Agenda
Public Policy Committee
July 21, 2022 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee……James W. Heath, Chairperson

A. Reports

1. Approval of June 8, 2022 minutes
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2002-37: Amendment of MCR 1.109

The amendment of MCR 1.109 provides an e-filing court with the authority to determine the most appropriate means of sending notices and other court-issued documents that are generated from its case management or local document management system.

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Liaison:	Judge Cynthia D. Stephens (Ret.)

2. ADM File No. 2002-37/2017-28: Amendments of MCR 1.109 and 8.119

The amendments of MCR 1.109 and MCR 8.119 aid in protecting personal identifying information included in Uniform Law Citations, proposed orders, and public documents filed with or submitted to the court.

Status:	09/01/22 Comment Period Expires.
Referrals:	05/12/22: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practices Committee; Criminal Law Section.
Liaison:	Takura N. Nyamfukudza

3. ADM File No. 2021-17: Proposed Rescission of Administrative Order No. 1998-1 and Proposed Amendment of MCR 2.227

The proposed rescission of Administrative Order No. 1998-1 and proposed amendment of MCR 2.227 would move the relevant portion of the administrative order into court rule format and make the rule consistent with the holding in *Krolczyk v Hyundai Motor America*, 507 Mich 966 (2021).

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Civil Procedure & Courts Committee.
Comments:	Civil Procedure & Courts Committee. Comment submitted to the Court included in the materials.
Liaison:	Mark A. Wisniewski

4. ADM File No. 2022-06: Proposed Amendment of MCR 3.101

The proposed amendment of MCR 3.101 would allow writs of garnishment to be served electronically on the Department of Treasury, subject to current e-filing requirements and guidelines established by the Department of Treasury.

Status:	09/01/22 Comment Period Expires.
Referrals:	05/11/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Liaison:	Thomas G. Sinas

5. ADM File No. 2021-21: Proposed Amendment of MCR 3.613

The proposed amendment of MCR 3.613 would clarify the process courts must use after receiving a request not to publish notice of a name change proceeding and to make the record confidential.

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Family Law Section. 06/30/22 Children's Law Section; LGBTQA Section; Probate & Estate Planning Section.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Liaison:	Suzanne C. Larsen

6. ADM File No. 2020-33: Proposed Amendment of MCR 3.903

The proposed amendment of MCR 3.903 would clarify the definition of a party in child protective proceedings.

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children's Law Section; Family Law Section.
Comments:	Civil Procedure & Courts Committee; Children's Law Section.
Liaison:	E. Thomas McCarthy, Jr.

7. ADM File No. 2021-18: Proposed Amendment of MCR 3.943

The proposed amendment of MCR 3.943 would update the definition of "firearm" in juvenile proceedings to be consistent with MCL 8.3t, which contains the definition referenced in the court rule's companion statute, MCL 712A.18g.

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section.
Comments:	Criminal Jurisprudence & Practice Committee.
Liaison:	Valerie R. Newman

8. ADM File No. 2021-16: Proposed Amendment of MCR 7.305

The proposed amendment of MCR 7.305 would clarify that the 28- day timeframe for filing an application for leave to appeal applies to cases where the respondent's parental rights have been terminated.

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Civil Procedure & Courts Committee; Appellate Practice Section; Children's Law Section; Family Law Section.
Comments:	Civil Procedure & Courts Committee. Comment submitted to the Court included in the materials.
Liaison:	Lori A. Buiteweg

9. ADM File No. 2021-13: Proposed Amendment of MCR 8.119

The proposed amendment of MCR 8.119 would clarify that a request for a fee waiver must be filed in accordance with MCR 2.002(B), which requires the request to be made on a form approved by the State Court Administrative Office.

Status:	08/01/22 Comment Period Expires.
Referrals:	04/18/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Liaison:	Kim W. Eddie

C. Legislation

1. HB 4795 Substitute H-2 (Berman) Courts: judges; hearings on emergency motions by defendant in criminal cases; provide for. Amends sec. 1, ch. I of 1927 PA 175 (MCL 761.1) & adds sec. 12 to ch. III.

Status:	06/09/22 Reported out of the House Committee on Oversight as Substitute H-2; Considered by the Committee on June 10, 2021 and June 9, 2022.
Referrals:	06/13/22 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Judicial Section.
Comments:	Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
Liaison:	Takura N. Nyamfukudza

D. Section Inconsistent Advocacy Request

1. HJR Q (Allor) Courts: judges; age limit for election of or appointment to a judicial office; amend. Amends sec.19, art. VI of the state constitution.

Status:	03/23/22 Referred to the House Committee on Judiciary; Considered by the Committee on April 26, 2022.
Comments:	Family Law Section.
Liaison:	James W. Heath

MINUTES
Public Policy Committee
June 8, 2022 – 12:00 p.m. to 1:30 p.m.

Committee Members: James W. Heath, Lori A. Buiteweg, Kim Warren Eddie, Suzanne C. Larsen, Valerie R. Newman, Takura N. Nyamfukudza, Brian D. Shekell, Thomas G. Sinas[i] (non-voting), Judge Cynthia D. Stephens, Mark A. Wisniewski (9)
SBM Staff: Peter Cunningham, Nathan A. Triplett, Carrie Sharlow
GCSI Staff: Marcia Hune

A. Reports

1. Approval of April 7, 2022 minutes
The minutes were unanimously approved.

2. Public Policy Report
A written report was provided.
Peter Cunningham and Nathan Triplett offered a verbal report.

B. Court Rule Amendments

1. ADM File No. 2021-11: Proposed Amendment of MCR 9.116
The proposed amendment of MCR 9.116 would allow the Attorney Grievance Commission to initiate disciplinary proceedings against a former judge who, but for his or her departure from the bench, would have been removed from office based on misconduct that was the subject of judicial disciplinary proceedings.
The committee reviewed recommendations from the following groups: Civil Procedure & Courts Committee; Judicial Ethics Committee.
The committee voted to 6 to 1 to support ADM File No. 2021-11 as drafted.

2. ADM File No. 2021-40: Amendment of BLE 5
The amendment of Rule 5 of the Rules for the Board of Law Examiners specifically allows attorneys who are teaching in a clinical program to represent individual clients of that program.
The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.
The committee voted unanimously (7) to support ADM File No. 2021-40 with additional language added to require an attorney practicing under the authority granted by a special certificate be required to designate that fact on any filings made when representing clients pursuant to the proposed amendment.

C. Legislation

1. HB 5749 (Fink) Courts: district court; compensation for district court judges; increase. Amends sec. 8202 of 1961 PA 236 (MCL 600.8202).
The committee reviewed recommendations from the following groups: Civil Procedure & Courts Committee.
The committee voted unanimously (7) that the legislation is *Keller*-permissible in impacting the functioning of the courts.
The committee voted unanimously (7) to support HB 5749.

2. Trial Court Funding
HB 5956 (Lightner) Criminal procedure: sentencing; sunset on certain costs that may be imposed upon criminal conviction; modify. Amends sec. 1k, ch. IX of 1927 PA 175 (MCL 769.1k).
HB 5957 (Lightner) Courts: funding; formula for local court operational needs based; allow the state court administrative office to create. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2406.
The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee voted unanimously (9) that the legislation is *Keller*-permissible in affecting the functioning of the courts and the availability of legal services to society.
The committee voted 8 to 1 to support HB 5956 and HB 5957.

3. HB 5975 (Pohutsky) Courts: guardian ad litem; trauma-informed training for lawyer-guardian ad litem; require. Amends sec. 17d, ch. XIIA of 1939 PA 288 (MCL 712A.17d).
The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Civil Procedure & Courts Committee.
The committee voted unanimously (9) that the legislation is *Keller*-permissible in affecting the functioning of the courts and the availability of legal services to society.
The committee voted unanimously (9) to support HB 5975.

4. HB 5987 (LaGrand) Crime victims: other; restorative justice practices enabling act; create. Creates new act.
The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee voted unanimously (9) that the legislation is *Keller*-permissible in affecting the functioning of the courts.
The committee voted unanimously (9) to oppose the bill as drafted, but support the concept of restorative justice practices, and urge the creation of a workgroup to further develop the proposed legislation.

5. SB 1015 (Bayer) Criminal procedure: evidence; admissibility of certain hearsay testimony in certain human trafficking and prostitution prosecutions; provide for. Amend sec. 27c, ch. VIII of 1927 PA 175 (MCL 768.27c).
The committee reviewed recommendations from the following groups: Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee voted unanimously (8) that the legislation is *Keller*-permissible in affecting the functioning of the courts.
The committee voted 6 to 2 to oppose SB 1015.

6. SB 1027 (MacDonald) Criminal procedure: other; prison diversion program for individuals in the possession of controlled substances; create. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 21b to ch. XVII.
The committee reviewed recommendations from the following groups: Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee voted unanimously (8) that the legislation is not *Keller*-permissible and removed it from the agenda.

D. <u>Amicus Brief Authorization Request</u>

1. *Spencer Woodman v Dep't of Corrections* (Docket No. #163382)

The committee reviewed recommendations from the following groups: Justice Initiatives Committee; Access to Justice Policy Committee.

The committee voted 6 in favor with one abstention that the submission of an amicus brief in this case is *Keller*-permissible in affecting the functioning of the courts and availability of legal services to society.

The committee voted 5 in favor, one opposed, and with one abstention to recommend that the Board authorize the State Bar of Michigan, upon the request of the Standing Committee on Justice Initiatives and the Access to Justice Policy Committee, to join an amicus brief, alongside the Michigan State Planning Body and the Legal Services Association of Michigan, in *Woodman v Dep't of Corrections*.

E. <u>Consent Agenda</u>

To allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

1. M Crim JI 11.25a

The Committee proposes a new instruction, M Crim JI 11.25a, for the crime of brandishing a firearm in violation of MCL 750.234e. This jury instruction is entirely new.

