whose interests are substantially identical to those of the unascertained or unborn interested persons.

#### Rule 5.107 Other ~~Papers~~Documents Required to be Served

- (A) Other ~~Papers~~Documents to be Served. The person filing a petition, an application, a ~~sworn testimony form~~verified statement identifying heirs, supplemental ~~sworn testimony form~~verified statement identifying heirs, a ~~motion or objection~~, a response ~~or objection~~, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.
- (B) Exceptions.
- (1) Service of the ~~papers~~documents listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent inquiry, is unknown, previous mailings to the last known address have been returned at least two times as undeliverable, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.
- (2) [Unchanged.]

#### Rule 5.108 Time of Service

(A)-(B) [Unchanged.]

(C) Electronic Service. Electronic service made under MCR 1.109(G)(6)(a) must be made at least 7 days before the date set for hearing or an adjourned date.

(C)-(E) [Relettered (D)-(F) but otherwise unchanged.]

#### Rule 5.113 Form, Captioning, Signing, and Verifying Documents

- (A) Forms of Documents Generally. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). Documents must be ~~substantially in the~~filed on a form approved by the State Court Administrative

Office, if a form has been approved for the use. An application, petition, inventory, accounting, proof of claim, or proof of service must be verified in accordance with MCR 1.109(D)(3).

(B) Contents of Petitions.

(1) [Unchanged.]

(2) The petition may incorporate by reference ~~papers~~documents and lists of interested persons previously filed with the court if changes in the papers or lists are set forth in the incorporating petition.

(C) Filing by Registered Mail. ~~Except as otherwise stated in this subrule~~Where e-filing is implemented, any document required by law to be filed in or delivered to the court by registered mail may be filed ~~through the electronic filing system~~in accordance with MCR 1.109(G)(6)(a). Deliveries of wills or codicils must be delivered in accordance with MCL 700.2515 and 700.2516.

(D) Filing Additional ~~Papers~~Documents. The court in its discretion may receive for filing a ~~paper~~document not required to be filed.

Rule 5.117 Appearance by Attorneys

(A) [Unchanged.]

(B) Appearance.

(1) [Unchanged.]

(2) Notice of Appearance. If an appearance is made in a manner not involving the filing of a ~~paper~~document served with the court or if the appearance is made by filing a ~~paper~~document which is not served on the interested persons, the attorney must promptly file a written appearance and serve it on the interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a) and on the fiduciary. ~~The attorney's address and telephone number must be included in the appearance.~~

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other ~~paper~~document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a ~~paper~~document in the action. All



notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the client.

(b) [Unchanged.]

(C)-(D) [Unchanged.]

#### Rule 5.118 Amending or Supplementing Papers

(A) ~~Papers~~Documents Subject to Hearing. A person who has filed a ~~paper~~document that is subject to a hearing may amend or supplement the ~~paper~~document

(1)-(2) [Unchanged.]

(B) ~~Papers~~Documents Not Subject to Hearing. A person who has filed a ~~paper~~document that is not subject to a hearing may amend or supplement the ~~paper~~document if service is made pursuant to these rules.

#### Rule 5.119 Additional Petitions; Objections; Hearing Practices

(A) Right to Hearing, New Matter. An interested person may, within the period allowed by law or these rules, file a petition and obtain a hearing with respect to the petition. The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a).

(B) Objection to Pending Matter. An interested person may object to a pending petition orally at the hearing or by filing and serving a ~~paper~~document which conforms with MCR 5.113. The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.

(C)-(D) [Unchanged.]

#### Rule 5.120 Action by Fiduciary in Contested Matter; Notice to Interested Persons; Failure to Intervene

The fiduciary represents the interested persons in a contested matter. The fiduciary must give notice to all interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a) that a contested matter has been commenced and must keep such interested persons reasonably informed of the

fiduciary's actions concerning the matter. The fiduciary must inform the interested persons that they may file a petition to intervene in the matter and that failure to intervene shall result in their being bound by the actions of the fiduciary. The interested person shall be bound by the actions of the fiduciary after such notice and until the interested person notifies the fiduciary that the interested person has filed with the court a petition to intervene.

#### Rule 5.125 Interested Persons Defined

(A)-(B) [Unchanged.]

(C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1)-(18) [Unchanged.]

(19) The persons interested in a proceeding under the Mental Health Code in a petition for appointment of a guardian of an individual with a developmental disability are the

(a) individual,

(b) individual's attorney,

(c) petitioner,

(d) individual's presumptive heirs,

(e) preparer of the report or another appropriate person who performed an evaluation,

(f) director of any facility where the individual may be residing,

(g) individual's guardian ad litem, if appointed, and

(h) such other persons as the court may determine.

(19)-(24) [Renumbered (20)-(25) but otherwise unchanged.]

(256) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are

(a) those interested in a petition for appointment under subrule (C)(1920), (212), (223), or (245) as the case may be, and

(b) [Unchanged.]

(267) The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other assets are

(a) [Unchanged.]

(b) those persons listed in subrule (C)(245) who will be affected by the instructions or order.

(27)-(28) [Renumbered (28)-(29) but otherwise unchanged.]

~~(29) The persons interested in a petition for emancipation of a minor are~~

~~(a) the minor,~~

~~(b) parents of the minor,~~

~~(c) the affiant on an affidavit supporting emancipation, and~~

~~(d) any guardian or conservator.~~

(30)-(32) [Unchanged.]

(33) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6), (C)(2829), and (C)(32) are:

(a)-(g) [Unchanged.]

(D)-(E) [Unchanged.]

#### Rule 5.126 Demand or Request for Notice

(A) [Unchanged.]

## (B) Procedure.

- (1) **Obligation to Provide Notice or Copies of Documents.** Except in small estates under MCL 700.3982 and MCL 700.3983, the person responsible for serving a ~~paper~~document in a decedent estate, guardianship, or conservatorship in which a demand for notice is filed is responsible for providing copies of any orders and filings pertaining to the proceeding in which the demandant has requested notification. If no proceeding is pending at the time the demand is filed, the court must notify the petitioner or applicant at the time of filing that a demand for notice has been filed and of the responsibility to provide notice to the demandant.
- (2) **Rights and Obligations of Demandant.**
  - (a) [Unchanged.]
  - (b) Unless the demand for notice is limited to a specified class of ~~papers~~documents, the demandant is entitled to receive copies of all orders and filings subsequent to the filing of the demand. The copies must be served on the demandant through the electronic filing system if the demandant is an authorized user under MCR 1.109(G)(6)(a), but if not, mailed to the address specified in the demand. If the address becomes invalid and the demandant does not provide a new address, copies are undeliverable, no further copies of ~~papers~~documents need be provided to the demandant.

## (C) Termination, Withdrawal.

- (1)-(2) [Unchanged.]
- (3) **Withdrawal.** The demandant may withdraw the demand at any time by communicating the withdrawal in writing to the fiduciary and to the court. If withdrawn, the demandant shall not continue to be served with documents in the case.

## Rule 5.132 Proof of Wills

- (A) [Unchanged.]
- (B) **Use of Copy of Will.** When proof of a will is required and a deposition is to be taken, a copy of the original will or other document ~~made by photographic or~~

~~similar process~~ reproduced in accordance with the Records Reproduction Act, MCL 24.401 et seq. may be used at the deposition.

#### Rule 5.162 Form and Signing of Judgments and Orders

- (A) Form of Judgments and Orders. A proposed judgment or order must be prepared in accordance with MCR 2.602(A) and MCR 1.109(D)(2).~~include the name, address, and telephone number of the attorney or party who prepared it. All judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.~~
- (B) [Unchanged.]

#### Rule 5.202 Letters of Authority

- (A) Issuance. Letters of authority shall be issued after the appointment and qualification of the fiduciary. If bond is ordered, the letters shall be issued after proof of bond has been filed with the court, unless otherwise ordered. Unless ordered by the court, letters of authority will not have an expiration date.
- (B)-(C) [Unchanged.]

#### Rule 5.203 Follow-Up Procedures

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

- (A) Notice of Deficiency. The court must notify the fiduciary, the attorney for the fiduciary, if any, and each of the sureties for the fiduciary of the nature of the deficiency, together with a notice to correct the deficiency within 28 days, or, in the alternative, to appear before the court or an officer designated by it at a time specified within 28 days for a conference concerning the deficiency. Service of the notice of deficiency is complete on mailing to the last known address of the fiduciary or when served under MCR 1.109(G)(6)(a).
- (B) Conference, Memorandum. If a conference is held, the court must prepare a written memorandum setting forth the date of the conference, the persons present, and any steps required to be taken to correct the deficiency. The steps must be taken within the time set by the court but not to exceed 28 days from the date of the conference. A copy of the memorandum must be given to those present at the conference ~~and.~~ If the fiduciary is not present at the conference, a copy of the

memorandum must be mailed to the last known address of the fiduciary at the last known address served on the fiduciary under MCR 1.109(G)(6)(a).

(C)-(E) [Unchanged.]

#### Rule 5.205 Address of Fiduciary

A fiduciary must keep the court and the interested persons informed in writing within 7 days of any change in the fiduciary's address even if the fiduciary is an authorized user of the electronic filing system. Any notice ~~sent to~~served on the fiduciary by the court ~~by ordinary mail~~ to the last address on file or under MCR 1.109(G)(6)(a) shall be notice to the fiduciary.

#### Rule 5.302 Commencement of Decedent Estates

- (A) **Methods of Commencement.** A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding. When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death. The court is prohibited from ~~Requiring~~ additional documentation, such as information about the proposed or appointed personal representative, ~~is prohibited.~~
- (B) ~~Sworn Testimony~~Verified Statement Identifying Heirs Form. At least one ~~sworn testimony~~verified statement identifying heirs form ~~sufficient to establish the identity of heirs~~ and devisees must be submitted with the application or petition that commences proceedings. ~~A sworn testimony form must be executed before a person authorized to administer oaths.~~

(C)-(D) [Unchanged.]

#### Rule 5.304 Notice of Appointment

- (A) **Notice of Appointment.** The personal representative must, not later than 14 days after appointment, serve notice of appointment by personal service or by first-class mail as provided in MCL 700.3705 and the agreement and notice relating to attorney fees required by MCR 5.313(D). No notice of appointment need be served if the person serving as personal representative is the only person to whom notice must be given.
- (B) [Unchanged.]

- (C) Prior Publication. After an interested person has once been served by publication, notice of appointment is only required if that person's address is known or becomes known during the proceedings or the person registers as an authorized user of the electronic filing system under MCR 1.109(G)(6)(a).

#### Rule 5.307 Requirements Applicable to All Decedent Estates

- (A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must ~~submit to file with~~ file with the court the information necessary for ~~computation of~~ the probate inventory fee. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.
- (B) Notice of Continued Administration. If unable to complete estate administration within one year of the original personal representative's appointment, the personal representative must file with the court and serve on all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of administration. The notice must be ~~given~~ served within 28 days of the first anniversary of appointment and all subsequent anniversaries during which the administration remains uncompleted.
- (C) Notice to Personal Representative. At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

“Inventory Information: Within 91 days of the date of the letters of authority, you must ~~submit to file the inventory with~~ file the inventory with the court the information necessary for computation of the probate inventory fee. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the personal representative.

“Change of Address: You must keep the court and all interested persons informed in writing within 7 days of any change in your address that you have provided for service.”

“Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative’s appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all subsequent anniversaries during which the administration remains uncompleted.”

“Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing ~~papers~~documents with the court. Failure to do so may result in personal assessment of costs.”

- (D) [Unchanged.]
- (E) Requiring or Filing of Additional ~~Papers~~Documents. Except in formal proceedings and supervised administration, the court may not require the filing of any ~~papers~~documents other than those required to be filed by statute or court rule. However, additional ~~papers~~documents may be filed under MCR 5.113(D).

#### Rule 5.308 Formal Proceedings

- (A) [Unchanged.]
- (B) Determination of Heirs.
  - (1) [Unchanged.]
  - (2) Determination Without Estate Administration.
    - (a) Petition and ~~Testimony~~Verified Statement Form. Any person may initiate a formal proceeding to determine intestacy and heirs without appointment of a personal representative by filing a petition and a ~~sworn testimony~~verified statement form, ~~executed before a person authorized to administer oaths~~, sufficient to establish the domicile of the decedent at the time of death and the identity of the interested persons.
    - (b)-(d) [Unchanged.]

#### Rule 5.309 Informal Proceedings

- (A)-(B) [Unchanged.]



## (C) Notice of Intent to Seek Informal Appointment as Personal Representative.

- (1) A person who desires to be appointed personal representative in informal proceedings must ~~give~~serve notice of intent to seek appointment and a copy of the application ~~to~~on each person having a prior or equal right to appointment who does not renounce this right in writing before the appointment is made.

(2)-(3) [Unchanged.]

## (D) [Unchanged.]

## Rule 5.310 Supervised Administration

## (A)-(B) [Unchanged.]

(C) Filing ~~Papers~~Documents With the Court. The personal representative must file the following additional ~~papers~~documents with the court and serve copies on the interested persons:

- (1) Inventory. The personal representative must file an inventory as prescribed by MCR 5.307(A).

(a) ~~Administration Commenced Supervised. If supervised administration is ordered at the commencement of the estate administration, the personal representative must file the inventory within 91 days of the date of the letters of authority.~~

(b) ~~Administration Commenced Without Supervision. If supervised administration is ordered after a personal representative has been appointed, the court must specify in the order a time for that personal representative to file the inventory.~~

(2)-(6) [Unchanged.]

- (7) Such other ~~papers~~documents as are ordered by the court.

## (D) [Unchanged.]

## (E) Notice to Personal Representative. When supervised administration is ordered, the court must serve a written notice of duties on the personal representative. The notice must be substantially as follows:

“Inventories: You are required to file an inventory of the assets of the estate within 91 days of the date of your letters of authority or as ordered by the court. The inventory must list in reasonable detail all the property owned by the decedent at the time of death, indicating, for each listed item, the fair market value at the time of decedent’s death and the type and amount of any encumbrance. If the value of any item has been obtained through an appraiser, the inventory should include the appraiser’s name and address with the item or items appraised by that appraiser.

“Accountings: You are required to file annually, or more often if the court directs, a complete itemized accounting of your administration of the estate, showing in detail all the receipts and disbursements and the property remaining in your hands together with the form of the property. When the estate is ready for closing, you are required to file a final accounting and an itemized and complete list of all properties remaining. Subsequent annual and final accountings must be filed within 56 days after the close of the accounting period.

“Change of Address: You are required to keep the court and interested persons informed in writing within 7 days of any change in your address that you have provided for service.

“Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative’s appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all subsequent anniversaries during which the administration remains uncompleted.

“Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing ~~papers~~documents with the court. Failure to do so may result in personal assessment of costs.”

(F)-(H) [Unchanged.]

#### Rule 5.311 Closing Estate

(A) [Unchanged.]

(B) Formal Proceedings.

(1)-(2) [Unchanged.]

(3) Discharge. A personal representative may petition for discharge from liability with notice to the interested persons. A personal representative who files such a petition with the court must also file the ~~papers~~documents described in MCR 5.310(C) and (D), as applicable, proofs of service of those ~~papers~~documents that are required to be served on interested persons, and such other ~~papers~~documents as the court may require. The court may order the personal representative discharged if the court is satisfied that the personal representative has properly administered the estate.

(4) Other Requests for Relief. With respect to other requests for relief, the petitioner must file appropriate ~~papers~~documents to support the request for relief.

(5) [Unchanged.]

(C) [Unchanged.]

#### Rule 5.313 Compensation of Attorneys

(A)-(C) [Unchanged.]

(D) Notice to Interested Persons. Within 14 days after the appointment of a personal representative or the retention of an attorney by a personal representative, whichever is later, the personal representative must ~~mail to~~serve on the interested persons whose interests will be affected by the payment of attorney fees, a notice ~~in the~~on a form ~~substantially~~-approved by the State Court Administrator and a copy of the written fee agreement. The notice must state:

(1)-(4) [Unchanged.]

(E)-(G) [Unchanged.]

#### Rule 5.402 Common Provisions

(A)-(B) [Unchanged.]

(C) Responsibility for Giving Notice; Manner of Service. The petitioner is responsible for giving notice of hearing. Regardless of statutory provisions, an interested person may be served the notice by mail, ~~by~~ personal service, or when necessary, ~~by~~ publication. ~~when necessary; h~~However, if the person who is the subject of the

petition is 14 years of age or older, notice of the initial hearing must be served on the person personally unless another method of service is specifically permitted in the circumstances.

- (D) Letters of Authority. After entering an order appointing a fiduciary, the court must issue letters of authority after an acceptance of appointment is filed, and if ordered, the filing of the fiduciary's bond. The letters of authority shall be issued~~On the filing of the acceptance of appointment or bond required by the order appointing a fiduciary, the court shall issue letters of authority~~ on a form approved by the state court administrator. Any restriction or limitation of the powers of a guardian or conservator must be set forth in the letters of authority.
- (E) Indian Child; Definitions, Jurisdiction, Notice, Transfer, Intervention.

(1)-(4) [Unchanged.]

- (5) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall do all of the following:

(a)-(b) [Unchanged.]

- (c) provide notice of the guardianship and the hearing scheduled in subrule (5)(a) and the potential applicability of the Indian Child Welfare Act and the Michigan Indian Family Preservation Act on a form approved by the State Court Administrative Office to the persons prescribed in MCR 5.125(A)(8), (C)(19), and (C)(25) in accordance with MCR 5.109(1). A copy of the notice shall be ~~mailed to~~served on the guardian ~~by first class mail~~.

#### Rule 5.404 Guardianship of Minor

- (A) Petition for Guardianship of Minor.

(1) [Unchanged.]

- (2) Investigation. Upon the filing of a petition, the court may appoint a guardian ad litem to represent the interests of a minor and may order the Department of Health and Human Services or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation in accordance with MCL 700.5204(1). If the petition involves an Indian child, the report shall contain the information required in MCL 712B.25(1). The report shall be filed with the court and served no later than 7 days before the hearing on the petition. If the petition

for guardianship states that it is unknown whether the minor is an Indian child, the investigation shall include an inquiry into Indian tribal membership.

(3) [Unchanged.]

(4) Social History. ~~If the court requires it~~The petitioner ~~to~~must file a social history before a hearing is held on a petition for guardianship of a minor, ~~it~~ and shall do so on a form approved by the State Court Administrative Office. The social history for minor guardianship is confidential, and it is not to be released, except on order of the court, to the parties or the attorneys for the parties.

(5) [Unchanged.]

(B)-(H) [Unchanged.]

#### Rule 5.405 Proceedings on Guardianship of Incapacitated Individual

(A) Examination by Physician or Mental Health Professional.

