

## CIVIL PROCEDURE AND COURTS COMMITTEE

Respectfully submits the following position on:

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ADM File No. 2008-35

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The Civil Procedure and Courts Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed on the following pages is that of the Civil Procedure and Courts Committee. The State Bar of the Michigan authorized the Civil Procedure and Courts Committee to advocate its position. The State Bar itself originally submitted the proposal that is the basis of Alternative A in the rule published for comment. The Committee's position suggests some modifications in that language.

The position was adopted after a discussion during a telephone conference and an electronically conducted vote thereafter. The number of members in the decision-making body is 17. The number who voted in favor to this position was 10. The other 7 members did not vote.

April 28, 2009

Corbin R. Davis  
Clerk, Michigan Supreme Court  
PO Box 30052  
Lansing, MI, 48909

RE: ADM File No. 2008-35 Proposed Amendment of Rule 8.115 of the Michigan Court Rules

Dear Mr. Davis:

This is a comment on behalf of the State Bar Civil Procedure and Courts Committee regarding the ADM File referenced above.

The Supreme Court published for public comment two versions of a new MCR 8.115(C) to regulate use of cell phones and other portable electronic devices by attorneys. Alternative A, which is essentially the proposal submitted by the State Bar, would permit attorneys to carry electronic devices but regulate their use in the courtroom. The Supreme Court added an alternative version B that would not allow any courtroom use.

The Civil Procedure and Courts Committee supports a version of alternative A. The realities of current practice make it essential that there be at least some use of electronic devices in court. The lack of a uniform rule has resulted in inconsistent practices in various courts. The Committee suggests several modifications.

First, the Committee thinks it would be wise for the rule to explicitly mention electronic devices that have recording capabilities.

Second, the Committee believes that the rule should make a clear distinction between oral and other communications on electronic devices, the former being far more disruptive.

Third, the Committee supports clarifying the court's general authority to restrict use of electronic devices as part of its general authority to control the courtroom.

To achieve those objectives, the Civil Procedure and Courts Committee offers the following modified language for MCR 8.115(C). [Changes shown from published version of Alternative A.]

(C) Electronic Devices. Lawyers may carry cell phones or other portable electronic devices, including, but not limited to, those with photographic, video or audio recording capabilities, into any court facility. ~~Cell phone or other portable electronic~~ Such devices may be used ~~shall be allowed~~ anywhere outside the courtroom. When in any courtroom, all phones or other portable electronic

devices shall either be turned off or silenced. If silenced, counsel shall make certain that any transmissions do not interfere with court proceedings. Individuals shall not orally initiate or answer any calls while court is in session without the consent of the court. No photographs may be taken inside any courtroom without permission of the court. No photographs may be taken of any jurors or witnesses. ~~Individuals shall not initiate or answer any calls while court is in session without the consent of the court.~~ Nothing in this subrule limits the court's authority to impose other reasonable limitations on use of electronic devices where necessary to maintain conditions conducive to the orderly conduct of proceedings. Failure to comply with this ~~subrule section~~ may result in a fine, incarceration, or both for contempt of court.

If the Court has any questions regarding any of these suggestions, feel free to contact me. The Civil Procedure and Courts Committee very much appreciates the opportunity to comment on this important proposal.

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