2. M Crim JI 19.1a

The Committee proposes a new instruction, M Crim JI 19.1a, for the crime of kidnapping a child in violation of MCL 750.350. This jury instruction is entirely new.

3. M Crim JI 19.6

The Committee proposes to amend jury instruction M Crim JI 19.6, the instruction for charges under the parental kidnapping statute, MCL 750.530a. The amendment entirely re-writes the instruction.

4. M Crim JI 19.9

The Committee proposes a new instruction, M Crim JI 19.9, for the crime of a prisoner taking a hostage in violation of MCL 750.349a. This jury instruction is entirely new.

5. M Crim JI 34.7 – 34.15

The Committee proposes instructions, M Crim JI 34.7, 34.7a, 34.8, 34.9, 3.10, 34.11, 34.12, 34.13, 34.14 and 34.15, for the Medicaid-related crimes found in MCL 400.603 to 400.611. These jury instructions are entirely new.

6. M Crim JI 41.1

The Committee proposes a new instruction, M Crim JI 41.1, for the crime of trespassing for eavesdropping or surveillance in violation of MCL 750.539b. This jury instruction is entirely new.

The Consent Agenda was approved.

---

[i] While Thomas G. Sinas was in attendance at the meeting and could hear the conversation, he was unable to vote due to technical issues. As per an email on June 9, 2022 at 8:54 a.m., Mr. Sinas noted that his votes were "consistent with the majority positions taken on all issues."

SBM State Bar of Michigan

p (517) 346-6300
p (800) 968-1442
f (517) 482-6248

Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012

www.michbar.org

June 30, 2022

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

RE: ADM File No. 2021-11 – Proposed Amendment of Rule 9.116 of the Michigan Court Rules

Dear Clerk Royster:

At its June 10, 2022 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-11. In its review, the Board considered recommendations from the Civil Procedure & Courts Committee and Judicial Ethics Committee. The Board voted unanimously to support the proposed amendment of Rule 9.116.

As written today, the Michigan Court Rules result in a gap between Michigan's judicial and attorney discipline systems that may result in a judge engaging in serious misconduct and yet escaping any meaningful sanction as a member of either the bench or the bar. Closing this gap by amending Rule 9.116 would protect the public from unscrupulous individuals, promote the integrity of the legal profession, and help ensure the effectiveness of the discipline systems and their essential role in maintaining the highest standards of professional conduct.

We thank the Court for the opportunity to comment on the proposed amendment.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Dana M. Warnez, President

SBM STATE BAR OF MICHIGAN

p (517) 346-6300
p (800) 968-1442
f (517) 482-6248

Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012

www.michbar.org

June 30, 2022

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

RE: ADM File No. 2021-40 – Amendment of Rule 5 of the Board of Law Examiners Rules

Dear Clerk Royster:

At its June 10, 2022 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-40. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, and Criminal Jurisprudence & Practice Committee.

The Board voted unanimously to support the amendment with a further recommendation that additional language be added to the Rule to require an attorney representing clients under the authority granted by a special certificate to designate that fact on any court filings. Adoption of the proposed amendment will both expand access to justice in Michigan and improve the functioning of, among other things, clinic legal education programs.

We thank the Court for the opportunity to comment on the amendment.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Dana M. Warnez, President

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: July 15, 2022

Re: Public Policy Update

This memo includes updates on legislation and court rules on which the State Bar has taken public policy positions.

Legislation

HB 4795 – Hearings on Emergency Motions by Defendant in Criminal Cases

On July 24, 2020, the Board of Commissioners voted to oppose HB 5805; the substance of HB 5805 was then reintroduced in the current legislative session as HB 4795. Because HB 4795 was identical to its predecessor, staff applied the Board's previously approved position of opposition. The bill sponsor began working with stakeholders to refine the legislation and address concerns; these consultations resulted in Substitute (H-2), which was supported by the State Court Administrative Office, and reported with recommendation by the House Oversight Committee by a vote of 7-1-0 on June 9, 2022. The substitute bill is currently pending on second reading in the House. SBM committees were asked to review and comment on the substitute.

HB 5512 – Drug Treatment Courts & Michigan Medical Marihuana Act

The Board of Commissioners reviewed HB 5512 at its April 8, 2022 meeting and voted unanimously to support the legislation. HB 5512 passed the House of Representatives on April 27th with a vote of 87 in favor and 16 in opposition. After review by the Senate Committee on Regulatory Reform, HB 5512 moved quickly through the Senate without any additional amendments. It passed the Senate on June 30th with a vote of 30 in favor and 8 in opposition. The bill now waits for the governor's signature.

HB 5681 – Victim Impact Statement Made Remotely

The Board of Commissioners reviewed HB 5681 at its April 8, 2022 meeting and voted unanimously to support the legislation. When the House Judiciary Committee discussed the bill on June 7th, SBM submitted a card in support. On June 15th, HB 5681 passed the House unanimously. It is now being considered by the Senate Judiciary & Public Safety Committee.

HB 5749 – Compensation for District Court Judges

The Board of Commissioners reviewed HB 5749 at its June 10, 2022 meeting and voted to support the legislation. At that point, the bill had already passed the House of Representative with a vote on 96 to 8. On June 30th, HB 5749 passed the Senate with a vote of 37 to 1. The bill now waits for the governor's signature.

HB 5783 – FY 2022-2023 Judiciary & MIDC Budgets

The Public Policy Committee reviewed the FY 2022-2023 Executive Budget Recommendation for the Michigan Indigent Defense Commission and the FY 2022-2023 Executive Budget for the Judiciary at a special meeting on March 3, 2022. The Committee recommended that the Board of Commissioners support both budget requests, and the positions passed via an e-vote in mid-March. Since that time, all departmental budgets were incorporated into an omnibus budget bill (HB 5783), versions of which passed the House of Representatives on May 5th (68 to 35) and the Senate on May 11th (21 to 12). The competing budget bills were referred to conference committee in late June and the conference report was presented to both chambers before the July 4th holiday. It passed the House 97 to 9, and the Senate unanimously, and now await the governor's signature. The budget for the Judiciary for the upcoming fiscal year totals $483,505,700. This includes over $12 million for drug treatment courts and $150 million for a statewide judicial case management system. The Licensing & Regulatory Affairs budget includes $148,917,400 for the Michigan Indigent Defense Commission.

HB 5975 – Trauma-Informed Training for Lawyer-Guardian Ad Litem

The Board of Commissioners reviewed HB 5975 at its June 10, 2022 meeting and voted unanimously to support the legislation. The bill had already passed the House of Representatives with a vote of 98 to 9 on May 24th; it has since been reported by the Senate Committee on Health Policy & Human Services. The bill now awaits action in the full Senate.

Court Rules

ADM File No. 2019-16: Amendments of Rules 7.212, 7.215, 7.305, 7.311, and 7.312 of the Michigan Court Rules (Formatting of Appellate Briefs)

The Board of Commissioners reviewed the proposed amendment to Rule 7.212 at its January 21, 2022 and voted unanimously to support the proposed amendments. In addition, the Board "authorized committee and sections to submit their positions to the Court for consideration." The Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and Appellate Practice Section submitted separate comments.

The final amendments issued by the Court on June 29th adopt the proposed amendments to Rule 7.212 with additional amendments to (B)(2) noting that the "only elements of a brief included in a word or page limit are (C)(6)-(8)": the statement of facts, arguments, and relief. Additional amendments were made to Rule 7.215(I) Reconsideration; 7.305(E) Reply; 7.311(F)(1) Motion for Rehearing; 7.311(G) Motion for Reconsideration; 7.312(A) Form & Length; and 7.312(B) Citation of Record; Summary of Arguments. The amendments are effective September 1, 2022.

ADM File No. 2021-31: Amendment of Rule 8.110 of the Michigan Court Rules (Court Observance of Juneteenth)

The Board of Commissioners reviewed ADM File No. 2021-31 at its January 21, 2022 and voted unanimously to "add Juneteenth as a court holiday in Michigan without omitting another holiday presently recognized by the court rules." On June 1st, the Court adopted the proposal requiring that courts observe Juneteenth as a holiday without omitting another with immediate effect.

ADM File No. 2019-28/2021-36: Amendment of Rule 9.202 of the Michigan Court Rules
(Imposition of Costs in Judicial Tenure Commission Proceedings)

The Public Policy Committee reviewed ADM File No. 2019-28/2021-36 at a special meeting on March 3, 2022. The Committee recommended that the Board of Commissioners take no position and authorize the Judicial Ethics Committee to advocate its position on alternative amendments. An e-vote of the Board was conducted in mid-March and the Board took no position. The Judicial Ethics Committee submitted its comments on April 1, 2022, recommending that Rule 9.202 "mirror the language that currently exists in Rule 9.128(B), which specifies the costs to be imposed in attorney disciplinary proceedings." The committee also recommended supporting the amendment to Rule 9.245.

On July 13th, the Court issued the amendment to Rule 9.202, adopting Alternative A, which notes that "a judge may not be ordered to pay the costs, fees, and expenses incurred by the Judicial Tenure Commission in prosecuting the complaint." The Court did not adopt the addition of new Rule 9.245. The amendment is effective September 1, 2022.

ADM File No. 2021-07: Addition of Rule 1.19 of the Michigan Rules of Professional Conduct and Official Comment (Arbitration Clause in An Attorney-Client Agreement)

The Public Policy Committee reviewed ADM File No. 2021-07 at a special meeting on March 3, 2022. The Committee that the Board oppose the proposed amendment as it unnecessarily interferes with the ability of attorneys and their clients to enter into engagement agreements on mutually agreeable terms. The Board further authorized the Professional Ethics Committee and Alternative Dispute Resolution Section to advocate their respective positions on the proposal.