(1) Admission of Report. The court may receive into evidence without testimony a written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court five days before the hearing and that the report is ~~substantially in~~on the form required by the state court administrator. A party offering a report must promptly inform the parties that the report is filed and available. The court may issue on its own initiative, or any party may secure, a subpoena to compel the preparer of the report to testify.

(2)-(3) [Unchanged.]

(B)-(C) [Unchanged.]

#### Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A) Reports. A guardian shall file a written report annually within 56 days after the anniversary of appointment and at other times as the court may order. Reports must be ~~substantially in~~ the form approved by the state court administrator. The guardian must serve the report on the persons listed in MCR 5.125(C)(~~23~~4).

(B) [Unchanged.]

## (C) Accounts.

(1)-(4) [Unchanged.]

(5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement ~~must be presented to the court~~ or a verification of funds on deposit must be filed with the court, either of which must reflect the value of all liquid assets held by a financial institution dated within 30 days after the end of the accounting period, unless waived by the court for good cause.

(6) [Unchanged.]

(D) Service and Notice. A copy of the account must be ~~sent to~~ served on the interested persons as provided by these rules. Notice of hearing to approve the account must be ~~given to~~ served on interested persons as provided in subchapter 5.100 of these rules.

(E)-(F) [Unchanged.]

## Rule 5.501 Trust Proceedings in General

(A)-(C) [Unchanged.]

(D) Appointment of Trustee not Named in Creating Document. An interested person may petition the court for appointment of a trustee when there is a vacancy in a trusteeship. The court may issue an order appointing as trustee the person nominated in the petition or another person. The order must state whether the trustee must file a bond or ~~execute~~ sign and file an acceptance.

(E) Qualification of Trustee. A trustee appointed by an order of the court, nominated as a trustee in a will that has been admitted to probate shall qualify by ~~executing~~ signing and filing an acceptance indicating the nominee's willingness to serve. The trustee must serve the acceptance and order, if any, on the then known qualified trust beneficiaries described in MCL 700.7103(g)(i) and, in the case of a testamentary trustee, on the personal representative of the decedent estate, if one has been appointed. No letters of trusteeship shall be issued by the court. The trustee or the attorney for the trustee may establish the trustee's incumbency by executing an affidavit to that effect, identifying the trustee and the trust and indicating that any required bond has been filed with the court and is in force.

(F) [Unchanged.]

Rule 5.784 Proceedings on a Durable Power of Attorney for Health Care or Mental Health Treatment

(A)-(B) [Unchanged.]

(C) Notice of Hearing, Service, Manner and Time.

- (1) Manner of Service. If the address of an interested party is known or can be learned by diligent inquiry, notice must be by mail or personal service, but service by mail must be supplemented by facsimile, electronic mail, or telephone contact within the period for timely service when the hearing is an expedited hearing or a hearing on the initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions.

(2)-(3) [Unchanged.]

(D)-(E) [Unchanged.]

*Staff comment:* The proposed amendments of Rules 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618 of the Michigan Court Rules are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No.

2002-37. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 27, 2018

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk



## Nonsubstantive Changes

RULE	CURRENT LANGUAGE	PROPOSED LANGUAGE	EXPLANATION
MCR 1.109(G)(5)(b)	Any document submitted on a weekend or court holiday is deemed filed on the next business day.	Any document submitted on a weekend, <u>legal holiday</u> , or <u>day on which the court is closed pursuant to court order</u> <del>court holiday</del> is deemed filed on the next business day.	Clarifies filing for next business day
MCR 2.104(A)(3)	an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.	<del>an affidavit stating</del> <u>written statement</u> of the facts of service, <u>verified under MCR 1.109(D)(3)</u> . The statement <u>shall include</u> <del>ing</del> the manner, time, date, and place of service, and <del>ing</del> the process server's official capacity, if any.	Changes affidavit requirement to "written statement...verified under MCR 1.109(D)(3)"
MCR 2.106(G)(2)	Posting must be proven by an affidavit of the person designated in the order under subrule (E)	Posting must be proven by <del>an affidavit</del> <u>a verified statement</u> of the person designated in the order under subrule (E)	Changes term "affidavit" to "verified statement"
MCR 2.106(G)(3)	Mailing must be proven by affidavit.	Mailing must be proven by <del>affidavit</del> <u>a verified statement</u> .	Changes term "affidavit" to "verified statement"
MCR 2.107(A)(1)	a motion must be served with a copy of every paper later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with papers that relate to that motion.	a motion must be served with a copy of every <del>paper</del> <u>document</u> later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with <del>papers</del> <u>documents</u> that relate to that motion.	Changes term "paper[s]" to "document[s]"
MCR 2.107(A)(2)	Except as provided in MCR 2.603, after a default is entered against a party, further service of papers need not be made on that party unless he or she has filed an appearance or a written demand for service of papers.	Except as provided in MCR 2.603, after a default is entered against a party, further service of <del>papers</del> <u>documents</u> need not be made on that party unless he or she has filed an appearance or a written demand for service of <del>papers</del> <u>documents</u> .	Changes term "papers" to "documents"
MCR 2.107(A)(4)	All papers filed on behalf of a defendant must be served on all other defendants not in default.	All <del>papers</del> <u>documents</u> filed on behalf of a defendant must be served on all other defendants not in default.	Changes term "papers" to "documents"
MCR 2.107(B)(1)(c)	papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;	<del>papers</del> <u>documents</u> must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;	Changes term "papers" to "documents"

## Nonsubstantive Changes

MCR 2.107(B)(1)(e)	service of every paper later filed in the action must continue to be made on the party, and must also be made on the limited scope attorney for the duration of the limited appearance.	service of every <del>paper</del> <u>document</u> later filed in the action must continue to be made on the party, and must also be made on the limited scope attorney for the duration of the limited appearance.	Changes term “paper” to “document”
MCR 2.107(B)(2)	If two or more attorneys represent the same party, service of papers on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a paper.	If two or more attorneys represent the same party, service of <del>papers</del> <u>documents</u> on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a <del>paper</del> <u>document</u> .	Changes term “paper[s]” to “document[s]”
MCR 2.107(B)(3)	If a party prosecutes or defends the action on his or her own behalf, service of papers must be made on the party in the manner provided by subrule (C).	If a party prosecutes or defends the action on his or her own behalf, service of <del>papers</del> <u>documents</u> must be made on the party in the manner provided by subrule (C).	Changes term “papers” to “documents”
MCR 2.107(E)	When service of papers after the original complaint cannot reasonably be made	When service of <del>papers</del> <u>documents</u> after the original complaint cannot reasonably be made	Changes term “papers” to “documents”
MCR 2.107(F)(1)	they need not serve their papers on each other	they need not serve their <del>papers</del> <u>documents</u> on each other	Changes term “papers” to “documents”
MCR 2.117(A)(1)	The party’s address and telephone number must be included in the appearance.	<del>The party’s address and telephone number must be included in the appearance.</del>	Removed requirement for party address and phone number on attorney appearance
MCR 2.117(A)(2)	An appearance entitles a party to receive copies of all pleadings and papers as provided by MCR 2.107(A).	An appearance entitles a party to <del>receive copies of</del> <u>be served with all pleadings and</u> <del>papers</del> <u>documents</u> as provided by MCR 2.107(A).	Changes phrases “receive copies of” to “be served with” and “pleadings and papers” to “documents”
MCR 2.117(B)(2)(a)	If an appearance is made in a manner not involving the filing of a paper with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The attorney's address and telephone number must be included in the appearance.	If an appearance is made in a manner not involving the filing of a <del>paper</del> <u>document</u> with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. <del>The attorney's address and telephone number must be included in the appearance.</del>	Changes term “papers” to “documents”  Removes requirement for attorney address and phone number on appearance
MCR 2.117(B)(2)(b)	the appearance entitles the attorney to service of pleadings and papers as provided by MCR 2.107(A).	the appearance entitles the attorney to <del>service of pleadings and papers</del> <u>be served with all documents</u> as provided by	Changes “pleadings and paper” to “documents”

## Nonsubstantive Changes

		MCR 2.107(A).	
MCR 2.117(B)(3)(a)	A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action.	A pleading, appearance, motion, or other <del>paper</del> <u>document</u> filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a <del>paper</del> <u>document</u> in the action.	Changes term “paper” to “document”
MCR 2.117(D)	Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other papers without signing them... issues concerning the preparation of such a paper.	Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other <del>papers</del> <u>documents</u> without signing them... issues concerning the preparation of such a <del>paper</del> <u>document</u> .	Changes term “paper[s]” to “document[s]”
MCR 2.119(B)(2)	Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to the affidavit unless the papers_or copies:	Sworn or certified copies of all <del>papers</del> <u>documents</u> or parts of <del>papers</del> <u>documents</u> referred to in an affidavit must be attached to the affidavit unless the <del>papers or copies</del> <u>documents</u> :	Changes term “papers” to “documents”
MCR 2.119(C)(1)(a)	at least 9 days before the time set for the hearing, if served by mail, or	at least 9 days before the time set for the hearing, if served by <u>first-class</u> mail, or	Clarifies that mail is “first-class”
MCR 2.119(C)(1)(b)	at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2).	at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2) <u>or MCR 1.109(G)(6)(a)</u> .	Adds subrule reference for service by e-Filing
MCR 2.119(C)(2)(a)	at least 5 days before the hearing, if served by mail, or	at least 5 days before the hearing, if served by <u>first-class</u> mail, or	Clarifies that mail is “first-class”
MCR 2.119(C)(2)(b)	at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1) or (2).	at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1) or (2) <u>or MCR 1.109(G)(6)(a)</u> .	Adds subrule reference
MCR 2.403(K)(1)	Within 14 days after the hearing, the panel will make an evaluation and notify the attorney for each party of its evaluation in writing. If an award is not unanimous, the evaluation must so indicate.	Within 14 days after the hearing, the panel will make an evaluation and <del>notify</del> <u>submit the evaluation to the court. If an evaluation is made immediately following the hearing, the panel will provide a copy to the attorney for each party of its evaluation in writing. If an evaluation is not made immediately following the</u>	Requires service by ADR clerk is a case evaluation is not immediately available

## Nonsubstantive Changes

		<u>hearing, the evaluation must be served by the ADR clerk on each party within 14 days after the hearing.</u> If an award is not unanimous, the evaluation must so indicate.	
MCR 2.503(D)(2)	the adjournment may be vacated if nonpayment is shown by affidavit.	the adjournment may be vacated if nonpayment is shown by <u>affidavit written statement verified under MCR 1.109(D)(3).</u>	Changes term “affidavit” to “written statement verified under MCR 1.109(D)(3)”
MCR 2.506(B)(2)	For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, or lithographed.	For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, <del>or lithographed,</del> <u>or executed under MCR 1.109(E)(4) .</u>	Adds reference to electronic signature
MCR 2.508(B)(1)	A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading.	<u>The demand for jury must be filed as a separate document.</u> <del>A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading.</del>	Requires a jury demand to be filed as a separate document
MCR 2.518(A)	Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by Michigan Supreme Court trial court case file management standards.	Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by Michigan Supreme Court trial court <u>case file records</u> management standards.	Changes phrase “case file management standards” to “records management standards”
MCR 2.602(A)(1)	all judgments and orders must be in writing, signed by the court and dated with the date they are signed.	all judgments and orders must be in writing, signed by the court, and dated with the date they are signed.	Comma added
MCR 2.602(B)(3)	The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.	The party must file with the court clerk the <u>notice and proof of service along with original</u> of the proposed judgment or order <del>and proof of its service on the other parties.</del>	Rephrased for clarification
MCR 2.602(B)(3)(a)	If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision.	If no written objections are filed within 7 days <u>of the date of service of the notice,</u> the <del>clerk shall submit the judgment or order to the court, and the court</del> <u>judge shall then sign it the judgment or order</u> if, in the court's determination, it	Simplifies the process for entry of orders/judgments

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		comports with the court's decision.	
MCR 2.602(C)	Filing. The original of the judgment or order must be placed in the file.	<del>Filing</del> Placement in Case File. The <del>original</del> of the <u>signed</u> judgment or order must be placed in the <u>case</u> file.	Changes term “filing” to “placement in case file” and “original” to “signed”
MCR 2.603(A)(1)	that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.	that fact is <u>filed with the court</u> <del>made to appear by</del> <u>in a request verified in the manner prescribed by MCR 1.109(D)(3) affidavit or</u> otherwise, the clerk must enter the default of that party.	Changes term “affidavit” to “request verified in the manner prescribed by MCR 1.109(D)(3)”
MCR 2.603(A)(3)	Once the default of a party has been entered	<del>Once</del> After the default of a party has been entered	Changes term “once” to “after”
MCR 2.603(B)(2)	On request of the plaintiff supported by an affidavit as to the amount due	On <u>written</u> request of the plaintiff <del>supported by an affidavit</del> <u>verified under MCR 1.109(D)(3)</u> as to the amount due	Changes term “affidavit” to “verified under MCR 1.109(D)(3)”
MCR 2.603(B)(2)(b)	the default was entered because the defendant failed to appear; and	the default was entered because the defendant failed to appear; <del>and</del>	Removes term “and”
MCR 2.603(B)(2)(c)	the defaulted defendant is not an infant or incompetent person and	the defaulted defendant is not an infant or incompetent person; and	Adds semi-colon
MCR 2.603(D)(1)	shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.	shall be granted only if good cause is shown and <del>an affidavit</del> <u>a verified statement</u> of facts showing a meritorious defense is filed.	Changes term “affidavit” to “verified statement”
MCR 2.621(H)(3)	delivery of papers or documents by the appellant, the papers must be delivered to the clerk of the court	delivery of <del>papers or</del> documents by the appellant, the <del>papers</del> documents must be delivered to the clerk of the court	Changes term “papers” to “documents”
MCR 3.101(H)	The garnishee shall mail or deliver to the court, to the plaintiff, and the defendant,	The garnishee shall <del>mail or deliver to</del> <u>file with</u> the court; <u>and deliver</u> to the plaintiff; and <del>the</del> defendant,	Makes rule more explicit by changing phrase “mail or deliver” to “file with the court and deliver to the plaintiff and defendant”
MCR 3.104(A)	A copy of the motion must be served on the plaintiff, by the clerk of the court in district court and by the party who filed the objection in circuit or probate court.	A copy of the motion must be served on the plaintiff, <del>by the clerk of the court in district court</del> and by the party who filed the objection <del>in circuit or probate court.</del>	Shifts burden of service onto parties
MCR 3.104(B)	The court will decide the motion based on the papers filed or notify the parties that a	The court will decide the motion based on the <del>papers</del> <u>documents</u> filed or notify the	Changes term “papers” to “documents”

## Nonsubstantive Changes

	hearing will be required.	parties that a hearing will be required.	
MCR 3.203	Service of Notice and Court Papers in Domestic Relations Cases	Service of Notice and Court <del>Papers</del> <u>Documents</u> in Domestic Relations Cases	Changes term “papers” to “documents”
MCR 3.203(A)(2)	court papers and notice for which the statute or court rule does not specify the manner of service must be served as provided in MCR 2.107	court <del>papers</del> <u>documents</u> and notice for which the statute or court rule does not specify the manner of service must be served as provided in MCR 2.107	Changes term “papers” to “documents”
MCR 3.203(A)(3)(a)	A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney by any of the following methods: (i) e-mail; (ii) text message; (iii) sending an e-mail or text message alert to log into a secure website to view notices and court papers.	A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney <u>in accordance with MCR 2.107(C)(4).</u> <del>by any of the following methods:</del> (i) <del>e-mail;</del> (ii) <del>text message;</del> (iii) <del>sending an e-mail or text message alert to log into a secure website to view notices and court papers.</del>	Eliminates special service provisions in favor of broader service rule requirements
MCR 3.203(D)(2)	notices and court papers are returned to the friend of the court office as undeliverable	notices and court <del>papers</del> <u>documents</u> are returned to the friend of the court office as undeliverable	Changes term “papers” to “documents”
MCR 3.203(E)	Absent statutory direction, court papers initiating an action against nonparties	Absent statutory direction, court <del>papers</del> <u>documents</u> initiating an action against nonparties	Changes term “papers” to “documents”
MCR 3.203(F)	When a court order makes a party's address confidential, the party shall provide an alternative address for service of notice and court papers	When a court order makes a party's address confidential, the party shall provide an alternative address for service of notice and court <del>papers</del> <u>documents</u>	Changes term “papers” to “documents”
MCR 3.203(G)	If a child of the parties or a child born during the marriage ...provide the friend of the court with a copy of all pleadings and other papers filed in the action.	<u>Except where electronic filing is implemented.</u> <del>If</del> a child of the parties or a child born during the marriage ...provide the friend of the court with a copy of all pleadings and other <del>papers</del> <u>documents</u> filed in the action.	Adds phrase “Except where electronic filing is implemented”  Changes term “papers” to “documents”
MCR 3.203(H)	the plaintiff must serve a copy of the summons and complaint on the prosecuting attorney	the plaintiff must serve a copy of the summons and complaint on the prosecuting attorney	Removes requirement for courts to serve prosecuting attorney

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	when required by law. Service must be made at the time of filing by providing the court clerk with an additional copy marked “prosecuting attorney”. The court clerk must send the copy to the prosecuting attorney.	when required by law. <del>Service must be made at the time of filing by providing the court clerk with an additional copy marked “prosecuting attorney”.</del> The court clerk must send the copy to the prosecuting attorney.	
MCR 3.205(B)(2)	the plaintiff or other initiating party must mail written notice of proceedings in the subsequent court to the attention of	the plaintiff or other initiating party must <del>mail written</del> send notice of proceedings in the subsequent court to the attention of	Changes phrase “must mail written” to “must send”  Removes unnecessary phrase “the attention of”
MCR 3.205(B)(3)	The notice must be mailed at least 21 days before the date set for hearing... notice must be given immediately when it becomes known.	The notice must be <del>mailed</del> sent at least 21 days before the date set for hearing... notice must be <del>given</del> sent immediately when it becomes known.	Changes term “mailed” to “sent” and “given” to “sent”
MCR 3.210(B)(2)(a)	Upon presentation of an affidavit by a party asserting facts setting forth proof of service and failure to plead or otherwise defend, the clerk must enter a default of the party.	<del>Upon presentation of an affidavit by a party</del> asserting facts setting forth proof of service and failure to plead or otherwise defend <u>in a written request verified under MCR 1.109(D)(3).</u> On filing of the request, the clerk must enter a default of the party.	Removes the requirement for an affidavit and adds a “written request verified under MCR 1.109(D)(3)”
MCR 3.210(B)(2)(e)	a copy of every paper later filed in the case... notice or other paper must file a proof of service with the court.	a copy of every <del>paper</del> document later filed in the case... notice or other <del>paper</del> document must file a proof of service with the court.	Changes term “paper” to “document”
MCR 3.302(E)(3)(c)	additional records and papers be filed.	additional records and <del>papers</del> documents be filed.	Changes term “papers” to “documents”
MCR 3.607	Proceedings to Restore Lost Records or Papers in Courts of Record	Proceedings to Restore Lost Records or <del>Papers</del> Documents in Courts of Record	Changes term “papers” to “documents”
MCR 3.614(B)	Service of Papers	Service of <del>Papers</del> Documents	Changes term “papers” to “documents”
MCR 3.801	Papers, Execution	<del>Papers</del> Documents, Execution	Changes term “papers” to “documents”
MCR 3.802(A)	Service of Papers.	Service of <del>Papers</del> Documents.	Changes term “papers” to “documents”
MCR 3.802(A)(2)(a)	MCR 5.105(B)(1)(a) or (b)	<del>MCR 5.105(B)(1)(a) or (b)</del> 2.107(C)(1) or (2), or	Changes rule cross reference
MCR 3.802(A)(2)(b)	[New]	<u>MCR 2.105(A)(2), but service is not made for purpose of this subrule until the individual or the individual’s attorney</u>	Clarifies that service is not made until party receives the notice or petition

