State Bar of Michigan
Board of Commissioners
Public Policy Agenda
March 2019
Teleconference Only

A. Court Rules

1. ADM File No. 2017-28 - Proposed Amendments of MCR 1.109, MCR 8.119, and Administrative Order 1999-41

The proposed amendments would make certain personal identifying information nonpublic and clarify the process regarding redaction.

Status:	04/01/19 Comment Period Expires.
Referrals:	12/12/18: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Business Law Section; Children's Law Section; Consumer Law Section; Criminal Law Section; Family Law Section; Litigation Section; Negligence Law Section; Probate & Estate Planning Section; Real Property Law Section; Taxation Section.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Family Law Section; Probate & Estate Planning Section. Comment provided to the Supreme Court included in materials.
Liaison:	Daniel D. Quick

2. ADM File No. 2018-06: Proposed Amendments of MCR 1.111 and 8.127

These two proposals, which would promote greater confidence that a qualified foreign language interpreter is proficient in the language and would reduce the possibility that renewals are delayed, were recommended to the Court by the Foreign Language Board of Review.

Status:	03/01/19 Comment Period Expires.
Referrals:	12/04/18 Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee.
Liaison:	Hon. Cynthia D. Stephens

3. ADM File No. 2018-13 - Proposed New Rule 3.22X

This proposal was developed by a workgroup facilitated by SCAO's Friend of the Court division to make more uniform the ADR processes used by Friend of the Court offices.

Status:	04/01/19 Comment Period Expires.
Referrals:	12/12/18: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Alternative Dispute Resolution Section; Children's Law Section; Family Law Section.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee; Family Law Section.
Liaison:	Victoria A. Radke

4. ADM File No. 2017-17: Proposed Amendments of MCR 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and Proposed New MCR 6.430

The proposed amendments would more explicitly require restitution to be ordered at the time of sentencing as required by statute, and would establish a procedure for modifying restitution amounts. This published version was based on an original submission from the State Appellate Defenders Office, but includes additional revisions and alternative language as well.

Status: 03/01/19 Comment Period Expires.

Referrals: 12/04/18 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
Comment provided to the Supreme Court included in materials.

Liaison: Kim Warren Eddie

5. ADM File No. 2018-23: Proposed Amendment of MCR 6.001

The proposed amendment of MCR 6.001 would allow for discovery in criminal cases heard in district court to the same extent that it is available for criminal cases heard in circuit court. The proposal was submitted by the Michigan District Judges Association. The MDJA noted that although many prosecutors provide discovery, there is no rule mandating it. The MDJA also noted that if the general discovery rule (MCR 6.201) is made applicable to district court criminal cases, subsection (I) could be used to limit its application where full-blown discovery may not be appropriate.

Status: 03/01/19 Comment Period Expires.

Referrals: 12/04/18: Criminal Jurisprudence & Practice Committee; Criminal Law Section.

Comments: Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments provided to the Supreme Court included in materials.

Liaison: Joseph J. Baumann

Order

Michigan Supreme Court
Lansing, Michigan

December 12, 2018

Stephen J. Markman,
Chief Justice

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

ADM File No. 2017-28

Proposed Amendment of Rules 1.109 and 8.119 of the Michigan Court Rules, Rescission of Administrative Order 2006-2, and Amendment to Administrative Order No. 1999-4

On order of the Court, this is to advise that the Court is considering amendments of MCR 1.109, MCR 8.119, AO No. 1999-4, and rescission of AO No. 2006-2. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

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

(A)–(C) [Unchanged.]

(D) Filing Standards.

(1) Form and Captions of Documents.

(a) [Unchanged.]

(b) The first part of every document must contain a caption stating:

(i)–(v) [Unchanged.]

(vi) the name~~, an address, and telephone number~~ of each party appearing without an attorney and an address for each party where documents can be served on that party.

(c)–(f) [Unchanged.]

(g) Pursuant to ~~Administrative Order No. 2006-2~~subrule (D)(9) a filer is prohibited from filing a document that contains ~~another person's social security number except when the number is required or allowed by statute, court rule, court order, or for purposes of collection activity when it is required for identification.~~protected personal identifying information.

(2)–(8) [Unchanged.]

(9) Personal Identifying Information. Personal identifying information is classified as protected or nonprotected.

(a) Protected Personal Identifying Information. The following personal identifying information is protected and shall not be included in any public document or attachment filed with the court except as provided by these rules:

(i) date of birth,

(ii) social security number or national identification number,

(iii) driver's license number or state-issued personal identification card number,

(iv) passport number,

(v) financial account numbers, and

(vi) home or personal telephone numbers.

(b) All protected personal identifying information required by law or court rule to be filed with the court must be provided in the form and manner established by the State Court Administrative Office. Protected personal identifying information provided under this subrule is nonpublic and available only to the parties to the case and other legally defined interested persons as required for case activity or as otherwise authorized by law or these court rules. The parties may stipulate in writing to allow access to protected personal identifying information to any person.

(c) If law or court rule requires protected personal identifying information to be included in a public document filed with the court, it must be provided in the following format:

(i) Date of Birth. Only the year may be included in the following format: XX/XX/1998.

(ii) Social Security Number. Only the last four digits may be included in the following format: XXX-XX-1234.

(iii) Driver's License Number or State-Issued Personal Identification Card Number. Only the last four digits may be included in the following format: X-XXX-XXX-XX1-234.

(iv) Passport Number. Only the last three digits may be included in the following format: XXXXXX123.

(v) Financial Account Numbers. Only the last four digits may be included in the following format: XXXXX1234.

(vi) Home and Personal Telephone Numbers. Only the last four digits may be included in the following format: XXX-XXX-1234.

(d) If a party is required to file a public document containing protected personal identifying information listed in subrule (a) or (b), the party may file a redacted document for the public file along with a confidential reference list on a form approved by the State Court Administrative Office. The confidential reference list 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 included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend the reference list as of right.

(e) If an exhibit offered for hearing or trial contains personal identifying information that is defined as protected personal identifying information in this rule or may be considered personal identifying information by a party, the party offering the exhibit is not required to redact the information. However, the person to whom the information pertains may request that the court redact the personal identifying information under subrule (10).

(f) Failure to Comply.

(i) A party waives the protection of personal identifying information as to the party's own protected information by filing it in a public document and not providing it in the form and manner established under this rule.

(ii) If a party fails to comply with the requirements of this rule, the court may, upon motion or its own initiative, seal the improperly filed documents and order new redacted documents to be prepared and filed.

(iii) If a party fails to comply with the requirements of this rule in regard to another person's protected information, the court may impose reasonable expenses, including attorney fees and costs, or may sanction the conduct as contempt.

(g) Protected personal identifying information provided to the court as required by subrule (c) shall be entered into the court's case management system in accordance with standards established by the State Court Administrative Office. The information shall be maintained for the purposes for which it was collected and for which its use is authorized by federal or state law or court rule; however, it shall not be included or displayed as case history under MCR 8.119(D)(1).

(10) Request for Copy of Public Document with Protected Personal Identifying Information; Redacting Personal Identifying Information; Responsibility; Certifying Original Record; Other.