On May 16th, the Professional Ethics Committee and Alternative Dispute Resolution Section submitted conferred upon recommended amendments to the proposal. The proposed amendment was reviewed at the May 18th Public Administrative Hearing. On June 8th, the Court issued the final amendment, effective September 1, 2022. In short, with only minor wording changes in the initial paragraph that were expected, the Court adopted the proposal recommended by the Professional Ethics Committee and the Alternative Dispute Resolution Section, including the official comment. They also placed the language in a new Rule 1.19, as opposed to in Rule 1.8. Justices Viviano and Zahra dissented.

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

ADM File No. 2002-37

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

Amendment of Rule 1.109 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the amendment of Rule 1.109 of the Michigan Court Rules is adopted, effective immediately. Concurrently, individuals are invited to comment on the form or the merits of the amendments during the usual comment period. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted at the Public Administrative Hearings page.

[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)-(d) [Unchanged.]

(e) A court may electronically~~If a party or attorney in a case is registered as an authorized user in the electronic-filing system, a court must electronically~~ send ~~to that authorized user~~ any notice, order, opinion, or other document issued by the court in that case by means of the electronic-filing system. This rule shall not be construed to eliminate any responsibility of a party, under these rules, to serve documents that have been issued by the court.

(f)-(l) [Unchanged.]

(4)-(7) [Unchanged.]

(H) [Unchanged.]

Staff comment: The amendment of MCR 1.109 provides an e-filing court with the authority to determine the most appropriate means of sending notices and other court-issued documents that are generated from its case management or local document management system.

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at 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.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2002-37: Amendment of MCR 1.109

Support

Explanation

The Committee voted to support ADM File No. 2002-37. The proposed amendment is consistent with existing e-filing systems and may allow for the expansion of such systems, while also preserving judicial discretion to determine the best means of notice in a particular court. Electronic notices and electronic filing bring state courts closer to the system that has been adopted by federal courts for many years now and seem to function well for the courts and litigants. Electronic notices and filings avoid mail delays, lost mail (especially when litigants move), and make the courts more ready to face future crises similar to the current COVID situation.

Position Vote:

Voted For position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 12

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2002-37: Amendment of MCR 1.109

Support

Explanation:
The Committee voted to support ADM File No. 2002-37. A majority of Committee members felt that a court is in the best position to determine the most appropriate means of sending notices and other court-issued documents based on the facts and circumstances that are particular to that court. Some Committee members were concerned that the use of non-electronic means of communication would result in untimely notices or other avoidable delays and complications. These members believed that the existing rule was preferable to the proposal.

Position Vote:
Voted For position: 16
Voted against position: 5
Abstained from vote: 0
Did not vote (absence): 11

Contact Person:
Lori J. Frank lori@markofflaw.com

Public Policy Position
ADM File No. 2002-37: Amendment of MCR 1.109

Support

Explanation:
The Committee voted to support ADM File No. 2002-37, an amendment of Rule 1.109 of the Michigan Court Rules. The Committee believed that courts are best situated the prescribe the means by which notices and other documents are sent based on the facts and circumstances present in a particular case or locality.

Position Vote:
Voted For position: 17
Voted against position: 1
Abstained from vote: 0
Did not vote (absence): 6

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2002-37: Amendment of MCR 1.109

Support

Position Vote:
Voted for position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Sofia V. Nelson
Email: sofia.nelson@gmail.com

Order

Michigan Supreme Court
Lansing, Michigan

May 11, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2002-37
ADM File No. 2017-28

Amendments of Rules 1.109 and 8.119 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the amendments of Rules 1.109 and 8.119 of the Michigan Court Rules are adopted, effective immediately. Concurrently, individuals are invited to comment on the form or the merits of the amendments during the usual comment period. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

[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)-(C) [Unchanged.]

(D) Filing Standards.

(1)-(8) [Unchanged.]

(9) Personal Identifying Information.

(a) [Unchanged.]

(b) Filing, Accessing, and Serving Personal Identifying Information

(i)-(ii) [Unchanged.]

(iii) Except as otherwise provided by these rules, ~~i~~If a party is required to include protected personal identifying information in a public document filed with the court, the party shall file the document with the protected personal identifying information redacted, along with a personal identifying information form approved by the State Court Administrative

Office under subrule (i). The personal identifying information form must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers listed in the personal identifying information form will be understood to refer to the corresponding complete identifier. A party may amend the personal identifying information form as of right. Fields for protected personal identifying information may be included in SCAO-approved court forms, and the information will be protected~~,~~ in the form and manner established by the State Court Administrative Office.

Unredacted protected personal identifying information may be included on Uniform Law Citations filed with the court and on proposed orders presented to the court.

(iv)-(vii) [Unchanged.]

(c)-(e) [Unchanged.]

(10) [Unchanged.]

(E)-(H) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(G) [Unchanged.]

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules.

(1) The clerk shall not permit any case record to be taken from the court without the order of the court.

(2) A court may provide access to the public case history information through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039.

(3) Public access to all electronic documents imported from an electronic document management system maintained by a court or its funding unit to the state-owned electronic document management system maintained by the

State Court Administrative Office will be automatically restricted until protected personal identifying information is redacted from all documents with a filed date or issued date that precedes April 1, 2022.

(4) If a request is made for a public record that is maintained electronically, the court is required to provide a means for access to that record. However, the recordsdocuments cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those recordsdocuments.

(5) If a public document prepared or issued by the court, on or after April 1, 2022, or a Uniform Law Citation filed with the court on or after April 1, 2022, contains protected personal identifying information, the information must be redacted before it can be provided to the public, whether the document is provided upon request via a paper or electronic copy, or direct access via a publicly accessible computer at the courthouse. Upon receipt by the court on or after April 1, 2022, protected personal identifying information included in a proposed order shall be protected by the court as required under MCR 8.119(H) as if the document was prepared or issued by the court.

(6) The court may provide access to any case record that is not available in paper or digital image, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(D), in a medium for which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.

(1)-(2) [Renumbered (7)-(8) but otherwise unchanged.]

(I)-(L) [Unchanged.]

Staff comment: The amendments of MCR 1.109 and MCR 8.119 aid in protecting personal identifying information included in Uniform Law Citations, proposed orders, and public documents filed with or submitted to the court.

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 submitted by September 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-37/2017-28. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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 11, 2022

Clerk

Public Policy Position
ADM File No. 2002-37/2017-28: Amendments of MCR 1.109 and 8.119

Support

Explanation
The Committee voted unanimously (14) to support the amendments to Rules 1.109 and 8.119. The Committee believes that the proposed amendments are reasonable and align with similar protection for personal identifying information afforded in other court rules.

Position Vote:
Voted For position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 13

Contact Persons:
Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2002-37/2017-28: Amendment of MCR 1.109 and 8.119

No Position

Explanation

The Committee voted not to take a position on ADM File No. 2002-37/2017-28. The Committee recognizes that affordable access to records is essential to litigants and also that appropriate redaction procedures are necessary to protect personal identifying information. However, the Committee did not feel it was appropriately situated to assess whether the proposed amendment of MCR 1.109 and 8.119 struck the correct balance between these competing interests.

Position Vote:

Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 15

Contact Person:

Lori J. Frank lori@markofflaw.com

Public Policy Position
ADM File No. 2002-37/2017-28: Amendments of MCR 1.109 and 8.119

Support

Explanation:
The Committee voted to support the amendments to MCR 1.109 and 8.119 proposed in ADM File No. 2002-37/2017-28 as drafted.

The Committee did wish to express concern over what they perceive as an increase in the frequency of the Court making amendments to the Rules effective immediately and soliciting comments after the fact. The Committee believes it would be preferable to adhere to the standard amendment procedure outlined in MCR 1.201 unless there is a genuine need for immediate action.

Position Vote:
Voted For position: 15
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 8

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2002-37/2017-28: Amendments of MCR 1.109 & 8.119

Support

Position Vote:
Voted for position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Sofia V. Nelson
Email: sofia.nelson@gmail.com

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2021-17

Proposed Rescission of Administrative Order No. 1998-1 and Proposed Amendment of Rule 2.227 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering a rescission of Administrative Order No. 1998-1 and amendment of Rule 2.227 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings 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.]

~~Administrative Order No. 1998-1 Reassignment of Circuit Court Actions to District Judges~~

~~In 1996 PA 374 the Legislature repealed former MCL 600.641; MSA 27A.641, which authorized the removal of actions from circuit court to district court on the ground that the amount of damages sustained may be less than the jurisdictional limitation as to the amount in controversy applicable to the district court. In accordance with that legislation, we repealed former MCR 4.003, the court rule implementing that procedure. It appearing that some courts have been improperly using transfers of actions under MCR 2.227 as a substitute for the former removal procedure, and that some procedure for utilizing district judges to try actions filed in circuit court would promote the efficient administration of justice, we adopt this administrative order, effective immediately, to apply to actions filed after January 1, 1997.~~

~~A circuit court may not transfer an action to district court under MCR 2.227 based on the amount in controversy unless: (1) The parties stipulate to the transfer and to an appropriate amendment of the complaint, see MCR 2.111(B)(2); or (2) From the allegations of the complaint, it appears to a legal certainty that the amount in controversy is not greater than the applicable jurisdictional limit of the district court.~~

~~Circuit courts and the district courts within their geographic jurisdictions are strongly urged to enter into agreements, to be implemented by joint local administrative orders, to provide that certain actions pending in circuit court will be reassigned to district judges for further proceedings. An action designated for such reassignment shall remain pending as a circuit court action, and the circuit court shall request the State Court Administrator assign the district judge to the circuit court for the purpose of conducting proceedings. Such administrative orders may specify the categories of cases that are appropriate or inappropriate for such reassignment, and shall include a procedure for resolution of disputes between circuit and district courts as to whether a case was properly reassigned to a district judge.~~

~~Because this order was entered without having been considered at a public hearing under Administrative Order No. 1997-11, the question whether to retain or amend the order will be placed on the agenda for the next administrative public hearing, currently scheduled for September 24, 1998.~~

Rule 2.227 Transfer of Actions on Finding of Lack of Jurisdiction

(A) Transfer to Court Which Has Jurisdiction. Except as otherwise provided in this rule, w~~W~~hen the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper. If the question of jurisdiction is raised by the court on its own initiative, the action may not be transferred until the parties are given notice and an opportunity to be heard on the jurisdictional issue.

