

Order

Michigan Supreme Court
Lansing, Michigan

August 25, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2008-35

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Amendment of Rule 8.115
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 8.115 of the Michigan Court Rules is adopted, effective September 1, 2009.

[Additions are indicated by underline, and deletions by strikethrough.]

Rule 8.115 Courtroom Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices

(A)-(B)[Unchanged.]

(C) Establishment of a Policy Regarding Portable Electronic Communication Devices.

- (1) A facility that contains a courtroom may determine use of electronic equipment in nonjudicial areas of the facility.
- (2) The chief judge may establish a policy regarding the use of cell phones or other portable electronic communication devices within the court, except that no photographs may be taken of any jurors or witnesses, and no photographs may be taken inside any courtroom without permission of the court. The policy regarding the use of cell phones or other portable electronic communication devices shall be posted in a conspicuous location outside and inside each courtroom. Failure to comply with this section or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both for contempt of court.

KELLY, C.J. I believe that attorneys should be permitted to bring electronic devices into courtrooms. If their use interferes with proceedings, judges certainly retain the discretion to have them removed.

The rule the Court has approved permits a judge to adopt a default policy banning all electronic devices from courtrooms. I am concerned that it will seriously impede some attorneys' ability to practice law. The role of technology in the practice of law has matured. Today, Blackberrys, cell phones, and PDAs have become commonplace for most attorneys who rely heavily on them in their busy and fast-paced legal practices. These devices allow attorneys waiting in court for their cases to be called to stay current with, and quietly respond to, their clients' needs. Solo practitioners who do not have staff are especially dependent on the devices. Hence, for many, what was once merely a convenience has become a necessity.

For those reasons, I would allow attorneys to bring electronic devices into courtrooms with the proviso that their use must not interfere with court proceedings.

WEAVER and HATHAWAY, JJ., concur with KELLY, C.J.

Staff Comment: This rule authorizes a court's chief judge to establish a policy for the use of cell phones and other portable electronic devices in courtrooms, and requires that the policy be posted in a conspicuous location in each courtroom. The amendment also acknowledges that the policy for cell phone and electronic device usage in nonjudicial areas may be set by the operators of the facility in which courtrooms are located. No photographs may be taken of jurors and witnesses, and no photographs are allowed without the judge's permission. Failure to comply with the judge's policy may result in a fine (including confiscation of the device), incarceration, or both for contempt of court.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, 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.

August 25, 2009

Corbin R. Davis

Clerk