(a) The responsibility for excluding or redacting protected personal identifying information listed in subrule (9) from all documents filed with or offered to the court rests solely with the parties and their attorneys. The clerk of the court will not review, redact, or screen documents for personal identifying information, protected or otherwise, whether filed electronically or on paper, except in accordance with this subrule.

(b) Dissemination of protected personal identifying information by the courts is restricted to the purposes for which its use is authorized by federal or state law or court rule. When a court receives a request for copies of any public document filed on or after January 1, 2021,

the court must review the document and redact all protected personal identifying information. This requirement does not apply to certified copies or true copies when they are required by law, or copies made for those uses for which the personal identifying information was provided.

(c) Redacting Personal Identifying Information.

(i) Protected personal identifying information contained in a document and filed with the court shall be redacted by the clerk of the court on written request by the person to whom it applies. The clerk of the court shall process the request promptly. The request does not require a motion fee, must specify the protected personal identifying information to be redacted, shall be maintained in the case file, and is nonpublic.

(ii) Except as provided in subrule (i), a party or a person whose personal identifying information is in a public document filed with the court may file an ex parte motion asking the court to direct the clerk to redact the information from that document or to make the information either confidential or nonpublic. The court may schedule a hearing on the motion at its discretion. The motion and order shall be on a form approved by the state court administrative office.

(iii) A party or interested person whose protected personal identifying information is in an exhibit offered for hearing or trial may file a written request before the hearing or trial that the information be redacted. The judge shall determine whether the request should be granted.

(d) Certifying a Record. The clerk of the court may certify a redacted record as a true copy of an original record on file with the court by stating that information has been redacted in accordance with law or court rule, or sealed as ordered by the court.

(e) Maintenance of Redacted or Restricted Access Personal Identifying Information. A document from which personal identifying information has been redacted shall be maintained in accordance with standards established by the State Court Administrative Office.

(E)–(G) [Unchanged.]

(H) Definitions. The following definitions apply to case records as defined in MCR 8.119(D) and (E).

(1) "Confidential" means that a case record is nonpublic and accessible only to those individuals or entities specified in statute or court rule. A confidential record is accessible to parties only as specified in statute or court rule.

(2) "Nonpublic" means that a case record is not accessible to the public. A nonpublic case record is accessible to parties and only those other individuals or entities specified in statute or court rule. A record may be made nonpublic only pursuant to statute or court rule. A court may not make a record nonpublic by court order.

(3) "Redact" means to obscure individual items of information within an otherwise publicly accessible document.

(4) "Redacted document" means a copy of an original document in which items of information have been redacted.

(5) "Sealed" means that a document or portion of a document is sealed by court order pursuant to MCR 8.119(I). Except as required by statute, an entire case may not be sealed.

MCR 8.119 Court Records and Reports; Duties of Clerks

(A)–(C) [Unchanged.]

(D) [Unchanged.]

(1) [Unchanged.]

(a) Case History. The clerk shall create and maintain a case history of each case, known as a register of actions, in the court's automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case and shall also be capable of searching a case by number or party name (previously known as numerical and alphabetical indices) and displaying the case number, date of filing, names of parties, and names of any attorneys of record. The case history shall contain both pre- and post-judgment information and shall, at a minimum, consist of the data elements prescribed in the Michigan

Trial Court Records Management Standards. Each entry shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each entry shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action. Protected personal identifying information entered into the court's case management system as required by MCR 1.109(D)(9)(d) shall be maintained for the purposes for which it was collected and for which its use is authorized by federal or state law or court rule; however, it shall not be included or displayed as case history, including when transferred to the Archives of Michigan pursuant to law.

(b) [Unchanged.]

(E)–(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. The clerk shall not permit any case record to be taken from the court without the order of the court. A court may provide access to the public 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.~~; however,~~ 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 ~~other public information in its case files may be provided through electronic means only upon request~~; however, the documents cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those documents. 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.

(I)–(L) [Unchanged.]

AO No. 1999-4 for Michigan Trial Court ~~Case File~~Records Management Standards

In order to improve the administration of justice; to improve the service to the public, other agencies, and the judiciary; to improve the performance and efficiency of Michigan trial court operations; ~~and~~ to enhance the trial courts' ability to ~~preserve~~create and maintain an accurate record of the trial courts' proceedings, decisions, orders, and judgments pursuant to statute and court rule, it is ordered that the State Court Administrator establish Michigan Trial Court ~~Case File~~Records Management Standards for data, case records, and other court records and that trial courts conform to those standards. The State Court Administrative Office ~~shall~~must enforce the standards and assist courts in adopting practices to conform to those standards.

Case records under MCR 8.119(D) must be made available electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not available to the public. In order to protect privacy and address security concerns, it is ordered that protected personal identifying information, as defined in court rule, filed with the state courts of Michigan in any form or manner and for any purpose must be nonpublic. The State Court Administrative Office must establish standards and develop court forms that ensure all protected personal identifying information necessary to a given court case is provided to the court separately from filed documents except as otherwise required by law.

Staff Comment: The proposed amendments would make certain personal identifying information nonpublic and clarify the process regarding redaction.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-28. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

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

December 12, 2018

Clerk

Public Policy Position
ADM 2017-28

Support

Explanation
The committee supports in concept the proposed rule changes that put in place practices and procedures to protect litigants' personal identifying information.

Position Vote:
Voted For position: 13
Voted against position: 1
Abstained from vote: 1
Did not vote (absent): 8

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2017-28

OPPOSE WITH AMENDMENTS

Explanation
ADM 2017-28 is a proposed amendment to MCRs 1.109 and 8.119 intended to protect "protected personal identifying information" (PPII) from being accessible in public court files. While the aim of the recommendation is laudatory, the specific suggested changes raise enough questions and impose enough burdens to make the proposal in its current form unsupportable.

The committee opposes the current proposal with the following suggestions:

a. 1.109(D)(9)(b)
There may be situations where it is wise to restrict some parties' access to PPII, for instance when domestic violence may be alleged. As a result, the rule should allow courts to restrict access to PPII in appropriate situations by including language like the following:

> A court may restrict the access of any party, person, or other legally defined interested person, to protected personal identifying information upon a finding of just cause.

b. 1.109(D)(9)(c)(d)
These sections refer to PPII required by law or court rule and the confidential reference list such would be listed on. What does not seem to be covered are instances of PPII that are not required by law or court rule but which are still helpful (e.g., telephone numbers are often exceedingly helpful in contacting parties, especially if any investigation is required, which is likely why they have been required to be included in case captions since the Court Rules were amended in 1985). Should such helpful information, which would otherwise count as PPII, be required and not be counted as PPII? Should courts be allowed to collect such useful information, even if not required by law or court rule, but keep it confidentially? These and perhaps other options seem to fulfill a reasonable need.

c. 1.109(D)(9)(f)(iii)
One might question whether the power to sanction conduct as contempt in the court rule is covered by the authorization in statute at MCL 600.1701. Beyond that, one might question the severity of contempt as a sanction.

d. 1.109(D)(10)(b)
For any document of any size filed after January 1, 2021, and for which a copy request is received, for a court to be forced review the entire document and redact all PPII is an unworkable burden. It would be preferable to remove (b) altogether and, as 1.109(D)(9)(f) suggests, affix the onus and liability on the party filing documents with PPII.

e. 8.119(H)

The new rule would seem to require any court maintaining a record digitally that can be accessed by a website to have all PPII redacted. [Unrestricted access to court records online probably does not exist in any state court in Michigan right now, but considering that it is available in the Federal Pacer system, such access may be a reality in the near future.] If such access were to become a reality, then for all records so accessed courts would likely need to examine all previously scanned images to determine whether they need to be redacted or redact all PPII prior to imaging the records.