(B) Transfers From Circuit Court to District Court.

(1) A circuit court may not transfer an action to district court under this rule based on the amount in controversy unless:

(a) the parties stipulate in good faith to the transfer and to an amount in controversy not greater than the applicable jurisdictional limit of the district court; or

(b) from the allegations of the complaint, it appears to a legal certainty that the amount in controversy is not greater than the applicable jurisdictional limit of the district court.

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

(E~~D~~) Procedure After Transfer.

(1) The action proceeds in the receiving court as if it had been originally filed there. If further pleadings are required or allowed, the time for filing them runs from the date the filing fee is paid under subrule (D~~C~~)(1). The receiving court may order the filing of new or amended pleadings. If part of the action remains pending in the transferring court, certified copies of the papers filed may be forwarded, with the cost to be paid by the plaintiff.

(2) [Unchanged.]

(3) A waiver of jury trial in the court in which the action was originally filed is ineffective after transfer. A party who had waived trial by jury may demand a jury trial after transfer by filing a demand and paying the applicable jury fee within 28 days after the filing fee is paid under subrule (D~~C~~)(1). A demand for a jury trial in the court in which the action was originally filed is preserved after transfer.

(E) [Relettered (F) but otherwise unchanged.]

Staff Comment: The proposed rescission of Administrative Order No. 1998-1 and proposed amendment of MCR 2.227 would move the relevant portion of the administrative order into court rule format and make the rule consistent with the holding in *Krolczyk v Hyundai Motor America*, 507 Mich 966 (2021).

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted

Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-17. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2021-17: Proposed Rescission of Administrative Order No. 1998-1 and Proposed Amendment of MCR 2.227

Support

Explanation:
The Committee voted to support ADM File No. 2021-17. The Committee believed that placing the proposed language into the Michigan Court Rules would make it more easily accessible to attorneys than it is today in an Administrative Order and thus avoid confusion. Additionally, the Committee supports aligning the Rule with the Court's controlling precedents, as such alignment promotes better understanding and provides clarity for those attorneys whose practice is impacted by the holding in *Krolczyk v Hyundai Motor America*.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 11

Contact Person:
Lori J. Frank lori@markofflaw.com

JEFFREY T. NEILSON[1,3,6,12]
PHILLIP E. SELTZER[1,6]
JOSEPH P. GARIN[1,3,4,6]
THOMAS G. COSTELLO[1]
DAVID B. DEUTSCH[1]
STEVEN H. MALACH[1,7]
C. THOMAS LUDDEN[1]
STUART D. LOGAN[1]
SANDRA D. GLAZIER[1]
MARY T. SCHMITT SMITH[1]
J. WILLIAM EBERT[6,13]
KALEB D. ANDERSON[6]
DAVID A. CLARK[2,6]
ANGELA T. NAKAMURA OCHOA[6,14]
PHILLIP G. ALBER[1,15]
JEFFREY M. FRANK[1]
KEVIN M. BERNYS[1]
SHAWN Y. GRINNEN[1]
LISA J. ZASTROW[6,9,10,11]
JANEEN V. ISAACSON[2,3,6]
OMAR J. HARB[1]
MICHAEL D. LIEBERMAN[1,12]
STEVEN J. COHEN[1,15]
JESSICA A. GREEN[6]
CARLY R. KOLO[1,5]
DAVID G. MICHAEL[1]
MEGAN H. THONGKHAM[6,8]
DAVID T. OCHOA[6]
AMBER M. WILLIAMS[6]
CHRISTINA MARIE DIMICHELE[1]
JONATHAN K. WONG[2,6]
AMANDA A. EBERT[6]
JESSICA L. WYNN[1]
MARY K. NEILSON[6]

LAW OFFICES
Lipson | Neilson
Attorneys and Counselors at Law
3910 TELEGRAPH ROAD, SUITE 200
BLOOMFIELD HILLS, MICHIGAN 48302

TELEPHONE (248) 593-5000
TELEFAX (248) 593-5040
WWW.LIPSONNEILSON.COM

E-MAIL: tludden@lipsonneilson.com

VIA ELECTRONIC DELIVERY ONLY

June 28, 2022

BARRY J. LIPSON
(1955-2003)

OF COUNSEL

MICHAEL C. CURHAN
ALBERT L. HOLTZ
HOWARD J. GOURWITZ
HENRY S. GORNBEIN

OTHER OFFICE LOCATIONS

LAS VEGAS, NEVADA
PHOENIX, ARIZONA
COLORADO SPRINGS, COLORADO
GROSSE POINTE, MICHIGAN

1 ADMITTED IN MICHIGAN
2 ADMITTED IN CALIFORNIA
3 ADMITTED IN COLORADO
4 ADMITTED IN ILLINOIS
5 ADMITTED IN MARYLAND
6 ADMITTED IN NEVADA
7 ADMITTED IN ARIZONA
8 ADMITTED IN WISCONSIN
9 ADMITTED IN NORTH DAKOTA
10 ADMITTED IN MISSOURI
11 ADMITTED IN OKLAHOMA
12 ADMITTED IN FLORIDA
13 ADMITTED IN UTAH
14 ADMITTED IN HAWAII
15 ADMITTED IN OHIO

Office of Administrative Counsel
Michigan Supreme Court
Lansing, MI 48909

Re: Administrative Order 2021-17: Proposed Rescission of Administrative Order No. 1998-1 and Proposed Amendment of MCR 2.227

Dear Counsel:

I have reviewed the proposal to rescind Administrative Order 1998-1 and to amend MCR 2.227. I do not have any comments on this particular proposal. Because the Supreme Court is considering amending MCR 2.227, I wished to bring to its attention a conflict between MCR 2.227(D)(3) and MCR 2.508(B)(3)(b) regarding jury demands after a case is transferred that could be eliminated at this time.

The current version of MCR 2.227(D)(3) provides that:

> A waiver of jury trial in the court in which the action was originally filed is ineffective after transfer. A party who had waived trial by jury may demand a jury trial after transfer by filing a demand and paying the applicable jury fee within 28 days after the filing fee is paid under subrule (C)(1). A demand for a jury trial in the court in which the action was originally filed is preserved after transfer.

Under the current proposal, this language would be moved to MCR 2.227(E), with the only change being to replace "subrule (C)(1)" with "subrule (D)(1)".

MCR 2.508(B)(3)(b) is much different and provides that:

> If part of a case is removed from circuit court to district court, or part of a case is removed or transferred from district court

> to circuit court, but a portion of the case remains in the court from which the case is removed or transferred, then a demand for a trial by jury in the court from which the case is removed or transferred is not effective in the court to which the case is removed or transferred. A party who seeks a trial by jury in the court to which the case is partially removed or transferred must file a written demand for a trial by jury within 21 days of the removal or transfer order, and must pay the jury fee provided by law, even if the jury fee was paid in the court from which the case is removed or transferred.

Both rules provide, either expressly or implicitly, that the waiver of a jury demand is not effective after transfer. But, there are significant differences between the two rules. MCR 2.227(D)(3) allows a party that previously waived a jury demand to demand a jury by filing a jury demand and paying the applicable fee within 28 days after the filing fee required to transfer the case to the proper court is paid. MCR 2.508(B)(3)(b) provides that the deadline for filing the jury demand is much shorter: 21 days after the removal or transfer order. Finally, MCR 2.227(D)(3) states that a jury demand made in the original court is preserved, but MCR 2.508(B)(3)(b) provides that the jury demand in the original court is not effective in the new court.

Given the important role that juries play in our jurisprudence, there should be a clear and consistent rule for requesting a jury following a transfer from one court to another. As a practical matter, it is sometimes administratively challenging to transfer a case from one court to another, and more than 21 days may pass after the removal or transfer order is entered before the new court has assigned a case number to the case. Therefore, this Court should modify MCR 2.508(B)(3)(b) so that it is consistent with the current version of MCR 2.227(D)(3) and the future MCR 2.227(E)(3).

Please let me know if you have any questions regarding this.

Very truly yours,

LIPSON NEILSON P.C.

C Thomas Ludden

C. THOMAS LUDDEN

CTL/ndy

Order

Michigan Supreme Court
Lansing, Michigan

May 11, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2022-06

Proposed Amendment of
Rule 3.101 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.101 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings 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 3.101 Garnishment After Judgment

(A)-(E) [Unchanged.]

(F) Service of Writ.

(1) The plaintiff shall serve the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees, on the garnishee within 182 days after the date the writ was issued in the manner provided for the service of a summons and complaint in MCR 2.105, except that service upon the state treasurer may be made in the manner provided under subsection (3).

(2) [Unchanged.]

(3) Unless service is subject to electronic filing under MCR 1.109(G), service upon the state treasurer or any designated employee may be completed

electronically in a manner provided under guidelines established by the state treasurer. Guidelines established under this subsection shall be published on the department of treasury's website and shall identify, at a minimum, each acceptable method of electronic service, the requirements necessary to complete service, and the address or location for each acceptable method of service. For purposes of this subsection:

(i) Electronic service authorized under the guidelines shall include magnetic media, e-mail, and any other method permitted at the discretion of the state treasurer.

(ii) Service in the manner provided under this subsection shall be treated as completed as of the date and time submitted by the plaintiff, except that any submission made on a Saturday, Sunday, or legal holiday shall be deemed to be served on the next business day.

(G)-(T) [Unchanged.]