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		<u>receives the notice or petition.</u>	
MCR 3.802(A)(4)	Except as provided in subrules (B) and (C), all other papers may be served by mail under MCR 2.107(C)(3).	Except as provided in subrules (B) and (C), all other <del>papers</del> <u>documents</u> may be served by mail under MCR 2.107(C)(3), <u>e-mail under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a).</u>	Changes term “papers” to “documents”  Adds electronic service and email as acceptance methods of service
MCR 3.802(B)(1)	the petitioner must file proof by affidavit or by declaration under MCR 1.109(D)(3), of the attempt to identify or locate the father.	the petitioner must file proof <del>by affidavit or by declaration under MCR 1.109(D)(3), of the attempt</del> <u>of the efforts made to identify or locate the father in a statement verified under MCR 1.109(D)(3).</u>	Replaces the affidavit requirement for “a statement verified under MCR 1.109(D)(3)”
MCR 3.802(C)	the petitioner must file proof, by affidavit or by declaration under MCR 1.109(D)(3), of the attempt to locate the noncustodial parent. If the court finds, on reviewing the affidavit or declaration, that service cannot be made because the whereabouts of the person has not been determined after reasonable efforts	the petitioner must file proof, <del>by affidavit or by declaration under MCR 1.109(D)(3), of the attempt</del> <u>of the efforts made to locate the noncustodial parent in a statement verified under MCR 1.109(D)(3).</u> If the court finds, on reviewing the <del>statement affidavit or declaration,</del> that service cannot be made because the whereabouts of the person has not been determined after reasonable efforts	Replaces the affidavit requirement for “a statement verified under MCR 1.109(D)(3)”  Changes phrase “affidavit or declaration” to “statement”
MCR 3.805(A)	Time for Personal Service. Personal service of notice of hearing on a petition for disposition of a child pursuant to MCL 710.23e(1) must be served at least	Time for <del>Personal</del> <u>Service</u> . <del>Personal s</del> Service of notice of hearing on a petition for disposition of a child <del>pursuant to</del> <u>under</u> MCL 710.23e(1) must be served at least;	Removes term “personal” before “service”  Changes term “pursuant” to “under”
MCR 3.805(A)(1)	3 days before the date set for hearing	3 days before the date set for hearing <del>for personal service under MCR 2.107(C)(1) or (2),</del> <u>e-mail service under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a); or</u>	Specifies cross references for different types of service
MCR 3.805(A)(2)	[New]	<u>7 days before the date set for hearing when served by first-class mail under MCR 2.107(C)(3).</u>	Reorganizes rule by shifting this paragraph into subsection (A)
MCR 3.805(B)	Time for Service by Mail. Service by mail must be made	<del>Time for Service by Mail. Service by mail must be made</del>	Relocates 7-day requirement to subsection



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	at least 7 days before the date set for hearing.	<del>at least 7 days before the date set for hearing.</del>	(A)(2)
MCR 3.805(C)	is unknown, service on that interested party will be sufficient if personal service or service by mail is attempted at the last known address of the interested party.	is unknown, service on that interested party will be sufficient if <del>personal service or service by mail</del> is attempted at the last known address of the interested party.	Removes term “personal service” and “by mail”
MCR 3.806(A)	petitioner must give all interested parties notice of its filing in accordance with MCR 5.105	petitioner must give all interested parties notice of its filing in accordance with MCR <del>5.105</del> <u>3.802</u>	Corrects rule cross reference
MCR 4.201(C)(2)(d)	The jury trial fee must be paid when the demand is made, unless payment of fees is waived or suspended under MCR 2.002.	The jury trial fee must be paid when the demand is made, unless payment of fees is waived <del>or suspended</del> under MCR 2.002.	Removes term “or suspended”
MCR 4.201(D)	A copy of the summons and complaint and all attachments must be served on the defendant by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served in one of the following ways:	A copy of the summons and complaint and all attachments must be served on the defendant <del>by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served in one of the following ways:</del>	Shifts burden of service onto parties
MCR 4.201(D)(2)	By delivering the papers at the premises to a member of the defendant's household who is	By delivering the <del>papers</del> <u>documents</u> at the premises to a member of the defendant's household who is	Changes term “papers” to “documents”
MCR 4.201(D)(2)(c)	asked to deliver the papers to the defendant; or	asked to deliver the <del>papers</del> <u>documents</u> to the defendant; or	Changes term “papers” to “documents”
MCR 4.201(D)(3)	by securely attaching the papers to the main entrance of the tenant's dwelling unit. A return of service made under subrule (D)(3) must list the attempts at personal service. Service under subrule (D)(3) is effective ... under subrule (D)(3) is entitled to the regular personal service fee.	by securely attaching the <del>papers</del> <u>documents</u> to the main entrance of the tenant's dwelling unit. A return of service made under <del>this</del> subrule <del>(D)(3)</del> must list the attempts at personal service. Service under <del>this</del> subrule <del>(D)(3)</del> is effective ... under <del>this</del> subrule <del>(D)(3)</del> is entitled to the regular personal service fee.	Changes term “papers” to “documents”  Adds term “this subrule” instead of “subrule (D)(3)”
MCR 4.201(F)(4)(a)	The default judgment must be mailed to the defendant by the court clerk and must inform the	The <u>plaintiff must mail the</u> default judgment <del>must be mailed</del> to the defendant <u>and file</u>	Shifts burden of service onto parties

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	defendant that (if applicable)	<u>a proof of service with the court</u> , <del>by the court clerk and</del> The default judgment must inform the defendant that (if applicable)	
MCR 4.202(H)(2)(a)	The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)	The <u>plaintiff must mail the default judgment</u> <del>must be mailed</del> to the defendant <u>and file a proof of service with the court</u> , <del>by the court clerk and</del> The default judgment must inform the defendant that (if applicable)	Shifts burden of service onto parties
MCR 4.303(C)	The notice may be served as provided in MCR 2.105.	The <u>further</u> notice may be served as provided in MCR 2.105.	Adds term “further” before “notice”
MCR 4.306(B)(2)	A copy of the order must be mailed to each party by the clerk.	<del>A copy of the order must be mailed to each party by the clerk.</del> The party demanding removal must promptly <u>serve the order on the opposing party and file proof of service with the court.</u>	Shifts burden of service onto parties
MCR 5.001(A)	Procedure in probate court is governed by the rules applicable to other civil proceedings, except as modified by the rules in this chapter.	Procedure in probate court is governed by the <u>general rules set forth in chapter one and by the rules applicable to other civil proceedings set forth in chapter two</u> , except as modified by the rules in this chapter.	Clarifies the rules the probate court is governed by
MCR 5.104(A)(1)	a proof of service must be filed promptly and at the latest before a hearing to which the paper relates or at the time the paper is required to be filed with the court if the paper does not relate to a hearing. The proof of service must include a description of the papers served	a proof of service must be filed promptly and <del>at the latest</del> before a hearing to which the <del>paper</del> <u>document</u> relates. <u>If the document does not involve a hearing, a proof of service must be filed with the document or at the time the paper is required to be filed with the court if the paper does not relate to a hearing.</u> The proof of service must include a description of the <del>papers</del> <u>documents</u> served	Requires a proof of service to be filed with documents when a hearing is not required  Changes term “papers” to “documents”
MCR 5.104(A)(2)	proof of service of a paper required or permitted to be served may be by	proof of service of a <del>paper</del> <u>document</u> required or permitted to be served may be by	Changes term “paper” to “document”
MCR 5.104(A)(2)(a)	a copy of the notice of hearing, if any;	<u>including it at the end of a copy of the notice of hearing or other documents being filed with the court, or, if any;</u>	Clarifies that the proof of service can be at the end of the notice of hearing or other documents

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MCR 5.104(A)(2)(b)	copies of other paper served with the notice of hearing, with a description of the paper in the proof of service;	<u>a written statement by the individual who served the notice of hearing or other documents, verified under MCR 1.109(D)(3).</u> <del>copies of other paper served with the notice of hearing, with a description of the paper in the proof of service;</del>	Clarifies that a written statement by the person who served must be verified under MCR 1.109(D)(3)
MCR 5.104(A)(2)(c)	authentication under MCR 1.109(D)(3) of the person making service.	<del>authentication under MCR 1.109(D)(3) of the person making service.</del>	Removes subsection
MCR 5.104(B)(2)(b)	must contain a declaration that the person signing has received a copy	must contain a <del>declaration</del> <u>statement</u> that the person signing has received a copy	Changes term “declaration” to “statement”
MCR 5.104(C)	an uncontested petition to determine heirs may only be entered on the basis of sworn testimony or a sworn testimony form.	an uncontested petition to determine heirs may only be entered on the basis of <del>sworn</del> <u>sworn testimony verified statement identifying heirs</u> form.	Changes requirement to provide “sworn testimony” to “verified statement identifying heirs”
MCR 5.105(A)(2)	Foreign consul and the Attorney General may be served by mail.	Foreign consul and the Attorney General may be served by mail <u>or by electronic service in accordance with MCR 1.109(G)(6)(a).</u>	Clarifies electronic service is already allowed
MCR 5.105(A)(2)(a)	to the current address of an interested person by registered, certified, or first-class mail.	to the current address of an interested person by registered, certified, or first-class mail <del>.,</del> <u>or</u>	Continues sentence with “or”
MCR 5.105(A)(2)(b)	[New]	<u>by electronic service in accordance with MCR 1.109(G)(6)(a).</u>	Clarifies that parties may serve electronically
MCR 5.105(A)(3)	An interested person whose address or whereabouts is not known may be served by publication, if an affidavit or a declaration, verification under MCR 1.109(D)(3) is filed with the court, showing that the address or whereabouts of the interested person could not be ascertained on diligent inquiry.	An interested person whose address or whereabouts is not known may be served by publication, if <del>an affidavit or a declaration of intent to give notice by publication,</del> <u>verified verification</u> under MCR 1.109(D)(3) is filed with the court <del>.,</del> <u>The declaration must set forth facts asserting</u> <del>showing</del> that the address or whereabouts of the interested person could not be ascertained on diligent inquiry.	Replaces the affidavit requirement for a declaration “verified under MCR 1.109(D)(3)”  Changes term “showing” to “asserting”
MCR 5.105(B)(1)(a)	Personal service of a paper on an attorney must be made by	Personal service of a <del>paper</del> <u>document</u> on an attorney must be made by	Changes term “paper” to “document”

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MCR 5.105(B)(1)(a)(iv)	sending the paper by registered mail or certified mail... receives the paper.	sending the <del>paper</del> <u>document</u> by registered mail or certified mail... receives the <del>paper</del> <u>document</u> .	Changes term “paper” to “document”
MCR 5.105(B)(1)(b)	Personal service of a paper on an individual other than an attorney must be made by	Personal service of a <del>paper</del> <u>document</u> on an individual other than an attorney must be made by	Changes term “paper” to “document”
MCR 5.105(B)(1)(b)(iii)	sending the paper by registered mail ... until the individual receives the paper.	sending the <del>paper</del> <u>document</u> by registered mail ... until the individual receives the <del>paper</del> <u>document</u> .	Changes term “paper” to “document”
MCR 5.105(B)(4)	Unless otherwise limited or provided by this court rule,	Unless otherwise limited or provided by this court rule <u>or MCR 1.109(G)(6)(a)(ii)</u> ,	Clarifies email service
MCR 5.105(B)(5)	[New]	<u>Electronic Service. Electronic service of a document shall be made in accordance with MCR 1.109(G)(6)(a) when required.</u>	Adds cross reference for electronic service
MCR 5.105(C)	the petitioner has received a copy of any paper required by these rules to be served on interested persons.	the petitioner has received a copy of any <del>paper</del> <u>document</u> required by these rules to be served on interested persons.	Changes term “paper” to “document”
MCR 5.105(E)(1)	notice and papers must be served on the persons to whom the interest is first limited.	notice and <del>papers</del> <u>documents</u> must be served on the persons to whom the interest is first limited.	Changes term “papers” to “documents”
MCR 5.105(E)(2)	notice and papers must be served on the persons ... before the time when the papers are served.	notice and <del>papers</del> <u>documents</u> must be served on the persons ... before the time when the <del>papers</del> <u>documents</u> are served.	Changes term “papers” to “documents”
MCR 5.105(E)(3)	notice and papers must be served on all known persons	notice and <del>papers</del> <u>documents</u> must be served on all known persons	Changes term “papers” to “documents”
MCR 5.107	Other Papers Required to be Served	Other <del>Papers</del> <u>Documents</u> Required to be Served	Changes term “papers” to “documents”
MCR 5.107(A)	Other Papers to be Served. The person filing a petition, an application, a sworn testimony form, supplemental sworn testimony form, a motion, a	Other <del>Papers</del> <u>Documents</u> to be Served. The person filing a petition, an application, a <del>sworn testimony</del> <u>verified statement identifying heirs form</u> , supplemental- <del>sworn testimony</del> <u>verified statement identifying heirs-form</u> , a <del>motion</del> <u>or objection</u> , a	Changes term “papers” to “documents”  Changes phrase “sworn testimony” to “verified statement identifying heirs”  Adds phrase “or objection”
MCR 5.107(B)(1)	Service of the papers listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent	Service of the <del>papers</del> <u>documents</u> listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on	Changes term “papers” to “documents”  Clarifies an exception to service on an interested

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	inquiry, is unknown, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.	diligent inquiry, is unknown, <u>previous mailings to the last known address have been returned at least two times as undeliverable</u> , or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.	person with two undeliverable mailings
MCR 5.108(C)	[New]	<u>Electronic Service. Electronic service made under MCR 1.109(G)(6)(a) must be made at least 7 days before the date set for hearing or an adjourned date.</u>	Adds electronic service requirement
MCR 5.113(A)	form approved by the State Court Administrative Office,	form approved by the State Court Administrative Office,	Comma removed
MCR 5.113(B)(2)	The petition may incorporate by reference papers	The petition may incorporate by reference <del>papers</del> <u>documents</u>	Changes term “papers” to “documents”
MCR 5.113(C)	Where e-filing is implemented, any document required by law to be filed in or delivered to the court by registered mail may be filed through the electronic filing system.	<u>Except as otherwise stated in this subrule</u> <del>Where e-filing is implemented</del> , any document required by law to be filed in or delivered to the court by registered mail may be filed <del>through the electronic filing system</del> <u>in accordance with MCR 1.109(G)(6)(a). Deliveries of wills or codicils must be delivered in accordance with MCL 700.2515 and 700.2516.</u>	Changes “electronic filing system” to “in accordance with MCR 1.109(G)(6)(a)”  Adds reference to statute for delivery of wills or codicils
MCR 5.113(D)	Filing Additional papers. The court in its discretion may receive for filing a paper not required to be filed.	Filing Additional <del>papers</del> <u>documents</u> . The court in its discretion may receive for filing a <del>paper</del> <u>document</u> not required to be filed.	Changes term “paper(s)” to “document(s)”
MCR 5.117(B)(2)	not involving the filing of a paper served with the court or if the appearance is made by filing a paper which is not served on the interested persons... whose addresses are known and on the fiduciary. The attorney's address and telephone number must be included in the appearance.	not involving the filing of a <del>paper</del> <u>document</u> served with the court or if the appearance is made by filing a <del>paper</del> <u>document</u> which is not served on the interested persons... whose addresses are known <u>or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a)</u> and on the fiduciary. <del>The attorney's</del>	Changes term “paper” to “document”  Removes requirement to provide attorney address and telephone number in appearance as it's already in caption

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		<del>address and telephone number must be included in the appearance.</del>	
MCR 5.117(B)(3)(a)	A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action.	A pleading, appearance, motion, or other <u>paperdocument</u> filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a <u>paperdocument</u> in the action.	Changes term “paper” to “document”
MCR 5.118(A)	Papers Subject to Hearing. A person who has filed a paper that is subject to a hearing may amend or supplement the paper	<del>Papers</del> <u>Documents</u> Subject to Hearing. A person who has filed a <u>paperdocument</u> that is subject to a hearing may amend or supplement the <u>paperdocument</u>	Changes term “paper(s)” to “document(s)”
MCR 5.118(B)	Papers Not Subject to Hearing. A person who has filed a paper that is not subject to a hearing may amend or supplement the paper if service is made pursuant to these rules.	<del>Papers</del> <u>Documents</u> Not Subject to Hearing. A person who has filed a <u>paperdocument</u> that is not subject to a hearing may amend or supplement the <u>paperdocument</u> if service is made pursuant to these rules.	Changes term “paper(s)” to “document(s)”
MCR 5.119(A)	The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known.	The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known <u>or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a).</u>	Clarifies service for authorized users of the electronic filing system
MCR 5.119(B)	by filing and serving a paper which conforms with MCR 5.113.	by filing and serving a <u>paperdocument</u> which conforms with MCR 5.113.	Changes term “paper” to “document”
MCR 5.120	The fiduciary must give notice to all interested persons whose addresses are known	The fiduciary must give notice to all interested persons whose addresses are known <u>or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a)</u>	Clarifies service for authorized users of the electronic filing system
MCR 5.125(C)(25)(a)	those interested in a petition for appointment under subrule (C)(19), (21), (22), or (24) as the case may be, and	those interested in a petition for appointment under subrule (C)( <del>19</del> <u>20</u> ), ( <del>21</del> <u>22</u> ), ( <del>22</del> <u>23</u> ), or ( <del>24</del> <u>25</u> ) as the case may be, and	Changes subrule cross references
MCR 5.125(C)(26)(b)	those persons listed in subrule (C)(24) who will be affected by the instructions or order.	those persons listed in subrule (C)( <del>24</del> <u>25</u> ) who will be affected by the instructions or order.	Changes subrule cross reference
MCR 5.125(C)(33)	the persons interested in a proceeding affecting a trust	the persons interested in a proceeding affecting a trust	Changes subrule cross reference