Position Vote:
Voted For position: 15
Voted against position: 4
Abstained from vote: 0
Did not vote: 8

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Public Policy Position
ADM File No. 2017-28

Oppose

Explanation
The committee voted unanimously (11) to oppose the administrative order for reasons stated by the Family Law Section.

Position Vote:
Voted For position: 11
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 6

Contact Persons:
Sofia V. Nelson snelson@sado.org
Michael A. Tesner mtesner@co.genesee.mi.us

Public Policy Position
ADM File No. 2017-28

Oppose

Explanation

The Family Law Council unanimously opposed this amendment to the rules regarding court records and what can and cannot be included in pleadings filed with the court after discussing the following concerns/questions:

a. Do these pleadings include SCAO forms, such as UCSOs, USSOs, etc.? Is the public document redacted and the FOC copy unredacted? How would that work?

b. There seems to be numerous inconsistencies in the rule as written that need to be addressed, i.e., MCR 1.109(D)(10)(a) indicates that the responsibility to redact is not on the clerk; however, MCR 1.109(D)(10)(c)(i) indicates that the clerk will redact on written request. Subrule (d) seems to be inconsistent with subrule (b). Further, MCR 1.109(D)(9)(e) seems to be a huge loophole in that it provides that the party submitting an exhibit at hearing or trial which contains personal identifying information is not obligated to redact it; rather, the person to whom the information pertains may request redaction. There is no distinction between motion hearings and trials or evidentiary hearings where exhibits are returned to parties by the trial court. If the exhibits are subject to appeal, then submission at the appellate level puts the information in the public realm. If the person to whom the information pertains is a witness on a witness list, how would that person even know he or she needs to request redaction?

c. Should the opposing side be served with the redacted version or the unredacted version or both? If both and e-filing is being used, that seems to defeat the purpose, as the unredacted version would also be part of the e-filing system.

d. With the effective date of 01/01/2021, how does this rule apply to old files? What obligations do attorneys have to reach out to former clients or request redaction in post-judgment matters?

e. There seems to be needed a requirement for clerks' offices to educate self-represented litigants, i.e., notices or instructions for what should or should not be included in documents filed.

There also seemed to be a consensus that including telephone numbers as part of personal identifying information is ridiculous. Witness lists would simply be the names of individuals, which then would dovetail back to subparagraphs (b) and (c) above.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote: 2

Contact Person: Jennifer Johnson
Email: jenjohnsen@westmichigandivorce.com

Public Policy Position
ADM File No. 2017-28

OPPOSE

Explanation
The Section opposes ADM File No. 2017-28 in its current format but recognizes the need for protection of personal identifying information, especially as the court system moves toward universal e-filing.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote: 5

Contact Person: David Skidmore
Email: dskidmore@wnj.com

Patricia Morris
7845 Glenhill Drive
Sylvania, OH 43560-1826

January 28, 2019

Supreme Court Clerk
Michigan Supreme Court
Michigan Hall of Justice
P. O. Box 30052
Lansing, MI 48909

Re: Public Comment – ADM File No. 2017-28
Chapter 8 Administrative Rules of Court
Proposed Amendments of MCR 1.109, MCR 8.119 and
Administrative Order 1999-41

Dear Clerk:

I am writing to voice my support for the changes the Michigan Supreme Court proposes to make to the above-referenced Michigan Court Rules and Administrative Order.

I have worked as a paralegal and court recorder for 25+ years. I am sending you this letter because I am very concerned about the information the Michigan court system is freely posting online about those who pass through the Michigan court systems.

Age and Date of Birth

As you are no doubt well aware, identity theft has become a very real threat to every person living in this country or elsewhere. The Michigan court system has a plethora of personal information not otherwise available to the general public. I consider much of that information to be both proprietary and confidential. I was astonished to find that, because of two minor traffic tickets I received more than 25 years ago, such information has been posted to the internet by the Lenawee County Second District Court and that such information **includes my actual date of birth**. I am completely at a loss to understand why my *entire* date of birth must be included? There should be NO posting of my date of birth, or my age for that matter. Such information is NOT readily available to the general public and should, therefore, be considered confidential and proprietary. My name and address are somewhat available because I own property, but NOT my date of birth or my age.

The various Michigan courts and law enforcement agencies have numerous methods to verify a person's identity or conduct a background investigation. The computer programs that grant those entities access to such information are not accessible by the general public. In fact, it is a crime for such information to be disseminated to anyone who is not authorized by law to have it. Those safeguards exist for a reason. The general public who would access a court's online website out of curiosity DO NOT need to know my *(1) age, (2) date of birth, (3) driver's license number, or (4) vehicle license plate number.*

One of the most sought after pieces of information a criminal actor needs to steal an identity is your date of birth. It is unconscionable to think that, although I am doing all that I can to protect my identity, a court system is undermining my efforts by posting my date of birth online for anyone to steal (domestically or internationally). I am not the only one at risk, it is every single person passing through the Michigan court system. In essence, a person could receive a ticket for a broken tail light, loud muffler or some other civil infraction, and their identity is forever jeopardized (for the rest of their life) merely because a 25+ year old minor traffic violation that placed them in the court system, and now their information is freely posted by Michigan courts on the internet. Court systems should exist to protect and serve the public interest, not induce harm and facilitate the efforts of would-be criminal actors.

Vehicle License Plate Number

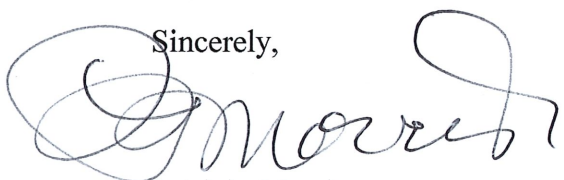
In my opinion, it would also be prudent to withhold the vehicle license plate number from what a court posts on the internet. A license plate number is occasionally used as a piece of security information on certain credit card websites. The general public is not permitted to run a license plate number on a Secretary of State website for a reason. The general public is also not permitted to obtain owner information by calling a law enforcement agency and asking them to run a plate number. Why then are Michigan courts permitted to post such information on the internet?