Staff Comment: The proposed amendment of MCR 3.101 would allow writs of garnishment to be served electronically on the Department of Treasury, subject to current e-filing requirements and guidelines established by the Department of Treasury.

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 submitted by September 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2022-06. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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 11, 2022

Clerk

Public Policy Position
ADM File No. 2022-06: Proposed Amendment of MCR 3.101

No Position

Explanation

The Committee voted to take no position on ADM File No. 2022-06. The Committee believes that while a plain reading of the proposed amendment to MCR 3.101 might suggest that it will simply make it easier for all parties to effect garnishment of funds from the State Treasurer, in reality, the vast majority of tax garnishments are filed by national creditors or large debt buyers against individuals. 70% of all debt collection cases end in default judgments, meaning that the vast majority of defendants never appear in the case, and those defendants that do appear are almost always pro se. The Committee agreed that it did not wish to support a proposed amendment that it believed would have at best a marginal benefit to litigants, and at worst will make it easier for large, corporate debt collectors to extract money from individuals.

Position Vote:

Voted for position to take no position: 12
Voted to support ADM File No. 2022-06: 4
Voted to oppose ADM File No. 2022-06: 1
Abstained from voting: 1
Did not vote (absent): 9

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2022-06: Proposed Amendment of MCR 3.101

Support

Explanation
The Committee voted unanimously to support the amendment of MCR 3.101 proposed in ADM File No. 2022-06.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 15

Contact Person:
Lori J. Frank lori@markofflaw.com

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2021-21

Proposed Amendment of
Rule 3.613 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.613 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 will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings 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 3.613 Change of Name

(A) A petition to change a name must be made on a form approved by the State Court Administrative Office.

(A) [Relettered (B) but otherwise unchanged.]

(C) No Publication of Notice; Confidential Record. Upon receiving a request establishing good cause, the court may order that no publication of notice of the proceeding take place and that the record of the proceeding be confidential. Good cause may include but is not limited to evidence that publication or availability of a record of the proceeding could place the petitioner or another individual in physical danger.

(1) Evidence of the possibility of physical danger must include the petitioner's or the endangered individual's sworn statement stating the reason for the fear of physical danger if the record is published or otherwise available.

(2) The court must issue an ex parte order granting or denying a request under this subrule.

(3) If a request under this subrule is granted, the court must:

(a) issue a written order;

(b) notify the petitioner of its decision and the time, date, and place of the hearing on the requested name change; and

(c) if a minor is the subject of the petition, notify the noncustodial parent as provided in subrule (E), except that if the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the published notice of hearing must not include the current or proposed name of the minor.

(4) If a request under this subrule is denied, the court must issue a written order that states the reasons for denying relief and advises the petitioner of the right to request a hearing regarding the denial, file a notice of dismissal, or proceed with the petition and publication of notice.

(5) If the petitioner does not request a hearing under subrule (4) within 14 days of entry of the order, the order is final.

(6) If the petitioner does not request a hearing under subrule (4) or file a notice of dismissal within 14 days of entry of the order denying the request, the court may set a time, date, and place of a hearing on the petition and proceed with ordering publication of notice as provided in subrule (B), and if applicable, subrule (E).

(7) A hearing under subrule (4) must be held on the record.

(8) The petitioner must attend the hearing under subrule (4). If the petitioner fails to attend the hearing, the court may adjourn and reschedule or dismiss the petition for a name change.

(9) At the conclusion of the hearing under subrule (4), the court must state the reasons for granting or denying a request under this subrule and enter an appropriate order.

(B) [Relettered (D) but otherwise unchanged.]

(E~~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) [Unchanged.]

(2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent shall be served with a notice of hearing by publishing in a newspaper and filing a proof of service as provided by MCR 2.106(F) and (G). Unless otherwise provided in this rule, t~~T~~he notice must be published one time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (~~A~~B). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.

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

Staff Comment: The proposed amendment of MCR 3.613 would clarify the process courts must use after receiving a request not to publish notice of a name change proceeding and to make the record confidential.

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-21. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2021-21: Proposed Amendment of MCR 3.613

Support with Recommended Amendments

Explanation

The Committee voted to support the proposed amendment of MCR 3.613 with additional recommended amendments. The Committee believes that establishing a presumption of confidentiality for transgender individuals seeking a name change to affirm their gender identity is necessary as it will protect these individuals from the threat of violence, including sexual assault, physical harm, and even murder, occasioned by name change proceedings. In addition, such a presumption would serve to support transgender individuals undertaking the process of affirming their gender identity without neighbors, acquaintances, colleagues, future employers, and other individuals becoming aware of their transgender identity.

In a similar vein, establishing a presumption of confidentiality for victims and survivors of domestic violence would serve to protect individuals seeking a name change to evade their abusers and individuals who support and enable their abusers, such as family and friends, as well as minor children of abusers who do not have physical custody, legal custody, or parenting time. Further, publishing a minor child's change in name can provide abusers with the identity of partners who have left an abuser. With the noncustodial parent's name published, a noncustodial parent with some type of custody will have sufficient information to participate in the hearing, if desired.

Rule 3.613 Change of Name

(A) A petition to change a name must be made on a form approved by the State Court Administrative Office.

(~~A~~B) [Relettered (B) but otherwise unchanged.]

(B) No Publication of Notice; Confidential Record. Upon receiving a request establishing good cause, the court may order that no publication of notice of the proceeding take place and that the record of the proceeding be confidential. Good cause may include but is not limited to evidence that publication or availability of a record of the proceeding could place the petitioner or another individual in physical danger with the fear of physical danger or harassment due to a change in name for gender affirmation or due to the threat of domestic violence establishing a presumption of good cause.

(1) Evidence of the possibility of physical danger or harassment must include the petitioner's or the endangered individual's sworn statement stating the reason for the fear of physical danger or harassment if the record is

published or otherwise available with this sworn statement confidential and not available for public viewing.

(2) The court must issue an ex parte order granting or denying a request under this subrule. This order must be confidential and not available for public viewing.

(3) If a request under this subrule is granted, the court must:

(a) issue a written order;

(b) notify the petitioner of its decision and the time, date, and place of the hearing on the requested name change; and

(c) if a minor is the subject of the petition, notify the noncustodial parent as provided in subrule (E), except that if the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the published notice of hearing must not include the ~~current or~~ proposed name of the minor.

(4) If a request under this subrule is denied, the court must issue a written confidential order not available for public viewing that states the reasons for denying relief and advises the petitioner of the right to request a hearing regarding the denial, file a notice of dismissal, or proceed with the petition and publication of notice.

(5) If the petitioner does not request a hearing under subrule (4) within 14 days of entry of the order, the order is final.

(6) If the petitioner does not request a hearing under subrule (4) or file a notice of dismissal within 14 days of entry of the order denying the request, the court may set a time, date, and place of a hearing on the petition and proceed with ordering publication of notice as provided in subrule (B), and if applicable, subrule (E).

(7) A hearing under subrule (4) must be held on the record with attendance in the court room limited to only those who are parties to the case and any persons requested by the petitioner to be present.

(8) The petitioner must attend the hearing under subrule (4). If the petitioner fails to attend the hearing, the court may adjourn and reschedule or dismiss the petition for a name change.

(9) At the conclusion of the hearing under subrule (4), the court must state the reasons for granting or denying a request under this subrule and enter an appropriate order **with the written order confidential and not available for public.**

(~~B~~D) [Relettered (D) but otherwise unchanged.]

(~~C~~E) 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) [Unchanged.]

(2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent shall be served with a notice of hearing by ~~publishing in a newspaper~~ alternate service as approved by the Court and filing a proof of service as provided by MCR 2.106(F) and (G). A notice provided under this subrule shall not include the minor child's proposed name. ~~Unless otherwise provided in this rule, T~~the ~~notice must be published one time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (AB). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.~~

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

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 2
Did not vote (absent): 9

Contact Persons:
Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2021-21: Proposed Amendment of MCR 3.613

Support in Concept

Explanation

The Committee voted to support the concept of clarifying the procedures courts must use after receiving a request not to publish notice of a name change proceeding but took no position on the specific language of ADM File No. 2021-21. Among other concerns, the Committee believed that limiting "physical danger" language was too limiting and that it should be expanded to include stalking and financial abuse. The Committee was also concerned about a potential conflict between the proposed amendment and MCR 8.119(I)(6), which presently prohibits a court from sealing a court order or opinion. The Committee believes that consideration should be given to language permitting confidential orders or case files in the case of certain name change proceedings.

Position Vote:

Voted For position: 14
Voted against position: 1
Abstained from vote: 2
Did not vote (absence): 15

Contact Person:

Lori J. Frank lori@markofflaw.com

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2020-33

Proposed Amendment of
Rule 3.903 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.903 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings 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 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)-(18) [Unchanged.]

(19) "Party" includes ~~the~~

(a) ~~petitioner and juvenile~~ in a delinquency proceeding~~,~~;

(i) the petitioner and juvenile.

(b) ~~petitioner, child, respondent, and parent, guardian, or legal custodian~~ in a protective proceeding~~,~~.

(i) the petitioner, child, and respondent

(ii) the parent, guardian, or legal custodian.

(20)-(27) [Unchanged.]

(B)-(F) [Unchanged.]

Staff Comment: The proposed amendment of MCR 3.903 would clarify the definition of a party in child protective proceedings.

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-33. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2020-33: Proposed Amendment of MCR 3.903

Support

Explanation:
The Committee voted unanimously to support ADM File No. 2020-33, as the revised language of MCR 3.903 will help to clarify the definition of a "party" in child protective proceedings.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 11

Contact Person:
Lori J. Frank lori@markofflaw.com

SBM State Bar of Michigan | CHILDREN'S LAW SECTION

Public Policy Position
ADM File No. 2020-33: Proposed Amendment of MCR 3.903

Oppose

Explanation
Children's Law Section opposes this proposed amendment as MCR 3.903 as we believe that it is unnecessary and that the current formatting of the definition of "party" does not require clarification.