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	other than those already covered by subrules (C)(6), (C)(28), and (C)(32) are:	other than those already covered by subrules (C)(6), (C)( <del>28</del> 29), and (C)(32) are:	
MCR 5.126(B)(1)	the person responsible for serving a paper in a decedent estate	the person responsible for serving a <del>paper</del> <u>document</u> in a decedent estate	Changes term “paper” to “document”
MCR 5.126(B)(2)(b)	specified class of papers, the demandant ... copies must be mailed to the address specified in the demand. If the address becomes invalid and the demandant does not provide a new address, no further copies of papers need be provided to the demandant.	specified class of <del>papers</del> <u>documents</u> , the demandant ... copies must be served <u>on the demandant through the electronic filing system if the demandant is an authorized user under MCR 1.109(G)(6)(a), but if not,</u> mailed to the address specified in the demand. If the <del>address becomes invalid and the demandant does not provide a new address</del> <u>copies are undeliverable</u> , no further copies of <del>papers</del> <u>documents</u> need be provided to the demandant.	Changes term “papers” to “documents”  Clarifies service to include authorized users of the electronic filing system  Changes phrase “address becomes invalid and the demandant does not provide a new address” to “copies are undeliverable”
MCR 5.126(C)(3)	The demandant may withdraw the demand at any time by communicating the withdrawal in writing to the fiduciary.	The demandant may withdraw the demand at any time by communicating the withdrawal in writing to the fiduciary <u>and to the court. If withdrawn, the demandant shall not continue to be served with documents in the case.</u>	Adds requirement to file demand withdrawal with the court
MCR 5.132(B)	other document made by photographic or similar process	other document <del>made by photographic or similar process</del> <u>reproduced in accordance with the Records Reproduction Act, MCL 24.401 et seq.</u>	Changes phrase “made by photographic or similar process” to “reproduced in accordance with the Records Reproduction Act, MCL 24.401 et seq”
MCR 5.162(A)	A proposed judgment or order must include the name, address, and telephone number of the attorney or party who prepared it. All judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.	A proposed judgment or order must <u>be prepared in accordance with MCR 2.602(A) and MCR 1.109(D)(2).</u> <del>include the name, address, and telephone number of the attorney or party who prepared it. All judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.</del>	Clarifies reference to rule instead of expanded definition
MCR 5.203(A)	Service is complete on mailing to the last known address of the	Service <u>of the notice of deficiency</u> is complete on	Clarifies service is for “notice of deficiency”

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	fiduciary.	mailing to the last known address of the fiduciary <u>or when served under MCR 1.109(G)(6)(a).</u>	Adds cross reference for electronic service under MCR 1.109(G)(6)(a)
MCR 5.203(B)	A copy of the memorandum must be given to those present at the conference and, if the fiduciary is not present at the conference, mailed to the fiduciary at the last known address.	A copy of the memorandum must be given to those present at the conference, <del>and, if the fiduciary is not present at the conference,</del> <u>a copy of the memorandum must be mailed to the last known address of the fiduciary at the last known address or served on the fiduciary under MCR 1.109(G)(6)(a).</u>	Rephrased for clarification  Adds reference to electronic service under MCR 1.109(G)(6)(a)
MCR 5.205	in the fiduciary's address. Any notice sent to the fiduciary by the court by ordinary mail to the last address on file shall be notice to the fiduciary.	in the fiduciary's address <u>even if the fiduciary is an authorized user of the electronic filing system.</u> Any notice <del>sent</del> <u>served</u> on the fiduciary by the court <del>by ordinary mail</del> <u>to the last address on file or under MCR 1.109(G)(6)(a)</u> shall be notice to the fiduciary.	Clarifies service process  Adds reference to electronic service under MCR 1.109(G)(6)(a)
MCR 5.302(A)	Requiring additional documentation, such as information about the proposed or appointed personal representative, is prohibited.	<u>The court is prohibited from</u> <del>Requiring</del> additional documentation, such as information about the proposed or appointed personal representative, <del>is prohibited.</del>	Rephrased for clarification
MCR 5.302(B)	Sworn Testimony Form. At least one sworn testimony form sufficient to establish the identity of heirs and devisees must be submitted with the application or petition that commences proceedings. A sworn testimony form must be executed before a person authorized to administer oaths.	<del>Sworn Testimony</del> <u>Verified Statement Identifying Heirs</u> Form. At least one <del>sworn testimony</del> <u>verified statement identifying heirs form</u> sufficient to establish the identity of heirs and devisees must be submitted with the application or petition that commences proceedings. <del>A sworn testimony form must be executed before a person authorized to administer oaths.</del>	Changes phrase “sworn testimony” to “verified statement identifying heirs”  Removes requirement to execute sworn testimony before a person authorized to administer oaths
MCR 5.304(A)	The personal representative must, not later than 14 days after appointment, serve notice of appointment as provided in MCL 700.3705	The personal representative must, not later than 14 days after appointment, serve notice of appointment <u>by personal service or by first-class mail</u> as provided in MCL 700.3705	Clarifies forms of service by personal service or first class mail



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MCR 5.304(C)	address is known or becomes known during the proceedings.	address is known or becomes known during the proceedings <u>or the person registers as an authorized user of the electronic filing system under MCR 1.109(G)(6)(a).</u>	Clarifies service for authorized users of the electronic filing system  Adds reference to electronic service under MCR 1.109(G)(6)(a)
MCR 5.307(B)	The notice must be given within 28 days of the first anniversary of appointment	The notice must be <del>given</del> <u>served</u> within 28 days of the first anniversary of appointment	Changes term “given” to “served”
MCR 5.307(C)	interested persons informed in writing within 7 days of any change in your address.”  You must complete the administration of the estate and file appropriate closing papers with the court.	interested persons informed in writing within 7 days of any change in your address <u>that you have provided for service.</u> ”  You must complete the administration of the estate and file appropriate closing <del>papers</del> <u>documents</u> with the court.	Clarifies changes of address requirement  Changes term “papers” to “documents”
MCR 5.307(E)	Requiring or Filing of Additional Papers. Except in formal proceedings and supervised administration, the court may not require the filing of any papers other than those required to be filed by statute or court rule. However, additional papers may be filed under MCR 5.113(D).	Requiring or Filing of Additional <del>Papers</del> <u>Documents</u> . Except in formal proceedings and supervised administration, the court may not require the filing of any <del>papers</del> <u>documents</u> other than those required to be filed by statute or court rule. However, additional <del>papers</del> <u>documents</u> may be filed under MCR 5.113(D).	Changes term “papers” to “documents”
MCR 5.308(B)(2)(a)	Petition and Testimony Form...by filing a petition and a sworn testimony form, executed before a person authorized to administer oaths	Petition and <del>Testimony</del> <u>Verified Statement</u> Form...by filing a petition and a <del>sworn testimony</del> <u>verified statement</u> form; <del>executed before a person authorized to administer oaths</del>	Changes term “testimony” to “verified statement”  Removes requirement that testimony form be “executed before a person authorized to administer oaths”
MCR 5.309(C)(1)	informal proceedings must give notice of intent to seek appointment and a copy of the application to each person	informal proceedings must <del>give</del> <u>serve</u> notice of intent to seek appointment and a copy of the application <del>to on</del> <u>on</u> each person	Changes term “give” to “serve” and “to” to “on”
MCR 5.310(C)	Filing Papers With the Court. The personal representative must file the following additional papers	Filing <del>Papers</del> <u>Documents</u> With the Court. The personal representative must file the following additional <del>papers</del> <u>documents</u>	Changes term “papers” to “documents”

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MCR 5.310(C)(7)	Such other papers as are ordered by the court.	Such other <del>papers</del> <u>documents</u> as are ordered by the court.	Changes term “papers” to “documents”
MCR 5.310(E)	Change of Address: You are required to keep the court and interested persons informed in writing within 7 days of any change in your address.  You must complete the administration of the estate and file appropriate closing papers with the court.	Change of Address: You are required to keep the court and interested persons informed in writing within 7 days of any change in your address <u>that you have provided for service</u> .  You must complete the administration of the estate and file appropriate closing <del>papers</del> <u>documents</u> with the court.	Clarifies that address is service address  Changes term “papers” to “documents”
MCR 5.311(B)(3)	a petition with the court must also file the papers described in MCR 5.310(C) and (D), as applicable, proofs of service of those papers that are required to be served on interested persons, and such other papers	a petition with the court must also file the <del>papers</del> <u>documents</u> described in MCR 5.310(C) and (D), as applicable, proofs of service of those <del>papers</del> <u>documents</u> that are required to be served on interested persons, and such other <del>papers</del> <u>documents</u>	Changes term “papers” to “documents”
MCR 5.311(B)(4)	petitioner must file appropriate papers to support the request for relief.	petitioner must file appropriate <del>papers</del> <u>documents</u> to support the request for relief.	Changes term “papers” to “documents”
MCR 5.313(D)	the personal representative must mail to the interested persons whose interests will be affected by the payment of attorney fees, a notice in the form substantially approved by the State Court Administrator	the personal representative must <del>mail to serve on</del> the interested persons whose interests will be affected by the payment of attorney fees, a notice <del>in the on a</del> form <del>substantially</del> approved by the State Court Administrator	Changes term “mail to” to “serve on” and “in the” to “on a”  Requires use of SCAO approved forms
MCR 5.402(C)	an interested person may be served by mail, by personal service, or by publication. when necessary; however,	an interested person may be served <u>the notice</u> by mail, <del>by</del> personal service, or <u>when necessary, by</u> publication. <del>when necessary; h</del> However,	Clarifies service of the notice
MCR 5.402(E)(5)(c)	A copy of the notice shall be mailed to the guardian by first-class mail.	A copy of the notice shall be <del>mailed to</del> <u>served on</u> the guardian <del>by first class mail</del> .	Changes phrase “mailed to” to “served on”  Removes phrase “by first-class mail”
MCR 5.404(A)(2)	Department of Human Services	Department of <u>Health and</u> Human Services	Corrects name of department
MCR 5.409(A)	The guardian must serve the report on the persons listed in MCR 5.125(C)(23).	The guardian must serve the report on the persons listed in MCR 5.125(C)( <del>23</del> 4).	Changes cross reference
MCR 5.409(D)	A copy of the account must be sent to the interested persons as	A copy of the account must be <del>sent to</del> <u>served on</u> the interested	Changes phrase “sent to” to “served on”

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	provided by these rules. Notice of hearing to approve the account must be given to interested	persons as provided by these rules. Notice of hearing to approve the account must be <del>given to</del> <u>reserved on</u> interested	
MCR 5.501(D)	The order must state whether the trustee must file a bond or execute an acceptance.	The order must state whether the trustee must file a bond or <del>execute</del> <u>sign and file</u> an acceptance.	Changes term “execute” to “sign and file”
MCR 5.501(E)	shall qualify by executing an acceptance indicating the nominee's willingness to serve.	shall qualify by <del>executing</del> <u>signing and filing</u> an acceptance indicating the nominee's willingness to serve.	Changes term “executing” to “signing and filing”
MCR 5.784(C)(1)	but service by mail must be supplemented by facsimile or	but service by mail must be supplemented by facsimile, <u> electronic mail</u> , or	Adds “electronic mail” as a manner of service

**Public Policy Position**  
**ADM 2002-37**  
**e-filing**

**Oppose and Recommend Amendments**

**Explanation**

As the Court continues its efforts to implement a statewide e-filing system, it must ensure that pro se litigants with limited or unreliable access to technology are still able to access the courts. These rules fail to provide adequate protections for these individuals in a number of ways. For this reason, the committee opposes ADM 2002-37 and proposes a number of amendments to improve the rules and ensure that the implementation of e-filing does not impede access to the courts.

**1. The Scope of E-Filing Needs to Protect Pro Se Litigants Without Adequate Access to the Internet.**

MCR 1.109(G) sets forth the scope and applicability of e-filing. While subsection (G)(3)(f) provides separate e-filing requirements for attorneys and pro se filers, the rule fails to explicitly provide protections for pro se filers without reliable and adequate access to technology and the internet. As proposed, subsection (G)(3)(f) states that “[a]ll other filers are required to electronically file documents only in courts that have been granted approval to mandate electronic filing by the State Court Administrative Office under AO 2018-XX.” It is, however, unclear what, if any, protections for pro se litigants SCAO requires for approval of electronic filing systems.

As recommended with previously-proposed e-filing court rule amendments, the committee continues to recommend that any e-filing requirement provide exceptions for individuals (1) with no access to electronic devices; (2) who must travel a certain distance to access a public computer; (3) facing a lack of transportation or other limitations on the ability to travel; (4) facing safety issues; and (5) who are unable to access the internet due to age or disability.

**2. The Scope of Alternative Electronic Service Is Too Broad.**

MCR 2.107(C)(4) provides that parties may agree to alternative electronic service, which may include email, text message or sending an email or text message to log into a secure website. Providing service by text message is problematic, particularly for low-income individuals who may not have continuous access to their phone service or electronic device. Further, it is unclear whether all electronic devices will be able to open the documents sent via text message, and litigants may not be aware of these limitations when initially agreeing to alternative electronic service.

While parties are allowed to withdraw from the agreement, they must provide 28-days’ notice before the withdrawal goes into effect. If litigants lose access to their cell phone or service plan, even if they file notice to withdraw from the alternative electronic service agreement, they will have to go 28-days without receiving court notices for their case. There is simply no reason that there has to be a 28-day

waiting period for a withdrawal from alternative electronic service goes into effect. The withdrawal should happen immediately upon providing notice.

For these reasons, the committee recommends that the option for text messaging be removed from the Alternative Electronic Service options under MCR 2.107(C)(4)(a) and the 28-day waiting period be removed from withdrawing from an Alternative Electronic Service agreement under MCR 2.107(C)(4)(h).

**3. MCR 4.201(D) Should Not Remove Mailing Requirement in Landlord-Tenant Proceedings when Alternative Service Methods of Delivering to Household Member or Posting Is Used.**

Currently, in summary landlord-tenant proceedings, to perfect service of process, a plaintiff must (a) mail the defendant the summons and complaint and (b) serve on the defendant by (1) a method provided in MCR 2.105; (2) delivering the papers at the premises to a member of defendant's household; or (3) after diligent attempts at personal service have been made, securely attaching the papers to the main entrance of the tenant's dwelling unit.

While the mail requirement could be eliminated if the plaintiff serves the summons and complaint as provided in MCR 2.105, the mailing requirement should not be eliminated if the plaintiff serves the defendant by delivering to a household member or posting. The mailing requirement is a safeguard against the reduced quality of alternatives to service allowed under (D)(2)-(3), namely delivering to a household member or posting.

**4. Exceptions to Serving Documents under MCR 5.107 Should Not Be Amended.**

Currently, MCR 5.107 requires petitioners to serve interested parties certain documents; however, under subsection (B), service is not required if the interest person "whose address or whereabouts, on diligent inquiry, is unknown or on an unascertained or unborn person." The proposed amendments to MCR 5.107(B) would provide a third exception – previous mailings to the law known address have been returned at least two times as undeliverable – to the exception for serving an interested party.

While undeliverable mail may be used to help establish that a petitioner has made a diligent inquiry of an interested person's address, the committee does not believe that two attempts at mailing is sufficient, in and of itself, to excuse a petitioner from serving an interested party.

**5. Provisions Unrelated to Electronic Filing**

The committee would also like to express its concern for the breadth of these rule amendments and the number of amendments that appear to have nothing to do with electronic filing.

**Position Vote:**

Voted For position: 17

Voted against position: 0

Abstained from vote: 1

Did not vote: 6



## ACCESS TO JUSTICE POLICY COMMITTEE

**Contact Persons:**

Lorray S.C. Brown [lorrayb@mplp.org](mailto:lorrayb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto:vnewman@waynecounty.com)

**Public Policy Position  
ADM File No. 2002-37**

**SUPPORT**

**Position Vote:**

Voted For position: 7

Voted against position: 0

Abstained from vote: 0

Did not vote: 0

**Contact Person:** William D. Gilbridge, Jr.

**Email:** [wdgilbridge@abbottnicholson.com](mailto:wdgilbridge@abbottnicholson.com)

**Public Policy Position**  
**ADM File No. 2002-37**

**Support with Recommendations**

**Explanation**

The Civil Procedure & Courts Committee continues to support the Michigan Supreme Court's efforts to implement a statewide e-filing system. The committee recommends a number of amendments to clarify the proposed rules.

**MCR 2.107(C)(4): Alternative Electronic Service.**

MCR 2.107(C)(4) references "alerts" to view documents; however, the term alert is not used in the permissible methods for alternative electronic service. To clarify the permissible methods for alternative electronic service, the committee recommends that CR 2.107(C)(4)(a)(iii) be amended as follows (shown in bold):

**Alert, consisting of sending** an email or text message to log into a secure website to view notices and court papers.

This recommendation was unanimously supported by the committee.

Under proposed MCR 2.107(C)(4)(i), if an attempt to serve via alternative electronic service is undeliverable, the filer is required to serve by regular mail under MCR 2.107(C)(3). The committee recommends that the rule be amended to also allow for service by delivery under MCR 2.107(C)(1) and (2) as follows (shown in bold):

**(i) Alternative electronic service is complete upon transmission . . . If alternative electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a copy of the return notice indicating that the electronic transmission was undeliverable.**

This recommendation was unanimously supported by the committee.

**MCR 2.117: Appearances**

The committee opposes the deletions proposed in MCR 2.117(A)(1) and (B)(2)(A), removing the requirement that the Notice of Appearance include the party's or the party's attorney's address and telephone number. While MCR 2.113(C) requires this information be included in the case caption to a pleading, requiring this information to also be included in the Notice of Appearance will make it more likely that parties will provide this basic and necessary information.

This recommendation was supported by the committee 21-1.



**MCR 2.508: Jury Trial of Right**

The committee opposes the proposed changes to MCR 2.508(B)(1) that would require that a demand for jury trial be filed as a separate document. Currently, parties are allowed to include the jury trial demand in the caption of the pleading. Michigan case law has established that as long as a party makes a clear jury demand and pays the requisite fees, the party is entitled to a jury trial.

This recommendation was supported by the committee 21-1.

**MCR 2.603: Default and Default Judgment**

The committee recommends the following amendment to (A)(1) to clarify that verified statements – not facts – are filed with the court:

If a party against whom a judgment for affirmative relief is sought . . . , and that fact is ~~made to appear by affidavit or otherwise~~ **verified in the manner prescribed by MCR 1.109(D)(3) and filed with the court in a request filed with the court in a request verified in the matter prescribed by MCR 1.109D)(3)**, the clerk must enter the default of that party.