Driver's License Number

Additionally, I applaud the Court's consideration to withhold a person's driver's license number from public disclosure. There has been more than one occasion in which I have had to use my driver's license number as a means of verifying my identity for security reasons. Having such non-public information readily available for **anyone in the world** to copy gives any bad actor one more piece of information they could use to steal my identity. Are you aware that "sample" driver's licenses are posted on many Secretary of State websites to indicate what a valid license looks like in their state? An identity thief could easily copy that document style to create a driver's license, then use my name, address, date of birth and *actual* driver's license number for their own criminal master plan. Such thief would only have to photo shop their picture for mine, and voilá – they have assumed my identity and hold proof in their hands. How do I protect myself unless courts and government agencies perceive the potential for harm and make every effort to prevent it?

In closing, I want to again thank the Court for acknowledging the potential harm that could be manifested if a person's age, date of birth, driver's license, etc. were freely posted on court websites. I encourage the Court to adopt its recommended changes issued December 12, 2018, as proposed for MCR 1.109 and 8.119 and Administrative Order 1999-41.

Sincerely,



Patricia Morris

Order

Michigan Supreme Court
Lansing, Michigan

November 28, 2018

Stephen J. Markman,
Chief Justice

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

ADM File No. 2018-06

Proposed Amendments of Rule 1.111
And Rule 8.127 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 1.111 and Rule 8.127 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at http://www.courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx.

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

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

Rule 1.111 Foreign Language Interpreters

(A) Definitions. When used in this rule, the following words and phrases have the following definitions:

(1)–(5) [Unchanged.]

(6) "Qualified foreign language interpreter" means:

(a) A person who provides interpretation services, provided that the person has:

(i) registered with the State Court Administrative Office; and

(ii) passed the consecutive portion of a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator (if testing exists for

the language), and is actively engaged in becoming certified; and

~~(ii)~~(iii) met the requirements established by the state court administrator for this interpreter classification; and

~~(iii)~~(iv) been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or

(b)-(c)[Unchanged.]

(B) – (H) [Unchanged].

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

(A)-(B)[Unchanged.]

(C) Interpreter Registration

(1) Interpreters who meet the requirements of MCR 1.111(A)(4) and MCR 1.111(A)(6)(a) and (b) must register with the State Court Administrative Office and renew their registration before October 1 of each year in order to maintain their status. The fee for registration is $60. The fee for renewal is $30. The renewal application shall include a statement showing that the applicant has used interpreting skills during the 12 months preceding registration. Effective 2019, r~~R~~enewal applications must be filed or postmarked on or before September 1~~30~~. Any application filed or postmarked after that date must be accompanied by a late fee of $100. Any late registration made after December 31 or any application that does not demonstrate efforts to maintain proficiency shall require board approval.

(2) [Unchanged.]

(D) [Unchanged.]

Staff Comment: These two proposals, which would promote greater confidence that a qualified foreign language interpreter is proficient in the language and would reduce the possibility that renewals are delayed, were recommended to the Court by the Foreign Language Board of Review.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-06. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

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

November 28, 2018

Clerk

Public Policy Position
ADM 2018-06

Support

Explanation
The committee supports the proposed rule amendments to require a qualified foreign language interpreter to pass foreign language test, as it promotes confidence in the proficiency of court interpreters.

The committee also supports the change in deadline for interpreter renewal applications as it may increase timeliness and efficiency in the renewal process.

Position Vote:
Voted For position: 13
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 9

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-06

Support

Explanation
The committee supports the rule proposal.

Position Vote:
Voted For position: 14
Voted against position: 0
Abstained from vote: 3
Did not vote: 10

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Order

Michigan Supreme Court
Lansing, Michigan

December 12, 2018

Stephen J. Markman,
Chief Justice

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

ADM File No. 2018-13

Proposed New Rule 3.22X of the Michigan Court Rules (regarding Friend of the Court ADR)

On order of the Court, this is to advise that the Court is considering adoption of new Rule 3.22X relating to Friend of the Court ADR. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

[This is a proposed new rule]

Rule 3.22X Friend of the Court Alternative Dispute Resolution

(A) Friend of the Court Alternative Dispute Resolution Plan. The chief judge of each circuit court shall submit a friend of the court alternative dispute resolution (ADR) plan to the State Court Administrative Office (SCAO) for approval as a local administrative order. The plan shall:

(1) Require the use of the domestic violence screening protocol provided by the SCAO to identify domestic violence, the existence of a protection order as defined in MCL 552.513 between the parties or other protective order, child abuse or neglect, and other safety concerns. The plan shall provide a method to address those concerns.

(2) State the circumstances under which the friend of the court may exclude a case from friend of the court ADR under subrule (D)(2).

(3) Designate the matters each friend of the court ADR process will address, subject to subrule (C)(1).

(4) Designate which friend of the court ADR processes are used in prejudgment or postjudgment friend of the court domestic relations cases.

(5) Designate the manner in which the friend of the court will conduct each process.

(6) Specify how cases are referred to friend of the court ADR.

(7) Address how the court complies with the training, qualifications, and confidentiality provisions for friend of the court ADR processes established by the SCAO pursuant to subrule (J).

(8) Provide that attorneys of record will be allowed to attend all friend of the court ADR processes.

(9) Set forth any additional procedures, standards, training, qualifications, and confidentiality requirements of any other friend of the court ADR process the court uses other than those processes set forth in this rule.

(B) Definitions. When used in this rule, unless the context indicates otherwise:

(1) "Domestic violence" means the presence of coercion or violence that would make friend of the court ADR physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues.

(2) "Friend of the court ADR" means a process established under MCL 552.513 by which the parties are assisted to voluntarily agree to resolve a dispute concerning child custody, parenting time, or support that arises from a domestic relations matter. Friend of the court ADR includes friend of the court mediation, and may include facilitative and information-gathering conferences, joint meetings, and other friend of the court alternative dispute resolution services.

(3) "Friend of the court facilitative and information-gathering conference" is a process in which a facilitator assists the parties in reaching an agreement. If the parties fail to reach an agreement, the facilitator may prepare a report and/or recommended order.

(4) "Friend of the court domestic relations mediation" means a process in which a neutral third party facilitates confidential communication between parties to explore solutions to settle custody and parenting time or support issues for friend of the court cases. Friend of the court domestic relations

mediation is not governed by MCR 3.216, which relates to domestic relations mediation conducted without participation or supervision of the friend of the court.

(5) "Joint meeting" means a process in which a person discusses proposed solutions with the parties to a custody or parenting time complaint or an objection to a friend of the court support recommendation.

(6) "Protected party" means a person who has a personal protection order or other protective order against another party to the case or a person who, due to the presence of coercion or violence in a relationship with another party to the case, could be physically or emotionally unsafe.

(C) Friend of the Court ADR Referral.

(1) On written stipulation of the parties, on written motion of a party, or on the court's initiative, the court may order any contested custody, parenting time, or support issue in a domestic relations case, including postjudgment matters to the friend of the court by written order.

(2) The court may, by an order or through its friend of the court ADR plan, provide that the parties are to meet with a person conducting ADR other than friend of the court domestic relations mediation concerning custody, parenting time, and support issues, unless otherwise provided by statute or court rule.

(D) Cases Exempt From Friend of the Court ADR.

(1) Parties who are subject to a personal protection order or other protective order or who are involved in a past or present child abuse and neglect proceeding may not be referred to friend of the court ADR without a hearing to determine whether friend of the court ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing.