Position Vote:
Voted for position: 10
Voted against position: 0
Abstained from vote: 0
Did not vote: 8

Contact Person: Joshua Pease
Email: jpease@sado.org

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-18

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

Proposed Amendment of
Rule 3.943 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.943 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings 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 3.943 Dispositional Hearing

(A)-(D) [Unchanged.]

(E) Dispositions.

(1)-(6) [Unchanged.]

(7) Mandatory Detention for Use of a Firearm.

(a)-(b) [Unchanged.]

(c) "Firearm" includes any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive~~means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smoothbore rifle or hand gun designed and manufactured exclusively for propelling BB's not exceeding.177 caliber by means of spring, gas, or air~~.

Staff Comment: The proposed amendment of MCR 3.943 would update the definition of "firearm" in juvenile proceedings to be consistent with MCL 8.3t, which contains the definition referenced in the court rule's companion statute, MCL 712A.18g.

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-18. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2021-18: Proposed Amendment of MCR 3.943

Support

Explanation:
The Committee voted unanimously to support ADM File No. 2021-18, a proposed amendment to Rule 3.943 of the Michigan Court Rules. The Committee believed that insuring consistency between the Court Rules and companion statutes promotes clarity for both the bench and bar.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 6

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2021-16

Proposed Amendment of
Rule 7.305 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.305 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings 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 7.305 Application for Leave to Appeal

(A)-(B) [Unchanged.]

(C) When to File.

(1) [Unchanged.]

(2) Application After Court of Appeals Decision. Except as provided in subrule (C)(4), the application must be filed within 28 days in ~~termination of parental rights~~ cases where the respondent's parental rights have been terminated, within 42 days in other civil cases, or within 56 days in criminal cases, after:

(a)-(d) [Unchanged.]

(3)-(7) [Unchanged.]

(D)-(I) [Unchanged.]

Staff Comment: The proposed amendment of MCR 7.305 would clarify that the 28-day timeframe for filing an application for leave to appeal applies to cases where the respondent's parental rights have been terminated.

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-16. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2021-16: Proposed Amendment of MCR 7.305

Support Michigan Coalition of Family Law Appellate Attorneys Alternative

Explanation
The Committee voted unanimously to support the alternative to ADM File No. 2021-16 proposed by the Michigan Coalition of Family Law Appellate Attorneys in their June 14, 2022 comment.

Position Vote:
Voted For position: 17
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 15

Contact Person:
Lori J. Frank lori@markofflaw.com

MCFLAA

June 14, 2022

Via Email Only to ADMcomment@courts.mi.gov

Clerk of the Court
Michigan Supreme Court

RE: ADM File No. 2021-16

Dear Clerk:

We write to suggest an alternative to ADM 2021-16. While we understand the purpose of the proposed amendment is to clarify the appeal period for orders terminating parental rights, we do not believe there is compelling justification for a separate appeal period for such orders. Nor do we believe there should be a shorter appeal period for parents whose rights are terminated than for other parties in the same types of cases who appeal orders denying termination. The standard 42-day appeal period for other civil cases should apply to orders terminating parental rights.

We propose the following language for MCR 7.305(C)(2) to make the appeal period 42 days for all civil appeals, including appeals from orders terminating parental rights.

> MCR 7.305(C)(2): Application After Court of Appeals Decision. Except as provided in subrule (C)(4), the application must be filed within ~~28 days in termination of parental rights cases where the respondent's parental rights have been terminated, within~~ 42 days in ~~other~~ civil cases, or within 56 days in criminal cases, after:

These cases involve some of the most fundamental rights guaranteed by the U.S. and Michigan Constitutions. A shorter appeal period places a substantial burden on parents seeking to appeal a termination order and on the lawyers who represent them. While the goal of reaching permanency for children involved in these cases as quickly as possible is laudatory, it cannot come at the expense of denying parents a reasonable opportunity to seek Supreme Court review of their cases. There are so many opportunities for delay built into the system, both in the trial court and on appeal, that the 14-day difference between the current 28-day rule and our proposed 42-day rule is meaningless and does nothing to help the children involved in these cases.

As a practical matter, attorneys court-appointed to represent parents in appeals from termination of parental rights orders are not obligated to pursue a Supreme Court appeal once the Court of Appeals issued its decision. It is difficult and time

MICHIGAN COALITION OF FAMILY LAW APPELLATE ATTORNEYS
michcflaa@gmail.com

Anne Argiroff • Scott Bassett • Judith A. Curtis • Kevin Gentry • Trish Oleksa Haas • Liisa R. Speaker

consuming for a parent to petition the trial court for authorization to have their appellate attorney paid for a Supreme Court appeal. Many such petitions are denied and in other cases, the trial court fails to rule on the request until after the 28-day appeal period in the current rule has expired.

As a result, parents must often find other counsel, either retained or pro bono, to prepare a Supreme Court application for leave to appeal. New appellate counsel then must become familiar with the case, obtain the trial court record, and prepare and file the application within 28 days. This can be an impossible task.

Moreover, when the Court of Appeals publishes a decision terminating parental rights, the importance of Supreme Court review is even more critical. A published termination case will by definition involve novel and complex issues, placing additional strain on any appellate attorney considering taking it on.

In summary, of all the types of cases where a shortened appeal period should be considered, termination of parental rights cases are particularly inappropriate for this treatment. The full 42-day appeal period should apply to all civil cases, including appeals from orders terminating parental rights. For that reason, we propose this alternative to ADM No. 2021-16.

Yours truly,

Anne Argiroff	Scott Bassett	Judith A. Curtis	Kevin Gentry	Trish Oleksa Haas	Liisa R. Speaker
Farmington Hills	Portage	Grosse Pointe	Howell	Grosse Pointe	Lansing

Michigan Coalition of Family Law Appellate Attorneys

Order

Michigan Supreme Court
Lansing, Michigan

April 13, 2022

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2021-13

Proposed Amendment of
Rule 8.119 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.119 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings 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 8.119 Court Records and Reports; Duties of Clerks

(A)-(B) [Unchanged.]

(C) Filing of Documents and Other Materials. The clerk of the court shall process and maintain documents filed with the court as prescribed by Michigan Court Rules and the Michigan Trial Court Records Management Standards and all filed documents must be file stamped in accordance with these standards. The clerk of the court may only reject documents submitted for filing that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver under MCR 2.002(B), unless already waived or suspended by court order. Documents prepared or issued by the court for placement in the case file are not subject to rejection by the clerk of the court and shall not be stamped filed but shall be recorded in the case history as required in subrule (D)(1)(a) and placed in the case file.

(D)-(L) [Unchanged.]

Staff Comment: The proposed amendment of MCR 8.119 would clarify that a request for a fee waiver must be filed in accordance with MCR 2.002(B), which requires the request to be made on a form approved by the State Court Administrative Office.

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 submitted by August 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-13. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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.

April 13, 2022

Clerk

Public Policy Position
ADM File No. 2021-13: Proposed Amendment of MCR 8.119

Support

Explanation

The Committee voted unanimously (15) to support the proposed amendment to Rule 8.119 and to recommend that additional language be added to the Rule to require that individuals representing themselves *pro se* must be provided with the fee waiver form or be given specific direction as to where to locate the form.

Position Vote:

Voted For position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 12

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2021-13: Proposed Amendment of MCR 8.119

Support

Explanation:
The Committee voted unanimously to support ADM File No. 2021-13, as the revised language will clarify that a request for a fee waiver must be made on a form approved by the State Court Administrative Office. Inserting the reference to MCR 2.002(B) into MCR 8.119, as opposed to relying on attorneys' understanding of the interrelationship between the two provisions, will help avoid attorney confusion and clarify the duties of court clerks in the event that a waiver is requested improperly.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 11

Contact Person:
Lori J. Frank lori@markofflaw.com

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: July 14, 2022

Re: HB 4795 (H-2) – Hearings of Emergency Motions by Defendant in Criminal Cases

---

Background

In July 2020, the Board of Commissioners voted to oppose HB 5805, which would have amended the Code of Criminal Procedure, 1927 PA 175, to provide for certain procedures related to "emergency motions" by defendants in criminal cases. The Board concluded that "matters of how and when courts hear emergency motions are more appropriately addressed through court rule amendment(s) than through legislative action." The State Court Administrative Office ("SCAO") also opposed the bill as introduced. Ultimately, the Legislature did not act on HB 5805 during the 2019-2020 session.

The substance of HB 5805 was then reintroduced in the next legislative session as HB 4795. As this new bill was identical to its predecessor, staff applied the Board's previously approved position and indicated that SBM opposed the bill. With a number of parties having raised concerns about the proposal, the bill sponsor began working with stakeholders, including SCAO and the ACLU of Michigan, to refine the legislation and address concerns. These consultations resulted in HB 4795 (H-2), which was supported by SCAO, and reported with recommendation by the House Oversight Committee by a vote of 7-1-0 on June 9, 2022. The substitute bill is currently pending on second reading in the House.

The substitute makes several changes to the bill:

1. A new subsection (7) is added, which provides that "[e]mergency motions . . . must be filed in conformity with the court rules."

2. The penalty provision in the bill as introduced provided that an individual who knowingly and intentionally makes a false statement to the court in support of an emergency motion "is subject to the contempt powers of the court." In the substitute, this provision is amended to provide that "the court may impose an appropriate sanction, which may include a fine of not more than $1,000.00."

3. Language included in the bill as introduced had provided that "emergency motions do not include standard motions for bond." This language has been removed.

4. The provision requiring that notice of an emergency motion be provided in writing by first-class mail, personal delivery, or electronic communication is removed from the required elements of an emergency motion outlined under Sec. 12(4) of the bill as introduced. Instead, the substitute includes this notice provision, with substantially the same language, as a standalone subsection (5) and renumbers subsequent subsections accordingly.