This recommendation was unanimously supported by the committee.

**MCR 3.104: Installment Payment Order**

The committee opposes the amendment that would require a judgment debtor – rather than the clerk – in district court to serve the judgment creditor with a copy of the judgment debtor’s motion for an installment payment order.

This change raises a number of issues. First, the judgment debtor is not required to file any proof of service that he or she actually served the judgment creditor. Second, if the judgment creditor – who often are pro se in district court – does not raise a timely objection to the motion, it is automatically entered, even if the judgment creditor never received notice of the motion, creating more paperwork and confusion for the court and the parties. For these reasons, the committee opposes the proposed deleted language in MCR 3.104(A).

In addition, the committee recommends that all references to “plaintiff” be changed to “judgment creditor” and all references to “defendant” be changed to “judgment debtor” in MCR 3.104.

This recommendation was unanimously supported by the committee.

**Position Vote:**

Voted For position: 22<sup>1</sup>  
Voted against position: 0  
Abstained from vote: 0  
Did not vote: 5

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)

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<sup>1</sup> The committee took separate votes on each recommendation, and the committee’s votes are indicated at the end of the discussion for each recommendation.

**Public Policy Position**  
**ADM File No. 2002-37**

**Explanation**

The committee supports the adoption of the rules that apply to criminal proceedings and takes no position on the other proposed amendments.

**Position Vote:**

Voted For position: 11

Voted against position: 1

Abstained from vote: 0

Did not vote: 5

**Contact Persons:**

Sofia V. Nelson

[snelson@sado.org](mailto:snelson@sado.org)

Michael A. Tesner

[mtesner@co.geneseo.mi.us](mailto:mtesner@co.geneseo.mi.us)

**Public Policy Position**  
**ADM File No. 2002-37**

**OPPOSE SPECIFIC REVISIONS**

**Explanation**

The Probate and Estate Planning Section objects to the proposed revisions to MCR 5.107(B)(1) (specifically, the addition of “previous mailings to the last known address have been returned at least two times as undeliverable”); 5.113(A) (specifically, the deletion of “substantially in the” and the addition of “filed on a”), 5.307(A) (specifically, the deletion of “submit to,” the addition of “file with,” and the deletion of “computation of”), and 5.307(C) (specifically, the deletion of “submit to” and the addition of “file the inventory with”).

**Position Vote:**

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote: 5

**Contact Person:** David Skidmore

**Email:** [dskidmore@wnj.com](mailto:dskidmore@wnj.com)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, Public Policy Counsel

Date: November 6, 2018

Re: HB 6110 (Iden)

**Background**

HB 6110 defines “good moral character” as it relates to qualifications for occupational licenses and establishes criteria for when a licensing board may consider a criminal conviction or judgment in a civil action as evidence in determining an applicant’s good moral character. The bill amends MCL 338.41 to 338.47, which are cited in the Revised Judicature Act under MCL 600.934 to define “good moral character” for the legal profession.

***Keller* Considerations**

The Character and Fitness Committee determined that the bill meets *Keller* requirements because it explicitly concerns the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

***Keller* Quick Guide**

<b>THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:</b>	
<b>Regulation of Legal Profession</b>	<b>Improvement in Quality of Legal Services</b>
<p><b>As interpreted by AO 2004-1</b></p> <ul style="list-style-type: none"> <li>✓ Regulation and discipline of attorneys</li> <li>• Ethics</li> <li>✓ Lawyer competency</li> <li>✓ Integrity of the Legal Profession</li> <li>• Regulation of attorney trust accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Improvement in functioning of the courts</li> <li>• Availability of legal services to society</li> </ul>

**Staff Recommendation**

The bill satisfies the requirements of *Keller* and may be considered on its merits.

## House Bill 6110 (2018) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2018-HB-6110>

### Sponsors

Brandt Iden (district 61)  
Beth Griffin, Joseph Bellino, Michele Hoitenga, Jeremy Moss, Lana Theis  
(click name to see bills sponsored by that person)

### Categories

Occupations: individual licensing and regulation; Occupations: other; State agencies (existing): licensing and regulatory affairs; State agencies (existing): boards and commissions;

Occupations; individual licensing and regulation; use of criminal record to determine eligibility for occupational licensing; restrict. Amends title & secs. 1, 2, 3, 4, 5, 6 & 7 of 1974 PA 381 (MCL 338.41 et seq.).

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2017-2018 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/less than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### House Introduced Bill

Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.



#### As Passed by the House

As Passed by the House is the bill, as introduced, that includes any adopted House amendments.



#### As Passed by the Senate

As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.



#### House Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

### Bill Analysis

#### House Fiscal Agency Analysis



##### Summary As Introduced (9/25/2018)

This document analyzes: HB6110, HB6111, HB6112, HB6113



##### Analysis as Reported From Committee (10/2/2018)

This document analyzes: HB6110, HB6111, HB6112, HB6113, HB6381

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
6/6/2018	HJ 57 Pg. 1275	introduced by Representative Brandt Iden
6/6/2018	HJ 57 Pg. 1275	read a first time
6/6/2018	HJ 57 Pg. 1275	referred to Committee on Regulatory Reform
6/7/2018	HJ 58 Pg. 1306	bill electronically reproduced 06/06/2018
10/2/2018	HJ 66 Pg. 2087	reported with recommendation without amendment
10/2/2018	HJ 66 Pg. 2087	referred to second reading
10/2/2018	HJ 66 Pg. 2094	read a second time
10/2/2018	HJ 66 Pg. 2094	placed on third reading
10/3/2018	HJ 67 Pg. 2121	read a third time
10/3/2018	HJ 67 Pg. 2121	passed; given immediate effect Roll Call # 611 Yeas 106 Nays 1
10/3/2018	HJ 67 Pg. 2121	transmitted

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# HOUSE BILL No. 6110

June 6, 2018, Introduced by Reps. Iden, Griffin, Bellino, Hoitenga, Moss and Theis and referred to the Committee on Regulatory Reform.

A bill to amend 1974 PA 381, entitled

"An act to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to prescribe the use of the term "good moral character" or similar term as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon,"

by amending the title and sections 1, 2, 3, 4, 5, 6, and 7 (MCL 338.41, 338.42, 338.43, 338.44, 338.45, 338.46, and 338.47), section 2 as amended by 2014 PA 361.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

TITLE

An act to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to ~~prescribe the use of~~ **DEFINE** the term "good moral character" ~~or similar term~~ **AND ESTABLISH HOW GOOD**

1 **MORAL CHARACTER IS DETERMINED WHEN USED** as a requirement for an  
 2 occupational or professional license or when used as a requirement  
 3 to establish or operate an organization or facility regulated by  
 4 this state; and to provide administrative and judicial procedures  
 5 to contest licensing board or agency rulings ~~thereon.~~**CONCERNING AN**  
 6 **INDIVIDUAL'S GOOD MORAL CHARACTER.**

7       Sec. 1. (1) The phrase "good moral character", ~~or words of~~  
 8 ~~similar import,~~ when used as a requirement for an occupational or  
 9 professional license or when used as a requirement to establish or  
 10 operate an organization or facility regulated by this state in ~~the~~  
 11 ~~Michigan Compiled Laws~~**A STATUTE OF THIS STATE** or administrative  
 12 rules promulgated under ~~these laws shall be construed to mean~~**A**  
 13 **STATUTE OF THIS STATE, MEANS** the propensity on the part of ~~the~~  
 14 ~~person~~**AN INDIVIDUAL** to serve the public in the licensed area in a  
 15 fair, honest, and open manner.

16       (2) As used in this act: ~~,"principal~~

17       **(A) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE**  
 18 **FOR WHICH THE OFFENDER MAY BE PUNISHED BY IMPRISONMENT FOR MORE**  
 19 **THAN 1 YEAR OR AN OFFENSE EXPRESSLY DESIGNATED BY LAW AS A FELONY.**

20       **(B) "LICENSE" INCLUDES A REGISTRATION.**

21       **(C) "LICENSING BOARD OR AGENCY" MEANS A PRINCIPAL DEPARTMENT,**  
 22 **OR A BOARD OR AGENCY WITHIN A PRINCIPAL DEPARTMENT, THAT ISSUES**  
 23 **OCCUPATIONAL OR PROFESSIONAL LICENSES.**

24       **(D) "PRINCIPAL department"** means ~~the~~**A department which**~~THAT~~  
 25 has jurisdiction over ~~the~~**A LICENSING** board or agency.~~issuing the~~  
 26 ~~license.~~

27       Sec. 2. ~~(1) A judgment of guilt in a criminal prosecution or a~~



1 ~~judgment in a civil action shall not be used, in and of itself, by~~  
2 ~~a licensing board or agency as proof of an individual's lack of~~  
3 ~~good moral character. However, the licensing board or agency may~~  
4 ~~use that judgment as evidence in the determination of his or her~~  
5 ~~good moral character.~~

6 (1) A LICENSING BOARD OR AGENCY SHALL NOT CONSIDER A JUDGMENT  
7 IN A CIVIL ACTION AGAINST AN INDIVIDUAL AS EVIDENCE OF HIS OR HER  
8 LACK OF GOOD MORAL CHARACTER.

9 (2) A LICENSING BOARD OR AGENCY SHALL NOT CONSIDER AN  
10 INDIVIDUAL'S CRIMINAL CONVICTION, IN AND OF ITSELF, AS CONCLUSIVE  
11 PROOF OF HIS OR HER LACK OF GOOD MORAL CHARACTER. A LICENSING BOARD  
12 OR AGENCY MAY ONLY CONSIDER AN INDIVIDUAL'S CRIMINAL CONVICTION AS  
13 EVIDENCE IN THE DETERMINATION OF HIS OR HER GOOD MORAL CHARACTER IF  
14 THE LICENSING BOARD OR AGENCY FINDS THAT ALL OF THE FOLLOWING ARE  
15 MET:

16 (A) THE INDIVIDUAL'S CRIMINAL RECORD INCLUDES A CONVICTION FOR  
17 A FELONY.

18 (B) THE TYPE OF FELONY OF WHICH THE INDIVIDUAL WAS CONVICTED  
19 IS CODIFIED AS A DISQUALIFYING OFFENSE IN THE APPLICABLE  
20 OCCUPATIONAL OR PROFESSIONAL LICENSING STATUTE.

21 (C) THE LICENSING BOARD OR AGENCY CONCLUDES THAT THE SPECIFIC  
22 OFFENSE OF WHICH THE INDIVIDUAL WAS CONVICTED HAS A DIRECT AND  
23 SPECIFIC NEGATIVE EFFECT ON HIS OR HER ABILITY TO PERFORM THE  
24 DUTIES AUTHORIZED BY THE OCCUPATIONAL OR PROFESSIONAL LICENSE.

25 (D) THE LICENSING BOARD OR AGENCY DETERMINES THAT THE STATE'S  
26 INTEREST IN PROTECTING PUBLIC SAFETY IS SUPERIOR TO THE  
27 INDIVIDUAL'S RIGHT TO PURSUE THE OCCUPATION OR PROFESSION, BASED ON

1 CLEAR AND CONVINCING EVIDENCE THAT ALL OF THE FOLLOWING ARE MET:

2 (i) THE SPECIFIC OFFENSE OF WHICH THE INDIVIDUAL WAS CONVICTED  
3 IS SUBSTANTIALLY RELATED TO THE STATE'S INTEREST IN PROTECTING  
4 PUBLIC SAFETY.

5 (ii) THE INDIVIDUAL, BASED ON THE NATURE OF THE OFFENSE FOR  
6 WHICH HE OR SHE WAS CONVICTED AND ON ANY ADDITIONAL INFORMATION  
7 PROVIDED BY THE LICENSEE UNDER SUBSECTION (3), IS MORE LIKELY TO  
8 COMMIT A SUBSEQUENT OFFENSE BECAUSE HE OR SHE HAS THE OCCUPATIONAL  
9 OR PROFESSIONAL LICENSE THAN IF HE OR SHE DOES NOT HAVE THE  
10 OCCUPATIONAL OR PROFESSIONAL LICENSE.

11 (iii) A SUBSEQUENT OFFENSE COMMITTED WITH THE AID OF THE  
12 OCCUPATIONAL OR PROFESSIONAL LICENSE WILL CAUSE GREATER HARM TO THE  
13 PUBLIC THAN IT WOULD IF THE INDIVIDUAL DID NOT HAVE THE  
14 OCCUPATIONAL OR PROFESSIONAL LICENSE.

15 (3) ~~(2) If a judgment of guilt in a criminal prosecution is~~  
16 ~~used as evidence in the determination of an individual's good moral~~  
17 ~~character under subsection (1), the~~ **A** licensing board or agency  
18 shall also consider ~~his or her~~ **AN INDIVIDUAL'S** certificate of  
19 employability, if any, under section 34d of the corrections code of  
20 1953, 1953 PA 232, MCL 791.234d, ~~as evidence in the determination.~~  
21 **AND ANY ADDITIONAL INFORMATION ABOUT HIS OR HER CURRENT**  
22 **CIRCUMSTANCES, SUCH AS HOW LONG AGO THE OFFENSE OCCURRED, WHETHER**  
23 **HE OR SHE COMPLETED THE SENTENCE FOR THE OFFENSE, OTHER EVIDENCE OF**  
24 **REHABILITATION, TESTIMONIALS, EMPLOYMENT HISTORY, AND EMPLOYMENT**  
25 **ASPIRATIONS AS EVIDENCE IN THE DETERMINATION OF AN INDIVIDUAL'S**  
26 **GOOD MORAL CHARACTER UNDER SUBSECTION (2).**

27 (4) ~~(3) If a judgment of guilt in a criminal proceeding or a~~

1 ~~judgment in a civil action~~ **CRIMINAL CONVICTION** is used under  
 2 subsection ~~(1)~~ **(2)** as evidence of an individual's lack of good  
 3 moral character, the licensing board or agency shall notify the  
 4 individual and he or she is permitted to rebut the evidence by  
 5 showing that at the current time he or she has the ability to, and  
 6 is likely to, serve the public in a fair, honest, and open manner,  
 7 that he or she is rehabilitated, or that ~~the substance of the~~  
 8 ~~former offense is not reasonably related to the occupation or~~  
 9 ~~profession for which he or she is seeking a license.~~ **THE CRITERIA**  
 10 **UNDER SUBSECTION (2) HAVE NOT BEEN MET.**

11 Sec. 3. (1) ~~The following criminal records shall not be used,~~  
 12 ~~examined, or requested by a~~ **A** licensing board or agency **SHALL NOT**  
 13 **USE, EXAMINE, OR REQUEST ANY OF THE FOLLOWING CRIMINAL RECORDS** in  
 14 **MAKING** a determination of good moral character ~~when used~~ **FOR USE** as  
 15 a requirement to establish or operate an organization or facility  
 16 regulated by this state ~~, or pursuant to~~ **FOR PURPOSES OF**  
 17 occupational or professional licensure:

18 (a) Records of an arrest **THAT IS** not followed by a conviction.

19 (b) Records of a conviction ~~which~~ **THAT** has been reversed or  
 20 vacated, including the arrest records relevant to that conviction.

21 (c) Records of an arrest or conviction for a misdemeanor or a  
 22 felony unrelated to the ~~person's~~ **INDIVIDUAL'S** likelihood to serve  
 23 the public in a fair, honest, and open manner.

24 (d) Records of an arrest or conviction for a misdemeanor for  
 25 the conviction of which ~~a person~~ **AN INDIVIDUAL** may not be  
 26 incarcerated in a jail or prison.

27 (2) A criminal record shall not be furnished to a licensing

1 board or agency except by the principal department, and shall be  
 2 furnished only after the director of the principal department or a  
 3 ~~person~~**AN INDIVIDUAL** designated by the director has determined that  
 4 the information to be provided to the board or agency meets the  
 5 criteria set forth in this section.

6 (3) The director or a ~~person~~**AN INDIVIDUAL** designated by the  
 7 director of the principal department shall promulgate rules for  
 8 each licensing board or agency under that department's jurisdiction  
 9 ~~which~~**THAT** prescribe the offenses or categories of offenses ~~which~~  
 10 **THAT** the department considers indicate a ~~person~~**AN INDIVIDUAL** is  
 11 not likely to serve the public as a licensee **OR REGISTRANT** in a  
 12 fair, honest, and open manner. Each licensing board or agency may  
 13 make recommendations to the director regarding the rules ~~to be~~  
 14 ~~promulgated.~~**DESCRIBED IN THIS SUBSECTION.** The rules shall ~~MUST~~ be  
 15 consistent with this act and promulgated ~~pursuant to Act No. 306 of~~  
 16 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~  
 17 ~~24.315 of the Michigan Compiled Laws. Prior to~~**UNDER THE**  
 18 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**  
 19 **24.328. BEFORE** the promulgation of the rules pertaining to a board  
 20 or agency, ~~all felonies shall be considered by the~~**A** board or  
 21 agency **SHALL CONSIDER ALL FELONIES** to be relevant to the ability or  
 22 likelihood ~~the person~~**THAT AN INDIVIDUAL** will serve the public in a  
 23 fair, honest, and open manner.

24 Sec. 4. This act ~~shall not bar~~**DOES NOT PROHIBIT** the use by a  
 25 licensing board or agency in its determination of a ~~person's~~  
 26 ~~fitness,~~**AN INDIVIDUAL'S GOOD MORAL CHARACTER** of any other public  
 27 record ~~,~~**THAT IS** not related to **HIS OR HER** arrest, ~~or~~ prosecution,

1 **OR CONVICTION** or **THE USE** of any other source of unbiased and  
2 accurate information.

3       Sec. 5. ~~When a person is found to be unqualified~~ **IF A**  
4 **LICENSING BOARD OR AGENCY DETERMINES THAT AN INDIVIDUAL IS NOT**  
5 **ELIGIBLE** for a license because of a lack of good moral character,  
6 ~~or similar criteria, the person shall be furnished by the board or~~  
7 agency **SHALL PROVIDE THE INDIVIDUAL** with a statement to this  
8 effect. The statement shall contain a complete record of the  
9 evidence ~~upon~~ **ON** which the determination was based. ~~The person~~  
10 ~~shall be entitled, as of right, to~~ **A LICENSING BOARD OR AGENCY MUST**  
11 **PROVIDE AN INDIVIDUAL DESCRIBED IN THIS SUBSECTION AN OPPORTUNITY**  
12 **FOR** a rehearing on the issue before the board **OR AGENCY** if he or  
13 she has relevant evidence ~~not previously considered,~~ regarding his  
14 or her qualifications **THAT WAS NOT PREVIOUSLY CONSIDERED.**

15       Sec. 6. ~~A person,~~ **AN INDIVIDUAL WHO IS** aggrieved by a  
16 licensing **BOARD OR** agency ~~or board determination regarding the~~  
17 ~~person's possession of~~ **HIS OR HER** good moral character, if  
18 unsatisfied by his or her administrative ~~appeal as provided in~~  
19 **REMEDY UNDER** section 5, may bring an action in circuit court for a  
20 review of the record. If, in the opinion of the circuit court, the  
21 record does not disclose a lack of good moral character, as ~~defined~~  
22 ~~in~~ **DETERMINED UNDER** this act, the court shall ~~so state and shall~~  
23 order the board **OR AGENCY** to issue the license ~~,~~ when **THE**  
24 **INDIVIDUAL MEETS** all other licensing requirements. ~~are complied~~  
25 ~~with.~~

26       Sec. 7. This act does not affect the power of a licensing  
27 **BOARD OR** agency to discipline licensees under its jurisdiction for

1 prohibited acts of professional misconduct or dishonesty.