(2) The friend of the court may exempt cases from ADR by the friend of the court on the basis of the following:

(a) child abuse or neglect;

(b) domestic abuse, unless the protected party submits a written consent and the friend of the court takes additional precautions to ensure the safety of the protected party and court staff;

(c) inability of one or both parties to negotiate for themselves at the ADR, unless attorneys for both parties will be present at the ADR session;

(d) reason to believe that one or both parties' health or safety would be endangered by ADR; or

(e) for other good cause shown.

(3) The friend of the court shall notify the court when a friend of the court case has been exempted from friend of the court ADR.

(4) If the friend of the court exempts a case from ADR, a party may file a motion and schedule a hearing to request the court to order friend of the court ADR.

(E) Objections to Friend of the Court ADR.

(1) A party may object to ADR under this rule. An objection must be based on one or more of the factors in subrule (D)(2), and must allege facts in support of the objection.

(2) Objection to Mediation:

(a) To object to friend of the court domestic relations mediation, a party must file a written motion to remove the case from friend of the court mediation and a notice of hearing of the motion, and serve a copy on all parties or their attorneys of record within 14 days after receiving notice of the order. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or the court orders otherwise.

(b) A timely motion must be heard before the case is mediated.

(3) Objection to Friend of the Court Facilitative Information-Gathering Conference:

(a) To object to a friend of the court facilitative and information-gathering conference, a party must include the objection within the pleading or postjudgment motion initiating the action, a responsive pleading or answer, or file the objection within seven days of the date that the notice is sent to the party. All objections must be filed with the court.

(b) The objecting party must schedule the hearing, serve a copy of the objection and notice of hearing on all parties and/or attorneys of record.

(c) If a party timely objects, the friend of the court shall not hold a facilitative and information-gathering conference unless the court orders a conference after motion and hearing or the objecting party withdraws the objection.

(4) Objection to Joint Meetings:

(a) To object to a joint meeting, the party must file a written objection with the friend of the court and provide a copy to all parties and their attorneys of record before the time scheduled for the joint meeting.

(b) If a party files an objection, the friend of the court shall not hold a joint meeting unless the court orders a joint meeting following a hearing on motion of a party or the objecting party withdraws the objection.

(F) Friend of the Court Facilitative and Information-Gathering Conference Procedure.

(1) A friend of the court facilitative and information-gathering conference shall use the following procedure:

(a) The conference may not begin until a reasonable inquiry has been made as to whether either party has a history of domestic violence with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol provided by the state court administrative office as directed by the Supreme Court.

(b) If domestic violence is identified or suspected, the conference may not proceed unless the protected party submits a written consent and the friend of the court takes additional precautions to ensure the safety of court staff and the protected party. Throughout the facilitative and information-gathering conference process, the facilitator must make reasonable efforts to screen domestic violence that would make the conference physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

(c) At the beginning of the conference, the facilitator will advise the parties and their attorneys, if applicable, of the following:

(i) the purpose of the conference and how the facilitator will conduct the conference and submit an order or recommendation to the court under(F)(2)(a);

(ii) how information gathered during the conference will be used;

(iii) that statements made during the conference are not confidential and can be used in other court proceedings;

(iv) that the parties are expected to provide information as required by MCL 552.603 to the friend of the court and the consequences of not doing so.

(2) If the parties resolve all contested issues, the facilitator shall submit a report to the court as provided in subrule (I) and may provide a proposed order to the court setting forth the parties' agreements.

(a) If the parties do not resolve all contested issues at the conference or the parties agree to resolve all or some contested issues but do not sign the proposed order, the facilitator shall submit a report as provided in subrule (I) and may do one of the following:

(i) Prepare and forward a recommended order to the court within seven days from the date of the conference. The court may enter the recommended order if it approves the order and must serve it on all parties and attorneys of record within seven days after from the date the court enters the order. Accompanying the order must be a notice that a party may object to the order by filing a written objection to the court within 21 days after the date of service, and by scheduling a hearing on the objection. If there is a timely objection, the hearing must be held within 21 days after the objection is filed. If a party objects, the order remains in effect pending a hearing on a party's objection unless the court orders otherwise.

(ii) Prepare and serve a recommended order on the parties within seven days from the date of the conference along with a notice that the recommended order will be presented to the court for entry unless a party objects by filing a written objection within 21 days after the date of service, and by scheduling a hearing on the objection. If neither party files a timely objection, the court may enter the order if it approves.

(iii) Submit a recommendation to the court for further action the court might take to help the parties resolve the remaining contested issues in the case, or alert the court there are contested issues that might require the court's immediate attention.

(b) A party may consent to entry of a recommended order by signing a copy of the order at the time of the conference or after receiving the recommended order. A party who consents to entry of the order waives the right to object to the order and must file a motion to set the order aside once it enters.

(c) Except for communications made during domestic violence screening under subrule (A)(1), (F)(1)(a), and (H)(1)(a), communications made during a friend of the court facilitative and information-gathering conference are not confidential and may be used in court proceedings.

(G) Friend of the Court Domestic Relations Mediation Procedure.

(1) Domestic relations mediation will be conducted by a mediator selected by the friend of the court.

(a) The mediation may not begin until a reasonable inquiry has been made as to whether either party has a history of a coercive or violent relationship with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol provided by the state court administrative office as directed by the Supreme Court.

(b) If domestic violence is identified or suspected, the mediation process may not continue unless the protected party submits a written consent and the friend of the court takes additional precautions to ensure the safety of the protected party and court staff. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

(c) At the beginning of the mediation, the mediator will advise the parties and their attorneys, if applicable, of the following:

(i) the purpose of mediation;

(ii) how the mediator will conduct mediation;

(iii) except as provided for in MCR 2.412(D)(8), statements made during the mediation process are confidential and cannot be used in court proceedings.

(d) If the parties reach an agreement, the mediator shall submit a proposed order and a report pursuant to subrule (I) within seven days.

(e) If the parties do not reach an agreement within seven days of the completion of mediation, the mediator shall so advise the court stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether additional friend of the court ADR proceedings are contemplated.

(2) With the exceptions provided for in MCR 2.412(D), communications during friend of the court domestic relations mediation process are confidential and cannot be used in court proceedings.

(H) Joint Meeting Procedure.

(1) Joint meetings shall be conducted as provided in this subrule:

(a) The joint meeting may not begin until a reasonable inquiry has been made as to whether either party has a history of a coercive or violent relationship with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol provided by the as directed by the Supreme Court.

(b) If domestic violence is identified or suspected, the meeting may not proceed unless the protected party submits a written consent and the friend of the court takes additional precautions to ensure the safety of the protected party and court staff. Throughout the joint meeting, the person conducting the joint meeting must make reasonable efforts to screen for the presence of coercion or violence that would make the joint meeting physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

(c) At the beginning of a joint meeting, the person conducting the meeting shall do the following:

(i) advise the parties that statements made during the joint meeting are not confidential and can be used in other court proceedings;

(ii) advise the parties that the purpose of the meeting is for the parties to reach an accommodation and how the person will conduct the meeting;

(iii) advise the parties that the person may recommend an order to the court to resolve the dispute; and

(iv) explain to the parties the information provided for in subrules (H)(1)(d)-(e).

