



Michigan Supreme Court

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Thomas P. Boyd
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MEMORANDUM

DATE: November 9, 2020

TO: All Judges

CC: Court Administrators, Probate Registers, and County Clerks

FROM: Thomas P. Boyd

SUBJECT: Electronic Access Fees

In its recent administrative orders, the Michigan Supreme Court has spoken clearly that courts must take steps to facilitate the public's access to court proceedings and documents using remote technologies. The Court's directives to the trial bench reflects both the need to protect the public during the pandemic and the fact that remote technologies enable courts to be more accessible, transparent, and efficient.

Contrary to the Michigan Court Rules, some courts are charging for electronic records searches or online access to the register of actions (ROA) even when the search is conducted remotely on a person's own device. MCR 8.119(J)(1) provides:

A court may not charge a fee to access public case history information or to retrieve or inspect a case document irrespective of the medium in which the case record is retained, the manner in which access to the case record is provided (including whether a record is retained onsite or offsite), and the technology used to create, store, retrieve, reproduce, and maintain the case record.

MCR 8.119(H)(1) similarly states that "any person may inspect" a record that is not restricted.

In addition, every trial court has a local administrative order that states in part:

Any person may access and inspect, at no charge, any case record or information contained in those records, regardless of means of access and record format, unless access is restricted by statute, court rule, or a court order entered pursuant to MCR 8.119(I), and may make photographic copies in accordance with MCR 8.115(C)(5)(a) or obtain copies subject to the following regulations established in accordance with MCR 8.119(J).

The court rules do allow courts to charge a fee for reproducing a document. MCR 8.119(J)(2) (“a court may charge a reproduction fee for a document pursuant to MCL 600.1988, except when required by law or court rule to provide a copy without charge to a person or other entity”). Under MCR 8.119(J)(4)(a), “a court may charge only for the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal, to reproduce a case document and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the document.” Fees typically authorized for document reproduction pertain to the copy costs and staff time necessary to provide those copies of a record.

The authorization to charge a fee does not apply, however, to the electronic reproduction of documents by someone on their own electronic device. MCR 8.115(C)(5) states:

Attorneys, parties, and members of the public may use a portable electronic device to reproduce public court documents in a clerk’s office as long as the device leaves no mark or impression on the document and does not unreasonably interfere with the operation of the clerk’s office.

Charging fees that are not authorized by statute or court rule for accessing court records is prohibited, and any court charging such fees must immediately discontinue that practice. This includes searching for a case on the court’s website and reproducing a document or ROA that is available online when using one’s own computer and printer.