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.

# Legislative Analysis

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## “GOOD MORAL CHARACTER”

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 6110 as reported from committee**  
**Sponsor: Rep. Brandt Iden**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 6111 as reported**  
**Sponsor: Rep. Beth Griffin**

**House Bill 6113 as reported**  
**Sponsor: Rep. Joseph N. Bellino, Jr.**

**House Bill 6112 as reported**  
**Sponsor: Rep. Michele Hoytenga**

**House Bill 6381 as reported**  
**Sponsor: Rep. Jeremy Moss**

**Committee: Regulatory Reform**  
**Complete to 10-2-18**

## SUMMARY:

House Bill 6110 would amend Public Act 381 of 1974, which defines “good moral character” as it relates to qualifications for occupational licenses, to establish criteria for when a licensing board may consider a criminal conviction as evidence in determining an applicant’s good moral character.

House Bills 6111, 6112, and 6113 are companion bills that would revise the definition of “good moral character” within their respective acts to comport with the changes proposed by House Bill 6110.

House Bill 6381 would require the Department of Licensing and Regulatory Affairs (LARA) to provide an annual report to the legislature regarding the number of applications for occupational licenses denied due to failure to meet the “good moral character” standard.

Each of the bills would take effect 90 days after enactment.

**House Bill 6110** would amend the title and several provisions of Public Act 381 of 1974. The statutory requirements for many types of occupational licenses issued by the state of Michigan require that an applicant for a new or renewal license be of “good moral character.” Public Act 381 defines “good moral character” and also contains provisions intended to support the rehabilitation efforts of former offenders by, among other things, prohibiting the use by a licensing board of a criminal record as the sole proof of an applicant’s lack of good moral character.

### **Title**

The title of Public Act 381 of 1974 describes it as an act to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship. The bill would amend the title by specifying that the act is “to define the term ‘good moral character’ [rather than ‘prescribing the use of’] and establish how good moral character is determined when used as a requirement for an

occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by the state.” (Underlining denotes proposed changes.)

### **Definition of “good moral character”**

The changes to the definition of “good moral character” would be largely technical or editorial in nature, rather than being substantive. For example, the phrase “those laws shall be construed to mean” would be replaced with “a statute of this state, means.” As amended, the definition would read:

The phrase “good moral character”, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in a statute of this state or administrative rules promulgated under a statute of this state, means the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.

### **Other definitions**

The bill would add several definitions and revise an existing one, as follows:

“Felony” would mean a violation of a Michigan penal law for which the offender may be punished by imprisonment for more than one year or an offense expressly designated by law as a felony. (A misdemeanor that carries a maximum term of imprisonment of two years, also known as a “high court misdemeanor,” would—for purposes of “good moral character”—be treated as a felony.)

“License” would include a registration.

“Licensing board or agency” would mean a principal department, or a board or agency within a principal department, that issues occupational or professional licenses.

“Principal department” would be slightly revised to mean a department that has jurisdiction over a licensing board or agency.

### **Consideration of a criminal conviction or judgment in a civil action**

Currently, a judgment of guilt in a criminal prosecution or a judgment in a civil action cannot—in and of itself—be used by a licensing board or agency as proof of an individual’s lack of good moral character, though either may be used as evidence in the determination of the individual’s good moral character. The bill would delete this provision.

Under the bill, a licensing board or agency could not consider a judgment in a civil action against an individual as evidence of his or her lack of good moral character.

Further, a criminal conviction could not be considered, in and of itself, as conclusive proof of an individual’s lack of good moral character. A licensing board or agency could only



consider a criminal conviction as evidence in the determination of the individual's good moral character if all of the following were found:

- The criminal record includes a felony conviction.
- The applicable occupational or professional licensing statute specifies that the type of felony of which the individual was convicted is a disqualifying offense.
- The licensing board or agency concludes that the specific offense has a direct and specific negative effect on the individual's ability to perform the duties authorized by the occupational or professional license.
- The licensing board or agency determines that the state's interest in protecting public safety is superior to the individual's right to pursue the occupation or profession. However, this determination must be based on all of the following:
  - The specific offense is substantially related to the state's interest in protecting public safety.
  - The individual, based on the nature of the offense of which the individual was convicted and on any additional information provided by the licensee regarding his or current circumstances, is more likely to commit a subsequent offense if he or she has the occupational or professional license than if he or did not have the license.
  - A subsequent offense committed with the aid of the license will cause greater harm to the public than it would if the individual did not have it.

Currently, a licensing board or agency must consider an individual's certificate of employability, if any, *if a judgment of guilt in a criminal prosecution is used as evidence in the determination of an individual's good moral character*. The bill would delete the italicized language and instead require the licensing board or agency to consider—as evidence in the determination of an individual's good moral character—the certificate of employability and any additional information about the individual's current circumstances, such as how long ago the offense occurred, whether or not the sentence for the offense was completed, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

(Under the Corrections Code, the Department of Corrections is required to issue a certificate of employability to a prisoner who successfully completes a career and technical education course, who had no major misconducts and not more than three minor misconducts during his or her last two years of incarceration, and who received a silver level or better on the National Work Readiness Certificate or similar score on an alternative jobs skills assessment test administered by the department.)

### **Rebuttal of lack of good moral character**

The bill would revise a provision pertaining to an individual's ability to rebut a determination by a licensing board or agency as to a lack of good moral character based on a judgment of guilt in a criminal proceeding or a civil judgment to reflect the amendments described above.

Under the bill, if a criminal conviction is used as evidence of lack of good moral character, the individual must be notified and permitted to rebut the evidence by showing that at the current time he or she is able to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the criteria described earlier have not been met.

### **Use of criminal records**

The act currently prohibits the use, examination, or request by a licensing board or agency of certain criminal records in a determination of good moral character. The bill retains the prohibition but makes several revisions of an editorial, not a substantive, nature.

### **Miscellaneous provisions**

The bill makes numerous revisions that are largely technical or editorial, rather than substantive, to several provisions. In addition, a few phrases have been deleted and replaced with language that comports with the changes made to how determinations of good moral character are to be made by licensing boards and agencies. For example, instead of specifying that when a person is found to be unqualified for a license because of a lack of good moral character the person shall be furnished by the board or agency with a statement to this effect, the bill would specify that *if a licensing board or agency determines that an individual is not eligible* for a license because of a lack of good moral character, the board or agency *shall provide the individual* with a statement to this effect (italicized text denotes revisions).

MCL 338.41

**House Bills 6111, 6112 and 6113** would amend various acts to revise the definition of “good moral character” contained in those acts to mean good moral character as defined in, and determined under, Public Act 381 of 1974. Currently, most of the affected provisions do not include the phrase “determined under” and only reference Section 1 of PA 381. As amended, determinations of good moral character made under each bill would have to follow the provisions within PA 381 as established by House Bill 6110.

House Bill 6111 would amend the Public Health Code and would also make several other changes of a technical nature. (MCL 333.16104 and 333.21755)

House Bill 6112 would amend the Skilled Trades Regulation Act. (MCL 339.5105)

House Bill 6113 would amend the Occupational Code. (MCL 339.104)

**House Bill 6381** would amend the Occupational Code to require that the annual report provided to the legislature by LARA regarding applications for occupational licenses issued under the Code include the number of applications denied by LARA because of an applicant’s lack of good moral character and a summary, by category of offense, of the criminal convictions on which those denials were based.

The report is due by December 1 of each year and submitted to the standing committees and appropriations subcommittees of the Senate and House of Representatives concerned with occupational issues. Information in the report concerns the preceding state fiscal year.

House Bills 6111, 6112, 6113, and 6380 are tie-barred to House Bill 6110, meaning that they could take effect unless House Bill 6110 were also enacted.

MCL 339.411

## **BRIEF DISCUSSION:**

Many who have made poor decisions in the past resulting in criminal convictions find that turning one's life around is no guarantee of being able to find gainful employment in a trade or occupation that requires a state license or registration. Recently, Governor Snyder signed Executive Directive 2018-4 to require that a question preceding a license application for state employment as to whether an applicant has a felony conviction be removed. Though disclosure of criminal convictions will still be required in the application or interview process, "removing the box," so to speak, at least precludes immediate ineligibility to apply for a state job.

Along that line, this bill package would clarify how "good moral character" clauses in various occupational statutes should be used when determining the eligibility of an applicant for licensing or registration in a particular occupation or trade. Historically, such good moral character clauses were never meant to interpret a previous arrest or conviction as prima facie evidence for denial of a license by a licensing board. Legislation dating to the mid-1970s attempted to clarify that issue, as well as to restrict access to criminal records that did not relate to the license being sought.

However, some feel that the statutes need further clarification, as many with checkered pasts still find it difficult to obtain licenses required of certain occupations. Enactment of the bills could restore the original intent of the statutes and also expand the pool of eligible workers at a time when many segments of the labor market are experiencing shortages of qualified applicants. Further, data show that employment is a major predictor of successful reintegration into society after incarceration and results in lower recidivism rates. Moreover, the Michigan Department of Corrections' Vocational Village is training prisoners in many trades, only to find that they cannot obtain the necessary licenses to continue in that work upon release.

Though the bill package has broad support, some have concerns that certain wording in HB 6110 would preclude the ability of licensing boards to review a person's misdemeanor records. For some professions, such as veterinary medicine, for which some animal neglect penalties result in misdemeanors, this could mean that a licensing board could not review such records when determining eligibility for license renewal or licensing sanctions. Perhaps language in the bill limiting review to felony records could be expanded to include misdemeanor records when appropriate.

## **FISCAL IMPACT:**

House Bills 6110 through 6113 and 6381 would not have a significant impact on expenditures or revenues for LARA or for other units of state or local government. LARA already makes determinations regarding “good moral character” of applicants, licensees, and registrants. House Bill 6110 would result in changes to the processes utilized by LARA to determine “good moral character.” However, the process changes would not be expected to lead to new or additional costs for the department.

## **POSITIONS:**

Representatives of the following entities testified in support of HBs 6110 through 6113 on 9-26-18:

- Mackinac Center for Public Policy
- ACLU of Michigan
- Institute of Justice
- Recovery Park

The following entities indicated support for one or more of the bills on 9-26-18:

- National Association of Social Workers (all of the bills)
- Safe and Just Michigan (all of the bills)
- Americans for Prosperity (HBs 6110 through 6113)
- West Michigan Policy Forum (HBs 6110 and 6113)
- Michigan Chamber of Commerce (HBs 6110 and 6113)
- Grand Rapids Chamber (HBs 6110 and 6113)

The Michigan League for Public Policy indicated support for the bills. (10-2-18)

The Michigan Society of Professional Surveyors indicated a neutral position on HB 6110. (9-26-18)

The following entities indicated opposition to one or more of the bills on 9-26-18:

- Michigan Society of Professional Engineers (HBs 6110 through 6113)
- Michigan Veterinary Medical Association (HB 6110)
- State Court Administrative Office (HB 6110)
- Michigan Realtors (HB 6110)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marcus Coffin

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

**Public Policy Position  
HB 6110**

**OPPOSE**

**Explanation**

The Character and Fitness Standing Committee unanimously voted to recommend the State Bar of Michigan vigorously oppose HB 6110 consistent with the opposition of the Michigan Supreme Court (MSC) and Board of Law Examiners (BLE) as stated in their October 1, 2018 Memo.

HB 6110 would severely constrict consideration of an SBM Bar applicant's criminal convictions and exclude consideration of criminal history (most records of arrests and misdemeanor convictions) and civil judgments for good moral determinations in the law licensing process. The MSC and BLE oppose application of HB 6110 to the attorney licensing process because it would "jeopardize the safety of the Michigan public by unnecessarily limiting the scope of a thorough attorney licensing character and fitness review process."

The Committee also agrees with the MSC and BLE that attorney licensing is within the exclusive jurisdiction of the MSC, so the legislature lacks authority to regulate in this area of professional licensing. In addition, the procedural process for attorney licensing involves an intensive investigation and review process inconsistent with the "check-the-box" exclusionary process that HB 6110 is intended to address.

**Position Vote:**

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote: 0

**Keller Explanation**

If enacted, HB 6110 would significantly affect the attorney licensing process which is a vital part of regulating the legal profession and ensuring the integrity of the legal profession. It would severely restrict consideration of an applicant's criminal history to determine good moral character. Specifically, misdemeanor offenses, traffic violations, and certain felony offenses would be excluded from review. HB 6110 would also exclude consideration of civil judgments against an applicant as evidence of lack of good moral character.

The determination process used during the character and fitness assessment of SBM applicants is undertaken to ensure the highest standards of conduct for persons licensed to practice law in Michigan for protection of the public. The restrictions of HB 6110 would constrict the information considered for character and fitness investigations and determinations and thereby would have the potential to jeopardize the safety of the Michigan public due to the unnecessary limited scope for review of attorney criminal history and civil judgments.



## CHARACTER & FITNESS COMMITTEE

**Contact Person:** Robert B. Ebersole

**Email:** [rbebersole@gmail.com](mailto:rbebersole@gmail.com)

TO: Standing Committee on Character and Fitness

FROM: Robert B. Ebersole, Chairperson, State Bar of Michigan Standing Committee on Character and Fitness

DATE: October 18, 2018

RE: House Bill 6110 – Proposed Amendment of Michigan Public Act 381 of 1974 to Define “Good Moral Character” and Its Determination for Occupational Licensing, Including Lawyer Licensing

**Purpose.** The State Bar of Michigan (SBM) Public Policy Committee,<sup>1</sup> referred House Bill (HB) 6110 to the Standing Committee on Character and Fitness (C&F Committee) to review and recommend a position to the SBM Board of Commissioners (Board) regarding the proposed amendment to Michigan Public Act 381 of 1974 regarding the term, “good moral character” and how good moral character is to be determined for occupational licensing, including the attorney licensing process. Given the need for quick review and submission of the C&F Committee’s recommendation to meet the timeline set by the Public Policy Committee, I convened a Subcommittee<sup>2</sup> of the C&F Committee that met via conference call on October 10, 2018. The Subcommittee discussed the proposed amendments to MCL 338.41 – 338.47, as outlined in HB 6110 and passed by the House Committee on Regulatory Reform. (See attached HB 6110). Before the conference call, the Subcommittee received and reviewed HB 6110, the Legislative Analysis pertaining to HB 6110 (see attached Legislative Analysis on Good Moral Character), and the October 1, 2018 Memo submitted to the House Committee on Regulatory Reform by the Michigan Supreme Court (MSC) and the Board of Law Examiners (BLE). (See attached MSC/BLE Memo.)

**Recommendation.** The Subcommittee unanimously recommends the C&F Committee vote to recommend the SBM **oppose** HB 6110 consistent with the concerns expressed in the MSC/BLE Memo.

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<sup>1</sup> The SBM Public Policy Committee is composed of SBM Commissioners assigned by the SBM President. It is charged with reviewing and formulating recommendations to the Board of Commissioners on SBM public policy positions on proposed or pending legislation and court rules. In carrying out its jurisdictional mandate, the SBM Public Policy Committee invites input from SBM Committees and Sections on proposed or pending legislation and court rules relevant to them.

<sup>2</sup> The Subcommittee Members are: Jeanine M. Brunson, Boyd E. Chapin, Jr., Scott E. Dwyer, Barbara A. Menear, John M. Toth, and Robert Ebersole. SBM Staff supported the work of the Subcommittee: Peter Cunningham (SBM Director of Governmental Relations and liaison to the SBM Public Policy Committee), Diane Van Aken, Keith Wilkinson, Alecia Ruswinckel, and Danon Goodrum-Garland.

**Process.** The Public Policy Committee requests a recommendation from the C&F Committee no later than November 1, 2018 whether the SBM should oppose HB 6110. The Public Policy Committee will formulate its recommendation to the Board based on all the information it has gathered by the Board's November 2018 meeting date. After the Board has adopted a policy position, a strategy will be developed for advocacy by the SBM consistent with the approved SBM policy position. SBM advocacy is facilitated exclusively through the SBM Governmental Relations Department.<sup>3</sup>

While the SBM is determining its policy position and advocacy strategy, the C&F Committee may gather information and prepare substantive information to be used by the SBM to help explain to the legislature the extensive investigative and review process already in place for attorney licensing. Such information may help assuage the concern underlying HB 6110 that a "check-the-box" system is being used to disenfranchise all applicants having a criminal history and/or civil judgments against them from becoming licensed lawyers.

**Background.** If enacted, HB 6110 would significantly affect the attorney licensing process. It would severely restrict consideration of an applicant's criminal history to determine good moral character. Specifically, misdemeanor offenses, traffic violations, and certain felony offenses would be excluded from review. HB 6110 would also exclude consideration of civil judgments against an applicant as evidence of lack of good moral character.

A criminal conviction could only be considered if (1) it was a felony codified as a disqualifying offense, (2) it has a direct and specific negative effect on professional duties, and (3) there is clear and convincing evidence that protection of the public safety is superior to the individual's right to pursue the profession. HB 6110 forbids use, examination, and requests for an applicant's criminal history regarding (1) records of arrest unrelated to a conviction, (2) overturned convictions and associated arrests, (3) misdemeanor or felony arrests or convictions unrelated to the ability to serve the public in a fair, honest, and open manner, and (4) misdemeanor convictions and related arrests where the punishment does not include jail or imprisonment.

The MSC/BLE Memo raises two primary concerns regarding HB 6110. First, whether there is legislative authority to regulate lawyers based on the judiciary's expressed authority. Second, HB 6110 places limitations on the investigation and law licensing approval process that would affect the BLE's ability to adequately protect the public.

The MSC/BLE Memo summarizes the determination process used during the character and fitness assessment of applicants, explains why attorneys are subject to the highest standards of conduct, and gives examples of how the restrictions of HB 6110 would constrict the information considered for character and fitness investigations and determinations. The MSC/BLE Memo also emphasizes the jeopardy to the safety of the Michigan public due to the unnecessary limited scope for review of attorney criminal history and civil judgments if HB 6110 is enacted.