(d) At the conclusion of a joint meeting, the person conducting the meeting shall submit a report within seven days pursuant to subrule (I) and may do one of the following:

(i) If the parties reach an accommodation, record the accommodation in writing and provide a copy to the parties and attorneys of record. If the accommodation modifies an order, the person must submit a proposed order to the court. If the court approves the order, the court shall enter it; or

(ii) Submit an order to the court stating the person's recommendation for resolving the dispute. The parties may consent by signing the recommended order and waiving the objection period in accordance with H(1)(e)(iii). If the court approves the order, the court shall enter it.

(e) If the person conducting the joint meeting submits a recommended order within seven days to the court, the friend of the court must serve the parties and attorneys of record a copy of the order and a notice that provides the following information:

(i) that the court may enter the recommended order resolving the dispute unless a party objects to the order within 21 days after the notice is sent;

(ii) when and where a written objection must be submitted;

(iii) that a party may waive the 21-day objection period by returning a signed copy of the recommended order; and

(iv) if a party files a written objection within the 21-day limit, the friend of the court office shall set a court hearing before a judge or referee to resolve the dispute. If a party fails to file a written objection within the 21-day limit, the office shall submit the proposed order to the court for entry if the court approves it.

(I) The SCAO shall develop forms for reports and orders that the friend of the court shall use in the ADR processes under this court rule.

(1) A report form for a proposed consent order shall contain sufficient information to allow the court to make an independent determination that the proposed order is in the child's best interest.

(2) When the parties do not resolve some or all of the issues in a facilitative and information-gathering conference or when the friend of the court submits a proposed order following a joint meeting, the report shall contain the parties' agreed-upon and disputed facts and issues.

(3) A report under this subrule is not a friend of the court report entitled to consideration under MRE 1101(b)(9). In any contested hearing, the court may use the report to:

(a) decide the contested matter to the extent the parties do not dispute the issues or facts in the report or to the extent that the contested issues and facts are not material to the court's decision; or

(b) if the parties dispute any issues or facts in the report, the court must make an independent determination based on evidence and testimony presented at the hearing or a subsequent hearing.

(4) The court may, on its own motion, order the friend of the court to conduct an investigation and provide a report under MCL 552.505(1)(G).

(J) Qualification of ADR Providers.

(1) The SCAO shall establish training and qualification requirements for persons conducting each type of ADR under this court rule.

(2) The SCAO shall also provide a process for waiving training and qualification requirements when:

(a) the trial court demonstrates a person who meets the requirements is not reasonably available and the court's proposed candidate has suitable qualifications equivalent to those established by the SCAO; or

(b) the person will complete the requirements within a reasonable time determined by the SCAO.

Staff Comment: This proposal was developed by a workgroup facilitated by SCAO's Friend of the Court division to make more uniform the ADR processes used by Friend of the Court offices.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-13. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

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

December 12, 2018

Clerk

Public Policy Position
ADM 2018-13

SUPPORT WITH AMENDMENTS

Explanation
The committee voted to support the proposed amendments in ADM 2018-13 with the following changes to (D)(1):

> Parties who are**, or have been**, subject to a personal protection order or other protective order or who are involved in a ~~**past or**~~ present child abuse and neglect proceeding may not be referred to friend of the court ADR without a hearing to determine whether friend of the court ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing.

As proposed by the Court, the sub-rule was too narrow because it only applied to situations in which there is currently a personal protective order (PPO), not situations where there may have been a past PPO or no contact order between the parties. The history of having a PPO is a fairly strong indicator of a history of domestic violence, and the purpose of this section appears to be protecting victims of domestic violence within the parameters of FOC ADR.

The committee also thought the sub-rule was too broad as it applied to Neglect and Abuse (NA) cases because the "past or present" language would sweep up people who had NA cases wholly unrelated to domestic violence years prior. The committee felt the inclusion of past NA cases (as opposed to present cases) simply made the process more onerous for parents for reasons which are not necessarily tied to protecting victims of domestic violence.

Position Vote:
Voted For position: 15
Voted against position: 1
Abstained from vote: 2
Did not vote (absent): 5

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-13

Support

Explanation
The committee supports the rule proposal.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 2
Did not vote: 6

Contact Person: Randy J. Wallace
Email: rwallace@olsmanlaw.com

Public Policy Position
ADM File No. 2018-13

Oppose with Recommended Amendments

Explanation
Council opposes this proposed new rule unless the following is sufficiently addressed:

a. Attorneys have the ability to be present at and participate in any meeting where an order is generated.
b. There are sufficient domestic violence screening, training and protocols contained in the new rule.
c. Confidentiality provisions are consistent in the new rule (as there are different confidentiality mandates depending on the type of meeting).
d. The language regarding an automatic order being generated is stricken from the new rule.

Position Vote:
Voted For position: 17
Voted against position: 2
Abstained from vote: 0
Did not vote: 2

Contact Person: Jennifer Johnson
Email: jenjohnsen@westmichigandivorce.com

Order

Michigan Supreme Court
Lansing, Michigan

November 28, 2018

ADM File No. 2017-17

Proposed Amendments of Rules 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and Proposed Addition of Rule 6.430 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and a proposed addition of Rule 6.430 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 hearings are posted at Administrative Matters & Court Rules page.

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

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

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rule and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.202, 6.425(E)(3), 6.427, 6.430, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E) [Unchanged.]

Rule 6.006 Video and Audio Proceedings

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, probable cause conferences, arraignments on the information, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, ~~and~~ waivers and

adjournments of preliminary examinations, and hearings on postjudgment motions to amend restitution.

(B)-(D) [Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(D) [Unchanged.]

(E) Sentencing Procedure.

(1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:

(a)-(e) [Unchanged.]

(f) order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate.

(2) Resolution of Challenges.

(a) If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(ia) correct or delete the challenged information in the report, whichever is appropriate, and

(iib) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

(b) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The

burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.

(3) [Unchanged.]

(F)-(G) [Unchanged.]

Rule 6.427 Judgment

Within 7 days after sentencing, the court must date and sign a written judgment of sentence that includes:

(1)-(8) [Unchanged.]

(9) the conditions incident to the sentence; ~~and~~

(10) whether the conviction is reportable to the Secretary of State pursuant to statute, and, if so, the defendant's Michigan driver's license number~~.~~; and

(11) the dollar amount of restitution that the defendant is ordered to pay.

If the defendant was found not guilty or for any other reason is entitled to be discharged, the court must enter judgment accordingly. The date a judgment is signed is its entry date.

Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

(F) Sentencing

(1) For sentencing, the court shall:

(a)-(c) [Unchanged.]

(d) order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate. Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss

sustained by a victim as a result of the offense shall be on the prosecuting attorney.

[New] Rule 6.430 Postjudgment Motion to Amend Restitution

(A) The court may amend an order of restitution entered under this section on a motion filed by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.

(B) Filing. The moving party must file the motion and a copy of the motion with the clerk of the court in which the defendant was convicted and sentenced. Upon receipt of a motion, the clerk shall file it under the same case number as the original conviction.

