

MICHIGAN SUPREME COURT



Office of Public Information

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FOR IMMEDIATE RELEASE

PROPOSAL TO LIMIT LAWYERS' CONTINGENCY FEES IN NO-FAULT CASES IS ON AGENDA FOR MICHIGAN SUPREME COURT'S MARCH 30 PUBLIC HEARING Attorney grievance rules, limits on judges' charity fundraising also on agenda

LANSING, MI, March 28, 2011 – Attorneys' contingency fees in auto no-fault benefits cases would be subject to the same limit as contingency fees in wrongful death and personal injury cases, under a proposed rule change on the agenda for the Michigan Supreme Court's public administrative hearing on March 30.

Michigan Court Rule 8.121 currently permits contingency fees, which are based on the amount of a settlement or award that an attorney recovers for a client, in wrongful death and personal injury cases. But MCR 8.121 limits those fees; one-third or less of the recovery "is deemed to be fair and reasonable," while a contingency fee over that amount is "clearly excessive" and violates attorney ethics rules. The proposed rule change ([ADM File No. 2007-17](#)) would also impose the allowable one-third limit on contingency fees in no-fault benefits cases.

The Court, which regularly holds public hearings as part of its administrative process, will also consider proposed updates to attorney discipline rules ([ADM File No. 2006-38](#)). The amendments, which were submitted by the Attorney Grievance Commission, include proposed revisions to MCR 9.104 that would expand the list of grounds for attorney discipline. Under the AGC proposal, attorneys could be sanctioned if they agree or attempt to agree to settle a case or seal a court file in an effort to conceal attorney misconduct from the AGC. Attorneys would also be subject to misconduct charges if they agree to have a plaintiff withdraw a grievance or refuse to cooperate with the AGC, or if they attempt to obtain such an agreement. The AGC could also bring misconduct charges, using "prior acts and omissions of the lawyer" as evidence, "if, through multiple acts and omissions, a lawyer demonstrates the absence of fitness to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court."

The State Bar of Michigan has offered an alternative version of MCR 9.104, which does not include the AGC's proposed changes and eliminates four grounds for discipline in the current version of the rule. A [memo](#) comparing the AGC and State Bar proposals, and a [chart](#) showing the differences among the current rule and the two proposals, are available [online](#) along with comments from representatives of the Attorney Grievance Commission, Attorney Discipline Board, Judicial Tenure Commission, Michigan Judges Association, and others.

The public hearing, which begins at 9:30 a.m., will take place in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice in Lansing. Anyone wishing to address the Court on agenda items should contact the Clerk of the Court at MSC_clerk@courts.mi.gov in advance to reserve a place on the agenda. Speakers will have three minutes each to present their views and may be questioned by the justices.

Also on the Court's public hearing agenda:

- [ADM File No. 2005-11](#). Proposed changes would allow judges to appear, speak, receive awards, and be featured guests at fundraising events for law-related, charitable, civic, educational, and religious organizations. The proposed rules specify that judges cannot individually solicit donations. The proposed changes add, “To the extent practicable, a judge must be shielded from the identity of contributors and the amount of their contributions.”
- [ADM File No. 2004-08](#). The proposed amendments to MCR 8.126, which permits attorneys licensed outside Michigan to appear pro hac vice (temporary admission) in Michigan courts, would require the attorney seeking admission to pay a fee for each temporary admission request and to have the court that grants the attorney’s admission send a copy of the court’s order to the AGC.
- [ADM File No. 2007-18](#). The proposal would amend MCR 2.117 to clarify that an attorney may terminate the attorney-client relationship. “Follow-up or ministerial acts performed by the attorney with regard to the client’s file following notice of termination do not extend the attorney-client relationship,” the proposals adds.
- [ADM File No. 2008-10](#). If adopted, the proposed revisions to MCR 6.425 and 7.210 would require a judge who departs from criminal sentencing guidelines to submit a form explaining why he or she did so. This form would be included with the case record. The proposal would not alter current rules requiring the judge to also state on the record, during the sentencing hearing, the judge’s reasons for departing from the sentencing guidelines. The staff comment to the proposed revisions explains that “The proposal is designed to provide litigants and appellate courts a clear and unambiguous recitation of the reasons for departure by the sentencing court.”
- [ADM File No. 2008-11](#). This proposal would amend MCR 2.507 to clarify that oral agreements to settle a case must be made in open court to be binding.
- [ADM File No. 2008-32](#). The proposed amendment would amend MCR 2.203 to “clarify that summonses must be issued when a counterclaim or cross-claim is filed, and would establish an expiration date identical to the expiration date of summonses issued when a third party is added to an existing case,” according to the staff comment.
- [ADM File No. 2010-30](#). This proposal would add a new rule, MCR 2.412, and amend MCR 2.403, 2.411, and 3.216. The changes would consolidate mediation confidentiality requirements into one rule and would expand current exceptions to mediation confidentiality – for example, when the mediation communication “is sought or offered to prove or disprove a claim of abuse or neglect of a child, or a protected or vulnerable adult.”

The Supreme Court’s public administrative hearing agenda is online at http://www.courts.michigan.gov/supremecourt/Resources/Administrative/notice_03-30-11_Lansing.pdf. To sign up for the Court’s administrative listserv, which includes orders publishing proposed and adopted court rules, send an e-mail to listserv@listserv.michigan.gov with the exact phrase **Subscribe ADMMATTERS** in the message body. Words must be on the same line. For information on subscribing to other Court listservs, go to <http://www.courts.mi.gov/supremecourt/Orders.htm>.

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