Because the substitute includes language that was not considered by any of SBM's public policy committees or the Board in 2020, and because some of the substantive changes relate to the primary concern identified when the Board adopted a position opposing the bill as introduced, the (H-2) substitute was referred to the Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee for further review. This agenda packet includes both the bill as introduced and the (H-2) substitute for comparison purposes.

Keller Considerations

The Board considered the *Keller*-permissibility of HB 5805 (the precursor to HB 4795) at its July 24, 2020 meeting. The Board concluded that by mandating specific court procedures, the bill's subject matter would directly impact the functioning of courts and it was therefore *Keller*-permissible. The (H-2) substitute for HB 4795 likewise mandates that courts follow specified procedures when handling "emergency motions" and will impact the functioning of the courts. As such, it too is *Keller*-permissible.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:		
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

House Bill 4795 (H-2) is reasonably related to the functioning of the courts and is therefore *Keller*-permissible. It may be considered on its merits.

SUBSTITUTE FOR

HOUSE BILL NO. 4795

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending section 1 of chapter I (MCL 761.1), as amended by 2017 PA 2, and by adding section 12 to chapter III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

(a) "Act" or "doing of an act" includes an omission to act.

(b) "Clerk" means the clerk or a deputy clerk of the court.

(c) "Complaint" means a written accusation, under oath or upon affirmation, that a felony, misdemeanor, or ordinance violation has been committed and that the person named or described in the accusation is guilty of the offense.

(d) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(e) "Emergency motion" means a motion that is filed by the defendant alleging a need for an emergency hearing for any of the following reasons:

(*i*) Deprivation of liberty.

(*ii*) A constitutional violation including, but not limited to, a due process or a cruel and unusual punishment violation.

(*iii*) A matter that would result in irreparable harm to the defendant if not heard on an emergency basis.

(f) ~~(e)~~ "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is enforcing laws of the United States.

(g) ~~(f)~~ "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(h) ~~(g)~~ "Indictment" means 1 or more of the following:

(*i*) An indictment.

(*ii*) An information.

(*iii*) A presentment.

(*iv*) A complaint.

(*v*) A warrant.

(*vi*) A formal written accusation.

(*vii*) Unless a contrary intention appears, a count contained in any document described in subparagraphs (*i*) through (*vi*).

(i) ~~(h)~~ "Jail", "prison", or a similar word includes a

juvenile facility in which a juvenile has been placed pending trial under section 27a of chapter IV.

(j) ~~(i)~~ "Judicial district" means the following:

(*i*) With regard to the circuit court, the county.

(*ii*) With regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under section 9928 of the revised judicature act of 1961, 1961 PA 236, MCL 600.9928.

(*iii*) With regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions.

(k) ~~(j)~~ "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.

(l) ~~(k)~~ "Juvenile facility" means a county facility, an institution operated as an agency of the county or family division of the circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 27a of chapter IV.

(m) ~~(l)~~ "Magistrate" means a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive

him or her of the power to exercise the authority of a magistrate.

(n) ~~(m)~~ "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed $1,000.00.

(o) ~~(n)~~ "Misdemeanor" means a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

(p) ~~(o)~~ "Ordinance violation" means either of the following:

(*i*) A violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine.

(*ii*) A violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations that is punishable by imprisonment or a fine that is not a civil fine.

(q) ~~(p)~~ "Person", "accused", or a similar word means an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary association.

(r) ~~(q)~~ "Property" includes any matter or thing upon or in respect to which an offense may be committed.

(s) ~~(r)~~ "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the

ordinance, charter, rule, or regulation upon which the ordinance violation is based.

(t) ~~(s)~~ "Recidivism" means any rearrest, reconviction, or reincarceration in prison or jail for a felony or misdemeanor offense or a probation or parole violation of an individual as measured first after 3 years and again after 5 years from the date of his or her release from incarceration, placement on probation, or conviction, whichever is later.

(u) ~~(t)~~ "Taken", "brought", or "before" a magistrate or judge for purposes of criminal arraignment or the setting of bail means either of the following:

(*i*) Physical presence before a judge or district court magistrate.

(*ii*) Presence before a judge or district court magistrate by use of 2-way interactive video technology.

(v) ~~(u)~~ "Technical parole violation" means a violation of the terms of a parolee's parole order that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law.

(w) ~~(v)~~ "Technical probation violation" means a violation of the terms of a probationer's probation order that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law.

(x) ~~(w)~~ "Writing", "written", or a similar term refers to words printed, painted, engraved, lithographed, photographed, copied, traced, or otherwise made visible to the eye.

CHAPTER III

Sec. 12. (1) In all criminal cases in the courts of this state, the court shall hear an emergency motion by the defendant

for alleged deprivation of liberty within 24 hours after filing the motion with the court.

(2) Subject to subsection (1), in all criminal cases in the courts of this state, the court shall hear an emergency motion by the defendant within 48 hours after filing the motion with the court.

(3) In all probation violation and post-conviction contempt matters in the courts of this state, the court may allow emergency motions under subsection (1) or (2) to be heard ex parte. In the case of an ex parte hearing, notice and opportunity to be heard must be provided to the prosecution within 24 hours for a hearing under subsection (1) or 48 hours for a hearing under subsection (2).

(4) The emergency motion under subsection (1) or (2) must include the following:

(a) The basis for the emergency nature of the hearing under subsection (1) or (2).

(b) A statement of whether the defendant or his or her counsel provided a copy of the notice and motion to the prosecution.

(c) The remedy requested by the defendant from the court.

(5) The notice and emergency motion must be provided in writing, by first-class mail, personal delivery, or electronic communication.

(6) An emergency motion must be given precedence on the court calendar. If no judge has been assigned to hear the case or the assigned judge is unable to hear the emergency motion, the chief judge shall hear the motion. If the chief judge is unable to hear the emergency motion, any available judge shall hear the motion.

(7) Emergency motions under this section must be filed in

conformity with the court rules.

(8) If an individual knowingly and intentionally makes a false statement to the court in support of his or her emergency motion, the court may impose an appropriate sanction, which may include a fine of not more than $1,000.00.

(9) The court may deny without hearing a defendant's second or subsequent emergency motion based on the same allegations or facts.

HOUSE BILL NO. 4795

May 05, 2021, Introduced by Reps. Berman, Wozniak and LaGrand and referred to the Committee on Oversight.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending section 1 of chapter I (MCL 761.1), as amended by 2017 PA 2, and by adding section 12 to chapter III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

(a) "Act" or "doing of an act" includes an omission to act.

(b) "Clerk" means the clerk or a deputy clerk of the court.

(c) "Complaint" means a written accusation, under oath or upon affirmation, that a felony, misdemeanor, or ordinance violation has been committed and that the person named or described in the accusation is guilty of the offense.

(d) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(e) "Emergency motion" means a motion that is filed by the defendant alleging a need for an emergency hearing for any of the following reasons:

(*i*) Deprivation of liberty.

(*ii*) A constitutional violation including, but not limited to, a due process or a cruel and unusual punishment violation.

(*iii*) A matter that would result in irreparable harm to the defendant if not heard on an emergency basis.

(f) ~~(e)~~ "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is enforcing laws of the United States.

(g) ~~(f)~~ "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(h) ~~(g)~~ "Indictment" means 1 or more of the following:

(*i*) An indictment.

(*ii*) An information.

(*iii*) A presentment.

(*iv*) A complaint.

(*v*) A warrant.

(*vi*) A formal written accusation.

(*vii*) Unless a contrary intention appears, a count contained in any document described in subparagraphs (*i*) through (*vi*).

(i) ~~(h)~~ "Jail", "prison", or a similar word includes a juvenile facility in which a juvenile has been placed pending trial under section 27a of chapter IV.

(j) ~~(i)~~ "Judicial district" means the following:

(*i*) With regard to the circuit court, the county.

(*ii*) With regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under section 9928 of the revised judicature act of 1961, 1961 PA 236, MCL 600.9928.

(*iii*) With regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions.

(k) ~~(j)~~ "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.

(*l*) ~~(k)~~ "Juvenile facility" means a county facility, an institution operated as an agency of the county or family division of the circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 27a of chapter IV.

(m) ~~(*l*)~~ "Magistrate" means a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act of

1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate.

(n) ~~(m)~~ "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed $1,000.00.

(o) ~~(n)~~ "Misdemeanor" means a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

(p) ~~(o)~~ "Ordinance violation" means either of the following:

(*i*) A violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine.

(*ii*) A violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations that is punishable by imprisonment or a fine that is not a civil fine.

(q) ~~(p)~~ "Person", "accused", or a similar word means an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary association.

(r) ~~(q)~~ "Property" includes any matter or thing upon or in respect to which an offense may be committed.

(s) ~~(r)~~ "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the

attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.

(t) ~~(s)~~ "Recidivism" means any rearrest, reconviction, or reincarceration in prison or jail for a felony or misdemeanor offense or a probation or parole violation of an individual as measured first after 3 years and again after 5 years from the date of his or her release from incarceration, placement on probation, or conviction, whichever is later.

(u) ~~(t)~~ "Taken", "brought", or "before" a magistrate or judge for purposes of criminal arraignment or the setting of bail means either of the following:

(*i*) Physical presence before a judge or district court magistrate.

(*ii*) Presence before a judge or district court magistrate by use of 2-way interactive video technology.

(v) ~~(u)~~ "Technical parole violation" means a violation of the terms of a parolee's parole order that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law.

(w) ~~(v)~~ "Technical probation violation" means a violation of the terms of a probationer's probation order that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law.

(x) ~~(w)~~ "Writing", "written", or a similar term refers to words printed, painted, engraved, lithographed, photographed,

copied, traced, or otherwise made visible to the eye.