(C) Service and Notice of Hearing. If the defendant is the moving party, he/she shall serve a copy of the motion and notice of its filing on the prosecuting attorney and the prosecutor shall then serve a copy of the motion and notice upon the victim. If the prosecutor is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the victim. If the victim is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the prosecutor. The home address, home telephone number, work address, and work telephone number of the victim, if included on a motion to amend restitution, is nonpublic. Unless so ordered by the court, the filing and service of the motion does not require a response by the non-moving party. If the court orders the non-moving party to respond to the motion, the non-moving party shall comply with the time for service of the response as provided in MCR 2.119(C)(2). The court shall provide written notice of hearing on the motion to the defendant, prosecutor, and victim.

(D) Appearance. As permitted by MCR 6.006(A), the court may allow the defendant to appear by two-way interactive video technology to conduct the proceeding between a courtroom and a prison, jail, or other location.

(E) Ruling. The court, in writing, shall enter an appropriate order disposing of the motion and, if the motion is granted, enter an order amending the restitution.

(F) Appeal. An appeal from this subsection is processed as provided by MCR 7.100 *et seq.*, and 7.200 *et seq.*

Rule 7.202 Definitions

For purposes of this subchapter:

(1)-(5) [Unchanged.]

(6) "final judgment" or "final order" means:

(a) [Unchanged.]

(b) In a criminal case,

(i)-(iii) [Unchanged.]

(iv) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; ~~or~~

(v) a sentence imposed following revocation of probation~~.~~; or

(vi) an order amending restitution.

Rule 7.208 Authority of Court or Tribunal Appealed From

(A)-(F) [Unchanged.]

(G) Stays and Bonds; Motions to Amend Restitution. The trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders. The trial court retains authority over motions to amend restitution filed pursuant to MCR 6.430, unless restitution is included as an issue on appeal.

(H)-(J) [Unchanged.]

Staff Comment: The proposed amendments would more explicitly require restitution to be ordered at the time of sentencing as required by statute, and would

establish a procedure for modifying restitution amounts. This published version was based on an original submission from the State Appellate Defenders Office, but includes additional revisions and alternative language as well.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-17. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

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

November 28, 2018

Clerk

Public Policy Position
ADM 2017-17

Support

Explanation

The committee supports the proposed rule changes to require restitution to be resolved prior to entry of a criminal sentence. This allows defendants to more efficiently address restitution issues on appeal.

Support for the position is found in MCL 780.766(2) itself, which provides that "*when sentencing a defendant convicted of a crime*, the court *shall* order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate." (Emphasis added).

Additionally, failing to include an amount of restitution – or noting restitution "TBD" – raises procedural complications when a restitution order is entered while the case is on appeal. New or modified restitution orders are not always included on appeal and therefore could avoid appellate review. Finalizing restitution at sentencing allows restitution to be addressed in one appeal along with whatever other issues are raised in the appeal.

The practice of failing to enter an amount of restitution at sentencing is also complicated by the general rule that a claim of appeal from a final order includes all prior interlocutory orders, but "it does not bring before the reviewing court any subsequent orders." *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989).

Finally, because restitution orders may be modified at a later time, MCL 780.766(22), the amendments make clear that orders modifying are appealable too and directs courts to ensure defendants are given their proper appellate rights.

Position Vote:

Voted For position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 9

Contact Persons:

Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2017-17

Support with Amendments

Explanation

The committee voted unanimously (12) to support the administrative file number with two amendments:

Remove the requirement that the restitution be a specific dollar amount (Rule 6.425(E)(1)(f) and Rule 6.427(11); and

Remove the requirement that the prosecutor serve a copy of the motion to the victim (Rule 6.430(C).

Rule 6.425(E)(1)(f) and 6.427(11) both require the "dollar amount of restitution" to be entered at the time of sentencing. This date and number requirement would create a number of problems. For example, the specific dollar amount is often elusive at the time of sentencing, due to insurance or hospital bills. At times, specific bills connected to the crime are not available until a year or more later.

New Rule 6.430(C) requires the prosecutor "serve a copy of the motion and notice upon the victim." The requirement that the prosecutor provide any information to the victim is superfluous because this is already covered by statute under the Crime Victim Rights Act 780.786b.

Issues involving challenges to restitution on appeal are expected to be addressed in a subsequent proposal from the State Appellate Defender Office.

Position Vote:

Voted For position: 12
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 5

Contact Persons:

Sofia V. Nelson snelson@sado.org
Michael A. Tesner mtesner@co.genesee.mi.us

February 26, 2019

Ms. Anne M. Boomer
Michigan Supreme Court
925 W. Ottawa
P.O. Box 30052
Lansing, MI 48909

Re: **ADM File No. 2017-17 - Proposed Amendments of Rules 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and Proposed Addition of Rule 6.430 of the Michigan Court Rules**

Dear Ms. Boomer:

On behalf of the Michigan Court of Appeals, we offer the following comments on the above-referenced rule proposal. As explained below, we support the changes to the Chapter 6 criminal procedure rules, with modification. However, we oppose the suggested revisions to MCR 7.202(6)(b) and MCR 7.208(G) because they are unnecessary and will complicate current procedure.

Requiring restitution to be set in the judgment of sentence would clarify procedure in the trial court and would benefit appellate practice by allowing a restitution issue to be raised in an appeal from the judgment. Currently, restitution is often set in a postjudgment order. Such orders are appealable by leave and, though they are exceedingly rare, they do present a second appeal on an issue that should have been resolved at the time of sentencing. Appellate practice would benefit from ensuring that the initial restitution decision is part of the judgment of sentence so that it may be considered in a plenary appeal of right.

However, the proposed revision to MCR 7.202(6)(b), allowing an appeal of right from "an order amending restitution," is unnecessary and ill-advised. This proposal is likely intended to clarify how an appeal may be taken from such an order, but the current procedure does not need clarification. The current rules are clear that any non-final order, which includes a postjudgment order on a motion to amend restitution, is appealable by leave. MCR 7.203(B)(1). Making an order that amends restitution appealable of right complicates the current procedure by introducing an exception to the general rule. Moreover, a postjudgment restitution order presents the type of narrow issue that is conducive to an application for leave to appeal. In an application setting, the restitution issue may be reviewed with a limited record, and the Court has flexibility to grant peremptory relief under any time constraints that may be present. For these reasons, we oppose the suggested change to MCR 7.202(6)(b).

Similarly, the proposed revision to MCR 7.208(G) should not be adopted because it unnecessarily complicates rules that need no further explanation. The apparent intention of the proposal is to make clear that the trial court retains authority to decide motions to amend restitution even when an appeal is pending. This addition is unnecessary because that authority is already provided in MCR

7.208(A). That rule provides that the trial court "may not set aside or amend the judgment or order appealed from except . . . as otherwise provided by law." MCL 780.766(22) and MCL 780.826(19) give the trial court authority to amend restitution without reference to whether an appeal is pending. As such, there is no need to amend MCR 7.208(G) to make this exception more explicit. As explained below, any ambiguity regarding the trial court's authority could be better addressed as part of the proposed new rule MCR 6.430.