The MSC/BLE Memo proposes a solution which would exclude application of HB 6110 to licensing lawyers except for the definition of good moral character in MCL 338.41(1) that states "propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner." Specifically, the MSC/BLE Memo proposes insertion of a sentence at the end of the introduction :

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<sup>3</sup> While individual SBM members may express their own views and perspectives about proposed legislation and court rules, the C&F Committee is not permitted to engage in advocacy without the expressed permission of the Board.



“This Act is inapplicable to attorney licensing with the exception of the 338.41(1) good moral character definition.”

The Subcommittee agrees with the analysis in the MSC/BLE Memo and the proposed solution. So, the Subcommittee requests the C&F Subcommittee vote to recommend the SBM oppose HB 6110 consistent with the concerns expressed in the MSC/BLE Memo.



## Michigan Supreme Court

Michigan Hall of Justice  
P.O. Box 30048  
Lansing, Michigan 48909  
517-373-0128

Thomas P. Clement  
General Counsel

### MEMORANDUM

To: House Committee on Regulatory Reform

From: Thomas P. Clement, General Counsel, Michigan Supreme Court  
Maribeth D. Preston, Executive Director, Board of Law Examiners

Date: October 1, 2018

Subject: HB 6110 – Good Moral Character Bill

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The Board of Law Examiners (Board or BLE) has reviewed the proposed statutory changes being considered by the Committee for Regulatory Reform that affect the good moral character requirements set forth in MCL 338.41 through 338.47, which are cross-referenced in the Revised Judicature Act (RJA), MCL 600.934, as pertains to attorney licensing.

Initially, the Board's concerns relate to whether there is Legislative authority to regulate lawyers in light of the judiciary's express authority to do so. More specifically, however, this Bill excludes pertinent factors from consideration in the licensing of lawyers. Currently, there is a cross-reference in the RJA at MCL 600.934 to the good moral character language being addressed here. The Board is opposed, as to the legal profession only, because it would place limitations on the State Bar of Michigan (SBM) and the Board during the character and fitness investigation and law licensing approval process. As currently proposed, HB 6110 would impact the Board's ability to adequately protect the public by eliminating the consideration of misdemeanor offenses, traffic violations, civil judgments, and certain felony offenses during the attorney licensing process.

#### **Background**

The Board is responsible for attorney licensing and the protection of the Michigan public (MCL 600.922 – 600.949). The RJA, MCL 600.934, incorporates the good moral character

definition and determinations set forth in MCL 338.41 to 338.47. In making determinations about applicants' good moral character, the SBM conducts investigations into applicants with adverse information and makes a recommendation to the Board. As part of the attorney licensing process, the Board applies essential eligibility requirements that, among other things, include: the ability to be honest and candid with clients, lawyers, courts, regulatory authorities, and others; the ability to conduct oneself with respect for and in accordance with the law; the ability to avoid acts which exhibit disregard for the welfare of others; the ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal; and the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others. These are some of the factors considered in reaching a determination regarding whether an applicant would put the public at risk or undermine the integrity of the justice system if granted a law license.

The role of an attorney routinely involves matters of public trust and confidence, such as handling client funds; accessing most sensitive client financial and personal information; and providing legal representation in and outside of court that can result in loss of liberty and/or financial assets. Accordingly, attorneys are obviously subject to the highest standards of conduct in both their personal and professional lives.

#### **HB 6110 Proposal**

As currently proposed, HB 6110, if applied to MCL 600.934 of the RJA, would seriously constrict the information considered for character and fitness investigations and recommendations initially made by the SBM along with the final determinations made by the Board in the law licensing process. For example, the SBM and Board consider misdemeanor convictions and repeated traffic violations for C & F determinations as evidence of an applicant's propensity to respect the law and the applicant's candor in the disclosure and explanation of such offenses. Misdemeanors, especially when they are numerous, can point to a pattern of behavior demonstrating disrespect for the law and disregard for the welfare and rights of others. Drunk driving and substance related offenses, that may be misdemeanors, can be indicative of a substance abuse problem that could impact an applicant's ability to adequately represent clients. The payment of fines and compliance with any court or tribunal orders are also considered in assessing an applicant's personal responsibility, ability to manage one's own affairs and the affairs of others.

The new proposed language also prevents the Board from considering a judgment in a civil action as evidence of lack of good moral character. Actions by creditors are one category of civil litigation considered during the attorney licensing process as indicative of an applicant's ability to responsibly manage finances and address obligations. Failure to do so may connote that an applicant would be unable to responsibly manage client trust funds. Vexatious or frivolous civil litigation against others is also considered. An applicant's ability to comply with any civil judgments is reflective of the ability to manage affairs and follow requirements.

Adherence to laws, rules and professionalism are examined as an important part of the law licensing process. Given the magnitude of the various matters attorneys are licensed to handle and the importance of possessing the requisite character and fitness to do so competently, the proposed language would jeopardize the safety of the Michigan public by unnecessarily limiting the scope of a thorough attorney licensing character and fitness review process.

#### **Proposed Solution**

The Board requests there be an exception specific to law licensing added to HB 6110. The Board desires to retain the definition of good moral character in 338.41(1) that defines it as the "propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner." Therefore, we propose the insertion of a final sentence in the introduction section stating "This Act is inapplicable to attorney licensing with the exception of the 338.41(1) good moral character definition." The RJA at MCL 600.934 would need to be amended at a later date to reflect this change as well.



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, Public Policy Counsel

Date: November 6, 2018

Re: HB 6277 (LaFave)

**Background**

HB 6277 would require courts to explicitly instruct juries in criminal cases “that even if the state has proved all of the elements of the offence beyond a reasonable doubt, nevertheless the jury may find the defendant not guilty if, based on the facts of the case, a guilty verdict would yield an unjust result.”

***Keller* Considerations**

The bill changes the requirements for criminal jury instructions and affects the functioning of the courts. It is, however, debatable whether the bill would improve or worsen the functioning of the courts. By a vote of 9 to 3 with 4 abstentions, the Criminal Jurisprudence and Practice indicated that HB 6277 “damage the justice system if juries were given the over-reaching power to disregard all evidence and nullify justified convictions based on personal feelings and biases.” The Criminal Law Section could not reach an agreement on a position. The section’s vote to oppose the legislation failed by a vote of 9 to 11, and its vote to support the legislation failed by a vote of 6 to 12 with 2 abstentions.

***Keller* Quick Guide**

<b>THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:</b>	
<b>Regulation of Legal Profession</b>	<b>Improvement in Quality of Legal Services</b>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>As interpreted by AO 2004-1</b></p> <ul style="list-style-type: none"> <li>• Regulation and discipline of attorneys</li> <li>• Ethics</li> <li>• Lawyer competency</li> <li>• Integrity of the Legal Profession</li> <li>• Regulation of attorney trust accounts</li> </ul>	<ul style="list-style-type: none"> <li>✓ Improvement in functioning of the courts</li> <li>• Availability of legal services to society</li> </ul>

**Staff Recommendation**

The bill affects the functioning of the courts and may be considered on its merits.

## House Bill 6277 (2018) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2018-HB-6277>

### Sponsors

Beau LaFave (district 108)

Martin Howrylak, Rose Mary Robinson, David LaGrand, Peter Lucido, Pamela Hornberger, Gary Glenn, Steven Johnson, Aaron Miller, Steve Marino  
(click name to see bills sponsored by that person)

### Categories

Courts: judges; Courts: juries;

Courts; judges; judges to fully instruct jury of its authority; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 29b to ch. VIII.

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2017-2018 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/less than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### House Introduced Bill

Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.



#### As Passed by the House

As Passed by the House is the bill, as introduced, that includes any adopted House amendments.



#### As Passed by the Senate

As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.



#### House Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
6/12/2018	HJ 59 Pg. 1899	introduced by Representative Sara Cambensy
6/12/2018	HJ 59 Pg. 1899	read a first time
6/12/2018	HJ 59 Pg. 1899	referred to Committee on Judiciary

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# HOUSE BILL No. 6277

June 12, 2018, Introduced by Reps. LaFave, Howrylak, Robinson, LaGrand, Lucido,  
Hornberger, Glenn, Johnson, Miller and Marino referred to the committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding section 29b to chapter VIII.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER VIII

**SEC. 29B. THE COURT SHALL FULLY INFORM THE JURY OF ITS  
AUTHORITY BY INSTRUCTING THE JURY THAT EVEN IF THE STATE HAS PROVED  
ALL OF THE ELEMENTS OF THE OFFENSE CHARGED BEYOND A REASONABLE  
DOUBT, NEVERTHELESS THE JURY MAY FIND THE DEFENDANT NOT GUILTY IF,  
BASED ON THE FACTS OF THE CASE, A GUILTY VERDICT WOULD YIELD AN  
UNJUST RESULT.**

Enacting section 1. This amendatory act takes effect 90 days  
after the date it is enacted into law.



**Public Policy Position**  
**HB 6277**

**OPPOSE**

**Explanation**

The committee voted to oppose the legislation. In *People v. St. Cyr* 129 Mich App 471 (1983) 341 NW 2d 533, the court addresses “the issue of a criminal defendant’s right to jury ‘nullification.’” In *St. Cyr*, the defendant “testified extensively concerning his actions in planning and carrying out the robbery,” but noted that his motivation was to purchase food and Christmas presents for his family. He requested that the jury be instructed that while

a jury is expected to stay within the bounds of reason, yet they may indulge tender mercies even to the point of acquitting the plainly guilty. Accordingly, you are entitled to act upon your conscientious feeling about what is a fair result in this case and acquit the defendant if you believe that justice requires such a result.

This instruction was not given. *St. Cyr* further notes that “federal courts have uniformly held that no such right exists” and the Michigan Supreme Court “recognized that juries in criminal cases have the power to dispense mercy by returning verdicts less than warranted by the evidence ... However, the Supreme Court has also held that, although the jury has the power to disregard the trial court’s instructions, it does not have the right to do so.”

The passage and enactment of this legislation would damage the justice system if juries were given the over-reaching power to disregard all evidence and nullify justified convictions based on personal feeling and biases.

**Position Vote:**

Voted For position: 9

Voted against position: 3

Abstained from vote: 0

Did not vote: 4

**Keller Explanation**

The legislation would affect the functioning of the courts by changing the requirements for criminal jury instructions in a manner that would damage the justice system.

**Contact Person:** Nimish R. Ganatra

**Email:** [ganatran@ewashtenaw.org](mailto:ganatran@ewashtenaw.org)

06Aug

# LaFave plan ensures Michigan juries are completely informed of rights

Categories: [LaFave News](#)

A plan introduced by state Rep. Beau LaFave with bipartisan support would require Michigan judges to fully inform jurors of their authority to set aside unjust laws.

LaFave, of Iron Mountain, said many people who serve on juries do not realize they have the right to acquit someone who has technically broken the law if they feel a guilty verdict would have an unfair result.

“Jurors have every right to judge the quality of the law, they just don’t realize it,” LaFave said. “We must fully inform the people serving on our juries so they understand their authority to analyze the facts of the case before them and vote their conscience.”

For example, LaFave said juries in the 1850s used this practice to protest the Fugitive Slave Act by refusing to convict runaway slaves and the people who were charged for assisting them. In modern times, a jury might go this route in instances of domestic abuse or self-defense.

House Bill 6277 requires a judge to clearly instruct the jury that even if the state has proven all of the elements of the offense beyond a reasonable doubt, the jury may find the defendant not guilty if a guilty verdict would yield an unjust result.

The legislation was referred to the House Judiciary Committee for consideration.



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, Public Policy Counsel

Date: November 6, 2018

Re: SB 1092 (Jones)

**Background**

SB 1092 would require courts to postpone the jury service of anyone who owns or operates a farm until after the period of April 1 through November 30.

***Keller* Considerations**

From the promulgation of the first Michigan Supreme Court *Keller* order, the State Bar has considered the jury selection process, including the jury pool process, *Keller*-permissible.

The Civil Procedure and Courts Committee offered the following *Keller* explanation: “The bill is *Keller*-permissible because it affects the functioning of the courts because it defines a special group of people who may opt out of jury service for an 8-month period each year.”

The bill would impact the functioning of the courts by complicating the jury pool process, and potentially limiting the number of available jurors 8 months of the year.

***Keller* Quick Guide**

<b>THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:</b>	
<b>Regulation of Legal Profession</b>	<b>Improvement in Quality of Legal Services</b>
<p>As interpreted by AO 2004-1</p> <ul style="list-style-type: none"> <li>• Regulation and discipline of attorneys</li> <li>• Ethics</li> <li>• Lawyer competency</li> <li>• Integrity of the Legal Profession</li> <li>• Regulation of attorney trust accounts</li> </ul>	<ul style="list-style-type: none"> <li>✓ Improvement in functioning of the courts</li> <li>• Availability of legal services to society</li> </ul>

**Staff Recommendation**

The bill satisfies the requirements of *Keller* and may be considered on its merits.

## Senate Bill 1092 (2018) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2018-SB-1092>

### Sponsor

Rick Jones (district 24)  
(click name to see bills sponsored by that person)

### Categories

Courts: juries;

Courts; juries; postponement of jury service; allow for farmers during certain months.  
Amends sec. 1335 of 1961 PA 236 (MCL 600.1335).

### Bill Documents

#### Bill Document Formatting Information

[x]

The following bill formatting applies to the 2017-2018 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/less than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

#### Documents



#### Senate Introduced Bill

Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.



#### As Passed by the Senate

As Passed by the Senate is the bill, as introduced, that includes any adopted Senate amendments.



#### As Passed by the House

As Passed by the House is the bill, as received from the Senate, that includes any adopted House amendments.



#### Senate Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

### Bill Analysis

#### Senate Fiscal Analysis



#### SUMMARY OF INTRODUCED BILL IN COMMITTEE (Date Completed: 9-24-18)

This document analyzes: SB1092



#### SUMMARY OF BILL REPORTED FROM COMMITTEE (Date Completed: 9-26-18)

This document analyzes: SB1092

## History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
9/5/2018	SJ 64 Pg. 1644	INTRODUCED BY SENATOR RICK JONES
9/5/2018	SJ 64 Pg. 1644	REFERRED TO COMMITTEE ON JUDICIARY
10/2/2018	SJ 67 Pg. 1718	REPORTED FAVORABLY WITHOUT AMENDMENT
10/2/2018	SJ 67 Pg. 1718	COMMITTEE RECOMMENDED IMMEDIATE EFFECT
10/2/2018	SJ 67 Pg. 1718	REFERRED TO COMMITTEE OF THE WHOLE

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# SENATE BILL No. 1092

September 5, 2018, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 1335 (MCL 600.1335), as amended by 2014 PA 10.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1335. (1) The chief judge of the court to which a person  
2 is returned as a juror may excuse the person from serving when it  
3 appears that the interests of the public or of the individual juror  
4 will be materially injured by his or her attendance or the health  
5 of the juror or that of a member of his or her family requires his  
6 or her absence from court.

7           (2) The chief judge of the court to which a person is returned  
8 as a juror shall postpone the person's term of service until the  
9 end of the school year if the person is a full-time student  
10 enrolled in and attending high school.

1           (3) The chief judge of the court to which a person is returned  
2 as a juror shall, upon request, postpone the person's term of  
3 service until the end of the academic year if the person is a full-  
4 time student enrolled in and attending a college, community  
5 college, university, graduate or professional school, vocational  
6 school, or any other accredited educational institution and the  
7 person provides satisfactory proof that the term of service will  
8 likely interfere with his or her class schedule.

9           **(4) THE CHIEF JUDGE OF THE COURT TO WHICH A PERSON IS RETURNED**  
10 **AS A JUROR SHALL, UPON REQUEST, POSTPONE THE PERSON'S TERM OF**  
11 **SERVICE UNTIL AFTER THE PERIOD OF APRIL 1 THROUGH NOVEMBER 30 IF HE**  
12 **OR SHE IS RETURNED TO SERVE AS JUROR DURING THE PERIOD OF APRIL 1**  
13 **THROUGH NOVEMBER 30, AND THE PERSON IS A FARMER.**

14           **(5) AS USED IN THIS SECTION:**

15           **(A) "FARM" MEANS THAT TERM AS IT IS DEFINED IN SECTION 2 OF**  
16 **THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.472.**

17           **(B) "FARMER" MEANS A PERSON WHO OWNS OR OPERATES A FARM.**

18           Enacting section 1. This amendatory act takes effect 90 days  
19 after the date it is enacted into law.



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**BILL ANALYSIS**

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 1092 (as reported without amendment)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

**CONTENT**

The bill would amend the Revised Judicature Act to require the chief judge of a court to which a person had been returned as a juror to postpone the person's term of service, upon request, until after the period of April 1 through November 30 if he or she were returned as a juror during the period of April 1 through November 30, and he or she was a farmer.

"Farmer" would mean a person who owns or operates a farm (the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products).

(A person is "returned" as a juror if he or she has been served with a written notice summoning him or her to appear in court for jury service.)

MCL 600.1335

Legislative Analyst: Stephen Jackson

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Date Completed: 9-26-18

Fiscal Analyst: Abbey Frazier





**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**BILL ANALYSIS**

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 1092 (as introduced 9-5-18)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

Date Completed: 9-24-18

**CONTENT**

The bill would amend the Revised Judicature Act to require the chief judge of a court to which a person had been returned as a juror to postpone the person's term of service, upon request, until after the period of April 1 through November 30 if he or she were returned as a juror during the period of April 1 through November 30, and he or she was a farmer.

"Farmer" would mean a person who owns or operates a farm (the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products).

(A person is "returned" as a juror if he or she has been served with a written notice summoning him or her to appear in court for jury service.)

The bill would take effect 90 days after its enactment.

MCL 600.1335

Legislative Analyst: Stephen Jackson

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Abbey Frazier

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

**Public Policy Position  
SB 1092**

**Oppose**

**Explanation**

The Civil Procedure & Courts Committee opposes SB 1092 as it creates a special exception for farmers not to serve on juries for an 8-month period every year, from April 1 to November 30. The committee opposes it for the following reasons:

- This bill could open the door for other special interest to request special treatment for jury service.
- The definition of “farmer” is vague.
- The committee is concerned about available jury pool in farming communities for jury trials – particularly criminal jury trials – between April 1 and November 30 each year.