CHAPTER III

Sec. 12. (1) In all criminal cases in the courts of this state, the court shall hear an emergency motion by the defendant for alleged deprivation of liberty within 24 hours after filing the motion with the court.

(2) Subject to subsection (1), in all criminal cases in the courts of this state, the court shall hear an emergency motion by the defendant within 48 hours after filing the motion with the court.

(3) In all probation violation and post-conviction contempt matters in the courts of this state, the court may allow emergency motions under subsection (1) or (2) to be heard ex parte. In the case of an ex parte hearing, notice and opportunity to be heard must be provided to the prosecution within 24 hours for a hearing under subsection (1) or 48 hours for a hearing under subsection (2).

(4) The emergency motion under subsection (1) or (2) must include the following:

(a) The basis for the emergency nature of the hearing under subsection (1) or (2).

(b) A statement of whether the defendant or his or her counsel provided a copy of the notice and motion to the prosecution.

(c) The remedy requested by the defendant from the court.

(d) The notice and motion must be provided in writing, by first-class mail, personal delivery, or electronic communication.

(5) An emergency motion must be given precedence on the court calendar. If no judge has been assigned to hear the case or the assigned judge is unable to hear the emergency motion, the chief

judge shall hear the motion. If the chief judge is unable to hear the emergency motion, any available judge shall hear the motion.

(6) Emergency motions do not include standard motions for bond.

(7) An individual who knowingly and intentionally makes a false statement to the court in support of his or her emergency motion is subject to the contempt powers of the court.

(8) The court may deny without hearing a defendant's second or subsequent emergency motion based on the same allegations or facts.

Public Policy Position
HB 4795 Substitute (H-2)

Oppose

Explanation:
The Committee voted to oppose HB 4795 Substitute (H-2).

Position Vote:
Voted to Oppose HB 4795 (H-2): 5
Voted to Support HB 4795 (H-2): 4
Abstained from Voting: 7
Did not vote (absent): 11

***Keller*-Permissible Explanation:**
The Committee agreed that because House Bill 4795 (H-2) mandates that courts follow specified procedures it is reasonably related to the functioning of the courts and is therefore *Keller*-permissible.

Contact Persons:
Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
HB 4795 Substitute H-2

Oppose

Explanation:
The Committee voted to oppose the (H-2) substitute. The Committee was concerned that terminology used in the substitute was not adequately defined, that the timeframes required by the legislation for hearings on emergency motions were impractical, and that the substitute would impair victims' constitutional right to participate in court proceedings.

Position Vote:
Voted For position: 14
Voted against position: 3
Abstained from vote: 1
Did not vote (absent): 6

***Keller*-Permissible Explanation:**
The Committee agreed that because House Bill 4795 (H-2) mandates that courts follow specified procedures it is reasonably related to the functioning of the courts and is therefore *Keller*-permissible.

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Peter Cunningham, Executive Director
Nathan Triplett, Director of Governmental Relations

Date: July 14, 2022

Re: Family Law Section Inconsistent Advocacy Request; HJR Q (Judicial Age Limit)

Issue for Consideration

The Family Law Section ("FLS") has requested permission to advocate a public policy position on House Joint Resolution Q that is inconsistent with State Bar policy, as provided for in Article 8, Section 7(2) of the SBM Bylaws. The Board is being asked to consider the request. Based on a 2015 position adopted by the Representative Assembly ("RA"), the Bar supports HJR Q. FLS wishes to oppose HRJ Q and advocate an alternative approach to the issue of judicial age limitations.

Background

At its October 5, 2015 meeting, the RA approved two resolutions[1] related to the provision of the Michigan Constitution that prohibits a person from being "elected or appointed to a judicial office after reaching the age of 70 years." Const 1963, art 4, § 19. The first resolution proposed that the Constitution be amended to "remove the age limitation from eligibility criteria for judicial office."[2] The RA voted 71 to 37 (with 2 abstentions) to support this resolution. The second resolution proposed to "increase the age limitation of eligibility for judicial office from 70 years to 75 years."[3] The RA voted 57 to 49 (with 3 abstentions) to support this resolution.

In March 2022, HJR Q was introduced. This latest proposed constitutional amendment would prohibit a person from being elected or appointed to a judicial office after reaching the age of 80 years. In reviewing HJR Q, staff construed the RA-adopted resolutions as adopting a State Bar policy of supporting any increase in the judicial age limit or its outright elimination. As such, the 2015 RA-adopted position was applied. When the House Judiciary Committee held a hearing on HJR Q on April 26, SBM staff submitted a card in support of the measure.

---

[1] The RA had considered the issue of judicial age limits prior to 2015. In April 2013, the RA adopted a resolution supporting an amendment to the Michigan Constitution to remove the age limitation from eligibility criteria for judicial office, which reflected the language of then-pending 2013 SJR F. As this resolution is not the RA's most recent action on the issue, it is not cited as a basis for current State Bar policy on such constitutional amendments.

[2] The first resolution reflected language then pending in the Legislature as 2015 SJR J.

[3] The second resolution reflected language then pending in the Legislature as 2015 HJR S.

At its June 4 meeting, the FLS Council voted to approve a public policy position opposing HJR Q and instead proposed a "straight mandatory retirement age of 76." In compliance with Article 8, Section 7(1) of the SBM Bylaws, FLS submitted its position to SBM and included the following explanation:

> This resolution seeks to amend the State Constitution by raising the age limit for judges seeking election, reelection or appointment from age 70 to 80. The current amendment does result in the loss of some good judges perhaps earlier than necessary because of the absurdity of the current amendment, which results in a "birthday lottery" of sorts, whereby some judges are forced to retire at age 69, whereas other judges can serve until 76, just because of their birthdate in relation to the election or date of appointment. Under the proposed amendment, the same absurd outcomes can occur, but it would permit judges to serve potentially until age 86 (or 88 for Supreme Ct justices). The concern over judges' health, longevity and consistency were significant in opposing HJR Q. Judges serving into their mid to late 80's is certain to result in many more judges becoming disabled, dealing with illness, or passing away during their term. This creates chaos within the court, including shuffling of dockets, delays in hearing matters, etc. The Family Law Section voted to oppose the resolution, and further voted that it would support a Constitutional amendment establishing a straight mandatory retirement age of 76. This would limit the concerns created by allowing judges to serve into their mid-80's, while at the same time eliminate the absurd outcomes under the current system.

Article VIII of the SBM Bylaws establishes the procedures sections must adhere to if they wish to engage in public policy activity. Section 7(2) provides that: "A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by a majority vote of the Board of Directors or Representative Assembly." Staff responded to the FLS submission noting that it was inconsistent with State Bar policy and that the Section was therefore prohibited from publicly advocating its position without permission from the Bar. FLS thereafter requested that the Bar grant such permission or, alternatively, that the State Bar's position on the matter be reconsidered. As very few session days remain in the current legislative session, the inconsistent advocacy request has been referred to the Board for consideration.

Summary

The FLS has submitted a request to advocate a policy position on HJR Q that is inconsistent with the most recent State Bar policy adopted by the RA. In the alternative, FLS has requested that the Bar's position on judicial age limits, including HJR Q, be reevaluated.

HOUSE JOINT RESOLUTION Q

March 23, 2022, Introduced by Reps. Allor, Carra, Filler and Yancey and referred to the Committee on Judiciary.

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 19 of article VI, to increase the age limitation criterion for judicial office.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to increase the age limitation criterion for judicial office, is proposed, agreed to, and submitted to the people of the state:

ARTICLE VI

Sec. 19. (1) The supreme court, the court of appeals, the

circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and each shall have a common seal. Justices and judges of courts of record must be persons who are licensed to practice law in this state.

(2) To be qualified to serve as a judge of a trial court, a judge of the court of appeals, or a justice of the supreme court, a person shall have been admitted to the practice of law for at least 5 years. This subsection shall not apply to any judge or justice appointed or elected to judicial office prior to the date on which this subsection becomes part of the constitution.

(3) No person shall be elected or appointed to a judicial office after reaching the age of ~~70~~ **80** years.

Resolved further, That the foregoing amendment shall be submitted to the people of the state at a special election to be held at the same time as the August 2, 2022 regular primary election in the manner provided by law.

Public Policy Position
HJR Q

Oppose with Recommended Amendments

Explanation

This resolution seeks to amend the State Constitution by raising the age limit for judges seeking election, reelection or appointment from age 70 to 80. The current amendment does result in the loss of some good judges perhaps earlier than necessary because of the absurdity of the current amendment, which results in a "birthday lottery" of sorts, whereby some judges are forced to retire at age 69, whereas other judges can serve until 76, just because of their birthdate in relation to the election or date of appointment. Under the proposed amendment, the same absurd outcomes can occur, but it would permit judges to serve potentially until age 86 (or 88 for Supreme Ct justices). The concern over judges' health, longevity and consistency were significant in opposing HJR Q. Judges serving into their mid to late 80's is certain to result in many more judges becoming disabled, dealing with illness, or passing away during their term. This creates chaos within the court, including shuffling of dockets, delays in hearing matters, etc. The Family Law Section voted to oppose the resolution, and further voted that it would support a Constitutional amendment establishing a straight mandatory retirement age of 76. This would limit the concerns created by allowing judges to serve into their mid-80's, while at the same time eliminate the absurd outcomes under the current system.

Position Vote:

Voted for position: 16
Voted against position: 1
Abstained from vote: 1
Did not vote: 3

***Keller* Permissibility Explanation:**

The improvement of the functioning of the courts
The availability of legal services to society
The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Mandatory retirement of judges, and the system implementing such mandatory retirement, is directly tied to the functioning of court. The death, illness, or incapacity of judges clearly can lead to hearing delays, judicial reassignments, etc.

Contact Person: James Chryssikos
Email: jwc@chryssikoslaw.com