A primary concern with a postjudgment order amending restitution is how the new order might affect a pending appeal. If the judgment of sentence includes restitution and that is an issue on appeal, it would be best if the Court was apprised of the filing of a motion to amend restitution and the entry of an order on that motion. To that end, and to clarify that the trial court has continuing authority to hear a motion to amend restitution, we recommend that proposed MCR 6.430(B) and (E) be revised as follows:

> (B) Filing. The moving party must file the motion and a copy of the motion with the clerk of the court in which the defendant was convicted and sentenced. Upon receipt of a motion, the clerk shall file it under the same case number as the original conviction. If an appeal is pending when the motion is filed, the moving party must serve a copy on the appellate court.
>
> * * *
>
> (E) Ruling. The court, in writing, shall enter an appropriate order disposing of the motion and, if the motion is granted, enter an order amending the restitution. If an appeal was pending when the motion was filed, the moving party must provide a copy of the order to the appellate court.

Including these provisions in MCR 6.430 accomplishes the purpose of the proposed amendment to MCR 7.208(G) by recognizing that the trial court has the authority to consider a motion to amend restitution during the pendency of an appeal. These provisions offer the additional benefit of notifying the appellate court of the potential for an order that might affect an issue on appeal.

We recommend that the proposed amendments to MCR 7.202(6)(b) and MCR 7.208(G) be rejected for the reasons stated. Altering those rules as suggested is unnecessary and would not benefit appellate practice. However, as indicated above, we believe that the new MCR 6.430 be revised to ensure that appellate courts are advised of the filing and disposition of a motion to amend restitution during the pendency of an appeal from the case.

Please let us know if we can answer any questions or provide additional information.

Very truly yours,

Christopher M. Murray
Chief Judge

Elizabeth L. Gleicher
Judge, Rules Committee Chair

Order

Michigan Supreme Court
Lansing, Michigan

November 28, 2018

Stephen J. Markman,
Chief Justice

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

ADM File No. 2018-23

Proposed Amendment of Rule 6.001
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendment of MCR 6.001. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.101, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.201, 6.202, 6.425(E)(3), 6.427, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E)[Unchanged.]

Staff Comment: The proposed amendment of MCR 6.001 would allow for discovery in criminal cases heard in district court to the same extent that it is available for criminal cases heard in circuit court. The proposal was submitted by the Michigan District Judges Association. The MDJA noted that although many prosecutors provide

discovery, there is no rule mandating it. The MDJA also noted that if the general discovery rule (MCR 6.201) is made applicable to district court criminal cases, subsection (I) could be used to limit its application where full-blown discovery may not be appropriate.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-23. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

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

November 28, 2018

Clerk

Public Policy Position
ADM File No. 2018-23

Support

Explanation:
The committee unanimously supports the proposed amendments to MCR 6.001. The committee agreed that this amendment will greatly improve courtroom efficiency. The use of electronic discovery, which is already common in many jurisdictions, is cost-effective, and it can lead to quicker resolution of matters when all information is shared. The committee expects that allowing discovery in misdemeanor cases will increase the fairness and efficiency in the resolution of those cases particularly.

Position Vote:
Voted For position: 11
Voted against position: 0
Abstained from vote: 0
Did not vote: 6

Contact Persons:
Sofia V. Nelson snelson@sado.org
Michael A. Tesner mtesner@co.genesee.mi.us

Public Policy Position
ADM File No. 2018-23

Support

Explanation
The majority of members in favor felt this was necessary to promote preparation of cases. This will curb and prevent delays in cases where some local prosecuting officials delay or deny discovery because it is not mandated in misdemeanor cases or ordinances in the district court.

Position Vote:
Voted For position: 15
Voted against position: 1
Abstained from vote: 1
Did not vote: 5

Contact Person: Judge Hugh B. Clarke, Jr.
Email: hugh.clarke@lansingmi.gov

From: Daniel Schwalm
To: ADMcomment
Subject: Comment Regarding ADM File No. 2018-23
Date: Thursday, November 29, 2018 10:51:29 AM

Dear Supreme Court Clerk,

Regarding discovery in district court (ADM File No. 2018-23), it sounds virtuous, but not a practical plan unless accompanied by legislation implementing tax increases to fund increased district court staffing costs for conscientious management of the anticipated high volume of customary discovery-related hearings, and also legislation implementing tax increases to fund necessary additional staffing positions statewide at all county prosecuting attorney offices to adequately handle the new massive discovery obligation imposed.

As an alternative, to allow full-blown discovery on a case-by-case basis where it may be appropriate, a subsection could be added to MCR 6.001, stating, "on good cause shown, the court may order a modification of the requirements and prohibitions of this rule."

Regards,

Daniel B. Schwalm
Assistant Prosecuting Attorney
Calhoun County
161 E. Michigan Ave.
Battle Creek, MI 49014
(269) 969-6980

SHELDON G. LARKY
ATTORNEY AT LAW

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CHAIRMAN (2003-2004)
ALTERNATIVE DISPUTE
RESOLUTION COMMITTEE
OAKLAND COUNTY BAR ASSOCIATION

MEMBER
ASSOCIATION FOR
CONFLICT RESOLUTION
INTERNATIONAL
ASSOCIATION OF FACILITATORS

Thursday, January 17, 2018

Supreme Court Clerk
P.O. Box 30052
Lansing, Michigan 48909

re: ***ADM File No. 2018-23***
Discovery in district court criminal cases

Dear Clerk:

I urge the Supreme Court to adopt the recommendation contained in ADM File No. 2018-23.

Criminal defendants in district court cases should have statewide access to discovery so there is uniformity between the courts. By implementing this change to MCR 6.001, criminal defense counsel will no longer have to worry about disparities between various judges and not be concerned about prosecutors limiting access to discovery.

Sincerely yours,

Sheldon G. Larky

SGL:s

From: Deborah Davis
To: ADMcomment
Subject: ADM File No. 2018-23
Date: Thursday, February 14, 2019 2:46:53 PM

I feel compelled to write in support of discovery for misdemeanor cases. We are fortunate in St. Joseph County to have a Prosecutor's Office that is generally open to providing copies of police reports, photos, audio, and video for misdemeanors and civil infractions. However, without it being mandatory, it can create a major disadvantage to the defendants. There have been many times where some discovery information is not obtained until the eve of trial, which puts defendants and their attorneys in a position where they cannot fully prepare. For example, if a video exists that is known to the officer, or the Prosecutor, they are not required to disclose it until trial is in progress. It leaves the defendants without the ability to view it, conduct their own investigation, or to decide to enter a plea. I believe more cases will actually resolve short of trial if this discovery rule is adopted, as it gives both sides all of the information upon which to base their strategy and determine the best course of action.

Thank you for your time and consideration.

Sincerely,

Deborah J. Davis (P70843)
Deborah J. Davis Law, PLLC
P.O. Box 68, 108 W. State Street
Colon, MI 49040
PH: 269-432-3000 FAX: 269-432-2979
***NOTE: Email is accessible and monitored by staff of Deborah J. Davis Law, PLLC*