**Position Vote:**

Voted For position: 21

Voted against position: 1

Abstained from vote: 0

Did not vote: 5

**Keller Explanation**

The bill is *Keller*-permissible because it affects the functioning of the courts by defining a special group of people who may opt out of jury service for an 8-month period each year.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, Public Policy Counsel

Date: November 6, 2018

Re: SB 1103 (Jones)

---

### **Background**

SB 1103 proposes changes to small claims court procedure set forth in the Revised Judicature Act to align with the Michigan Supreme Court's statewide e-filing system. SB 1103 proposes changes in language to accommodate e-filing. For example, the bill changes "affidavits of claims" to "statement of claims," which is consistent with changes that the Court has made and proposed under the Michigan Court Rules. Similarly, the bill proposes changing "instruction sheets" to "instructions" because they will be available both electronically and in paper at the district court.

In addition, the bill would allow claimants to receive instructions on the small claims process and how to file and defend an action prior to the claimant filing his or her claim. MCL 600.8401a currently requires the court to provide instructions to the claimant upon filing a claim. SB 1103 would amend this provision to require the instructions to be available at each district court and electronically, which would improve claimants' access to the instructions prior to filing claims.

### ***Keller* Considerations**

SB 1103 improves the functioning of the courts by (1) changing the terminology used to align with e-filing and (2) requiring small claims court instructions to be available both electronically and in paper at the district court, rather than simply having the courts provide the instructions to claimants after the claim has been filed.

*Keller* Quick Guide

<b>THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:</b>	
<b>Regulation of Legal Profession</b>	<b>Improvement in Quality of Legal Services</b>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>As interpreted by AO 2004-1</b></p> <ul style="list-style-type: none"><li>• Regulation and discipline of attorneys</li><li>• Ethics</li><li>• Lawyer competency</li><li>• Integrity of the Legal Profession</li><li>• Regulation of attorney trust accounts</li></ul>	<ul style="list-style-type: none"><li>✓ Improvement in functioning of the courts</li><li>• Availability of legal services to society</li></ul>

**Staff Recommendation**

The bill satisfies the requirements of *Keller* and may be considered on its merits.

## Senate Bill 1103 (2018) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2018-SB-1103>

### Sponsor

Rick Jones (district 24)  
(click name to see bills sponsored by that person)

### Categories

Civil procedure: small claims;

Civil procedure; small claims; general amendments related to e-filing provisions; provide for. Amends secs. 8401a, 8402, 8403, 8404, 8405, 8406, 8409, 8412, 8420 & 8423 of 1961 PA 236 (MCL 600.8401a et seq.).

### Bill Documents

#### Bill Document Formatting Information

[x]

The following bill formatting applies to the 2017-2018 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
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(gray icons indicate that the action did not occur or that the document is not available)

#### Documents



##### Senate Introduced Bill

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##### As Passed by the Senate

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##### As Passed by the House

As Passed by the House is the bill, as received from the Senate, that includes any adopted House amendments.



##### Senate Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

### Bill Analysis

#### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
9/5/2018	SJ 64 Pg. 1646	INTRODUCED BY SENATOR RICK JONES
9/5/2018	SJ 64 Pg. 1646	REFERRED TO COMMITTEE ON REGULATORY REFORM

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# SENATE BILL No. 1103

September 5, 2018, Introduced by Senator JONES and referred to the Committee on Regulatory Reform.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 8401a, 8402, 8403, 8404, 8405, 8406, 8409, 8412, 8420, and 8423 (MCL 600.8401a, 600.8402, 600.8403, 600.8404, 600.8405, 600.8406, 600.8409, 600.8412, 600.8420, and 600.8423), section 8401a as amended by 1998 PA 547, sections 8402 and 8409 as amended by 1991 PA 192, sections 8404 and 8412 as amended by 1984 PA 278, section 8405 as amended by 1996 PA 579, and section 8420 as amended by 2005 PA 151.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 8401a. (1) The state court administrator shall prepare  
2 ~~instruction sheets~~ **INSTRUCTIONS** clearly explaining in plain English  
3 how the small claims division functions and how to commence and

1 defend an action in the small claims division. ~~A copy of the~~  
 2 ~~instruction sheet~~ **THE INSTRUCTIONS** must be given to the claimant  
 3 ~~upon filing a claim. Copies of the instruction sheets shall be made~~  
 4 ~~available at the office of each clerk and deputy clerk of the~~  
 5 ~~district court and a copy of the defendant's instruction sheet~~  
 6 ~~shall be sent by the~~ **AVAILABLE AT EACH DISTRICT COURT AND**  
 7 **ELECTRONICALLY. THE** clerk or deputy clerk **OF THE DISTRICT COURT**  
 8 **SHALL SEND THE INSTRUCTIONS** to the defendant along with the copy of  
 9 the affidavit ~~STATEMENT OF CLAIM~~ served upon the defendant under  
 10 section 8404.

11 (2) In addition to general ~~instruction sheets,~~ **INSTRUCTIONS,**  
 12 the state court administrator shall prepare ~~instruction sheets~~  
 13 **INSTRUCTIONS** under subsection (1) specifically for an action under  
 14 section 73109 of the natural resources and environmental protection  
 15 act, 1994 PA 451, MCL 324.73109.

16 Sec. 8402. (1) An action ~~shall be~~ **IS** commenced in the small  
 17 claims division by filing with the clerk or a deputy clerk of the  
 18 district court ~~an affidavit~~ **A STATEMENT OF CLAIM** and 1 copy of the  
 19 ~~affidavit~~ **STATEMENT OF CLAIM** for each defendant to be served. The  
 20 form and contents of the ~~affidavit shall~~ **STATEMENT OF CLAIM MUST** be  
 21 as prescribed by statute and the state court administrator. On the  
 22 same form as the ~~affidavit~~ **STATEMENT OF CLAIM** there ~~shall~~ **MUST** be  
 23 printed a notice directing the defendant to appear and answer as  
 24 prescribed in section 8404.

25 (2) The full and correct name of the plaintiff ~~shall~~ **MUST** be  
 26 given, and the ~~affidavit shall~~ **STATEMENT OF CLAIM MUST** state  
 27 whether the plaintiff is a corporation, partnership, sole



1 proprietorship, or individual. If the plaintiff was acting under an  
2 assumed name or business name ~~at the time~~ **WHEN** the claim arose, the  
3 assumed name or business name ~~shall~~ **MUST** be given.

4 (3) The ~~affidavit, in boldface type, shall~~ **STATEMENT OF CLAIM**  
5 **MUST** inform both parties of the right to removal before trial from  
6 magistrate jurisdiction, if applicable, and removal before trial to  
7 the general civil division. The ~~affidavit shall~~ **STATEMENT OF CLAIM**  
8 **MUST** inform the parties of rights waived if they choose to remain  
9 in the small claims division.

10 Sec. 8403. ~~Printed affidavit~~ **STATEMENT OF CLAIM** forms for the  
11 ~~commencement of~~ **COMMENCING** actions in the small claims division  
12 ~~shall~~ **MUST** be available at the office of each clerk and deputy  
13 clerk of the district court. ~~who~~ **THE CLERK OR DEPUTY CLERK** shall  
14 prepare ~~such affidavit~~ **THE STATEMENT OF CLAIM** for a claimant upon  
15 request.

16 Sec. 8404. (1) Upon the filing of the ~~affidavit,~~ **STATEMENT OF**  
17 **CLAIM,** the clerk or deputy clerk shall cause a copy of the  
18 ~~affidavit~~ **STATEMENT OF CLAIM** to be served upon each defendant with  
19 a notice directing the defendant to appear and answer before a  
20 judge of the small claims division. The notice ~~shall~~ **MUST** be in a  
21 form prescribed by the state court administrator and ~~shall~~ **MUST**  
22 inform the defendant of all of the following:

23 (a) When and where to appear.

24 (b) That the defendant and the plaintiff are to bring all  
25 books, papers, and witnesses needed to establish any claim or  
26 defense.

27 (c) That failure to appear may result in a judgment against

1 the defendant of up to the applicable jurisdictional amount as  
2 prescribed by section 8401, or the amount ~~of the claim~~ stated in  
3 the affidavit, ~~STATEMENT OF CLAIM~~, whichever is less, together with  
4 costs of the action.

5 (d) That if settlement of the dispute is made before or at the  
6 hearing, the defendant may be charged with costs incurred by the  
7 plaintiff in initiating the action.

8 (e) That, even if the defendant does not have a legal defense,  
9 the defendant may appear to request installment payments pursuant  
10 ~~to~~ ~~UNDER~~ section 8410.

11 (2) The ~~clerk shall~~ **INSTRUCTIONS UNDER SECTION 8401A MUST**  
12 inform the plaintiff and defendant that evening and Saturday court  
13 hours may be made available upon written request and need shown.

14 Sec. 8405. Except as otherwise provided in this section,  
15 service of the affidavit ~~STATEMENT OF CLAIM~~ and notice to appear  
16 and answer ~~shall~~ **MUST** be made upon the defendant by certified mail,  
17 return receipt requested and deliverable to the addressee only, by  
18 personal service, or upon a showing that service of process cannot  
19 reasonably be made as provided by this section, the court may, by  
20 order, permit service of process to be made in any other manner  
21 reasonably calculated to give the defendant actual notice of the  
22 proceedings and an opportunity to be heard. ~~Where~~ **IF** service by  
23 certified mail is made, it ~~shall~~ **MUST** be made by the clerk and the  
24 receipt of mailing together with the return card signed by the  
25 defendant ~~shall~~ constitute proof of service.

26 Sec. 8406. (1) The date for the appearance of the defendant  
27 provided in the notice ~~shall~~ **MUST** not be less than 15 days nor more

1 than 45 days after the date of the notice. The person filing the  
 2 claim shall receive from the clerk a copy of the ~~affidavit~~  
 3 **STATEMENT OF CLAIM** and notice of hearing. The plaintiff shall  
 4 appear on the date shown in the notice of hearing and have all  
 5 books, papers, and witnesses necessary to prove the claim. If the  
 6 notice is not served upon the defendant at least 7 days before the  
 7 appearance date, the plaintiff may apply to the clerk or deputy  
 8 clerk for a new notice setting a new date for the appearance of the  
 9 defendant ~~which shall~~ **THAT MUST** be not less than 15 days nor more  
 10 than 30 days after the date of ~~the issuance of~~ **ISSUING** the new  
 11 notice.

12 (2) If a defendant is not personally served or did not sign  
 13 the certified mail return receipt at least 7 days before the  
 14 appearance date, there ~~shall~~ **IS** not be jurisdiction to render  
 15 judgment, unless the defendant appears on the appearance date and  
 16 does not request a continuance. If the defendant was not served  
 17 within the minimum time specified, the matter, upon request of  
 18 either party, ~~shall~~ **MUST** be continued for not less than 7 days.

19 Sec. 8409. (1) Attachment or garnishment ~~shall~~ **MUST** not issue  
 20 from the small claims division ~~prior to~~ **BEFORE** judgment but  
 21 execution may issue in the manner prescribed by law and the  
 22 judgment may be enforced in any other manner provided by law and  
 23 not prohibited under ~~the provisions of~~ this chapter.

24 (2) The state court administrator shall prepare ~~instruction~~  
 25 ~~sheets~~ **INSTRUCTIONS** clearly explaining in plain English how, and  
 26 under what circumstances, a plaintiff in whose favor a judgment has  
 27 been entered may request the court to issue execution, attachment,

1 or garnishment to enforce payment of the judgment. A copy of the  
2 ~~instruction sheet shall~~ **INSTRUCTIONS MUST** be offered to the  
3 plaintiff at the same time as a copy of the judgment is given to  
4 the plaintiff under section 8410. Additional copies of the  
5 ~~instruction sheets,~~ **INSTRUCTIONS**, and forms for writs of  
6 garnishment, ~~shall~~ **MUST** be made available at the office of each  
7 clerk and deputy clerk of the district court.

8 Sec. 8412. Unless a party removes a small claims action to the  
9 district court ~~pursuant to~~ **UNDER** section 8408(4), all parties to an  
10 action in the small claims division ~~shall be considered to have~~  
11 waived the right to counsel, the right to trial by jury, the right  
12 to recover more than the applicable jurisdictional amount as  
13 prescribed by section 8401, and any right of appeal, except that if  
14 the action is heard before a district court magistrate ~~pursuant to~~  
15 **UNDER** section 8427, the parties have a right to an appeal to the  
16 small claims division of the district court as provided by section  
17 8427. The ~~affidavit~~ **STATEMENT OF CLAIM** prescribed in section 8402  
18 ~~shall~~ **MUST** contain a statement that the plaintiff understands that  
19 he or she has waived these rights.

20 Sec. 8420. (1) A fee of the following amount, as applicable,  
21 ~~shall~~ **MUST** be charged and collected for the filing of the ~~affidavit~~  
22 **STATEMENT OF CLAIM** for the commencement of any action:

23 (a) \$25.00, if the amount in controversy does not exceed  
24 \$600.00.

25 (b) \$45.00, if the amount in controversy exceeds \$600.00 but  
26 does not exceed \$1,750.00.

27 (c) \$65.00, if the amount in controversy exceeds \$1,750.00.

1           (2) A fee in an amount equal to the prevailing postal rate for  
2 the service provided ~~shall~~**MUST** be charged and collected for each  
3 defendant to whom a copy of the affidavit~~—STATEMENT OF CLAIM~~ is  
4 mailed by the clerk. A fee of \$15.00 ~~shall~~**MUST** be charged and  
5 collected for the issuance of a writ of execution, attachment, or  
6 garnishment and for the issuance of a judgment debtor discovery  
7 subpoena. Except as otherwise provided in this chapter, a fee or  
8 charge ~~shall~~**MUST** not be collected by an officer for any service  
9 rendered under this chapter. ~~or for the taking of affidavits for~~  
10 ~~use in connection with any action commenced under this chapter.~~

11           (3) Of each filing fee under subsection (1)(a) collected  
12 within the month, at the end of each month, the clerk shall  
13 transmit \$11.00 to the treasurer of the district funding unit in  
14 which the action was commenced, of which not less than \$5.00 ~~shall~~  
15 **MUST** be used by the district funding unit to fund a drug treatment  
16 court if one is planned, established, or operated in that judicial  
17 district. If the entire amount attributable to the \$5.00 portion is  
18 not needed for the operation of a drug treatment court, the balance  
19 that is not needed for that purpose ~~shall~~**MUST** be used for the  
20 operation of the district court. If a drug treatment court is not  
21 planned, established, or operated in that judicial district, all  
22 \$11.00 ~~shall~~**MUST** be used for the operation of the district court.  
23 The clerk of the district court shall transmit the balance of the  
24 filing fee to the state treasurer for deposit in the civil filing  
25 fee fund created in section 171.

26           (4) Of each filing fee under subsection (1)(b) collected  
27 within the month, at the end of each month, the clerk shall

1 transmit \$17.00 to the treasurer of the district funding unit in  
2 which the action was commenced, of which not less than \$5.00 ~~shall~~  
3 **MUST** be used by the district funding unit to fund a drug treatment  
4 court if one is planned, established, or operated in that judicial  
5 district. If the entire amount attributable to the \$5.00 portion is  
6 not needed for the operation of a drug treatment court, the balance  
7 that is not needed for that purpose ~~shall~~**MUST** be used for the  
8 operation of the district court. If a drug treatment court is not  
9 planned, established, or operated in that judicial district, all  
10 \$17.00 ~~shall~~**MUST** be used for the operation of the district court.  
11 The clerk of the district court shall transmit the balance of the  
12 filing fee to the state treasurer for deposit in the civil filing  
13 fee fund created in section 171.

14 (5) Of each filing fee under subsection (1)(c) collected  
15 within the month, at the end of each month, the clerk shall  
16 transmit \$23.00 to the treasurer of the district funding unit in  
17 which the action was commenced, of which not less than \$5.00 ~~shall~~  
18 **MUST** be used by the district funding unit to fund a drug treatment  
19 court if one is planned, established, or operated in that judicial  
20 district. If the entire amount attributable to the \$5.00 portion is  
21 not needed for the operation of a drug treatment court, the balance  
22 that is not needed for that purpose ~~shall~~**MUST** be used for the  
23 operation of the district court. If a drug treatment court is not  
24 planned, established, or operated in that judicial district, all  
25 \$23.00 ~~shall~~**MUST** be used for the operation of the district court.  
26 The clerk of the district court shall transmit the balance of the  
27 filing fee to the state treasurer for deposit in the civil filing

1 fee fund created in section 171.

2 (6) If the ~~affidavit~~ **STATEMENT OF CLAIM** and notice to appear  
3 and answer are served by personal service, the person serving the  
4 process is entitled to the same fee and mileage as for the service  
5 of a summons and complaint out of the district court.

6 Sec. 8423. (1) If a defendant in a small claims action has a  
7 claim against the plaintiff, ~~which claim~~ **THAT** is for an amount  
8 over the jurisdiction of the small claims division but of a nature  
9 ~~which~~ **THAT** would be subject to counterclaim in accordance with  
10 rules of the supreme court, ~~he~~ **THE DEFENDANT** may commence an action  
11 against the plaintiff in a court of competent jurisdiction. ~~and~~ **IF**  
12 **THE DEFENDANT COMMENCES AN ACTION, AT OR BEFORE THE TIME SET FOR**  
13 **THE TRIAL OF THE SMALL CLAIMS ACTION, THE DEFENDANT SHALL** file with  
14 the clerk or deputy clerk of the small claims division ~~wherein~~  
15 **WHERE** the plaintiff has commenced his **OR HER** action, ~~at or before~~  
16 ~~the time set for the trial of the small claims action, an affidavit~~  
17 ~~in a form prescribed by the supreme court setting forth the fact of~~  
18 ~~the commencement of such action by the defendant. He shall attach~~  
19 ~~to the affidavit a true copy of the complaint filed by him~~ **THE**  
20 **DEFENDANT** against **THE** plaintiff, ~~and~~ pay to the clerk or deputy  
21 clerk the sum of \$1.00 for a transmittal fee, and ~~shall~~ mail to the  
22 plaintiff a copy of the ~~affidavit and~~ complaint. ~~at or before the~~  
23 ~~time above stated.~~ Thereupon the judge of the small claims division  
24 shall order that the small claims action ~~shall~~ be transferred to  
25 the court set forth in the ~~affidavit and~~ **COMPLAINT, THE JUDGE**  
26 shall transmit all files and papers in the action to the other  
27 court, and the actions ~~shall then~~ **MUST** be tried together in the

1 other court.

2 (2) The plaintiff in the small claims action shall not be  
3 required to pay to the clerk of the court to which the action is  
4 transferred any transmittal, appearance, or filing fee in the  
5 action.



**Public Policy Position  
SB 1103**

**Support**

**Explanation**

The committee supports SB 1103.

**Position Vote:**

Voted For position: 22

Voted against position: 0

Abstained from vote: 0

Did not vote: 5

**Keller Explanation**

SB 1103 is Keller permissible as it affects the functioning of the small claims divisions of the district courts.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)