

Order

Michigan Supreme Court
Lansing, Michigan

May 21, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-16

Michael F. Cavanagh
Stephen J. Markman

Adoption of Rule 2.119
of the Local Court Rules
of the Court of Claims

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, the following Local Court Rule 2.119 of the Court of Claims is adopted, effective immediately.

[The following is a new local court rule that governs motion practice
for the Court of Claims.]

Rule 2.119 Motion Practice

(A) Form of Motions.

- (1) An application to the court for an order in a pending action must be by motion. Unless made during a hearing or trial, a motion must
 - (a) be in writing,
 - (b) state with particularity the grounds and authority on which it is based,
 - (c) state the relief or order sought, and
 - (d) be signed by the party or attorney as provided in MCR 2.114.
- (2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Exhibits and attachments are to be abridged to include only the portions that are relevant to the motion or response. But, each exhibit and attachment shall fully provide identification of parties, witnesses, attorneys participating, date, and location. A set of unabridged exhibits and attachments shall be filed contemporaneously and separately with the Clerk of the Court at the time of filing a motion or response. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The

judge's copy must be clearly marked judge's copy on the cover sheet; that notation may be handwritten.

- (3) If a contested motion is filed after rejection of a proposed order under subrule (D), a copy of the rejected order and an affidavit establishing the rejection must be filed with the motion.
 - (4) All motions and responses shall include as part of the title the date of filing of the motion. (For example, DATE [dd/mm/yyyy] followed by MOTION FOR . . . or RESPONSE TO THE [dd/mm/yyyy] MOTION FOR . . .).
 - (5) There is no oral argument on motions unless a request is made in the motion or response, and the request is granted by the assigned judge. A notice of hearing, if any, will be provided by the court.
 - (6) The motion will be deemed submitted for decision 21 days after the date of filing as appears in the title of the motion unless otherwise specified by the court or noticed for hearing by the court.
- (B) Form of Affidavits.
- (1) If an affidavit is filed in support of or in opposition to a motion, it must:
 - (a) be made on personal knowledge;
 - (b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and
 - (c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.
 - (2) Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to the affidavit unless the papers or copies:
 - (a) have already been filed in the action;
 - (b) are matters of public record in the county in which the action is pending;
 - (c) are in the possession of the adverse party, and this fact is stated in the affidavit or the motion; or

- (d) are of such nature that attaching them would be unreasonable or impracticable, and this fact and the reasons are stated in the affidavit or the motion.

(C) Time for Service and Filing of Motions and Responses.

- (1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard *ex parte*) and any supporting brief or affidavits must be served within 5 days after the date of filing as appears in the title of the motion, and in accordance with MCR 2.107.
- (2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be filed with the court and served within 14 days after the date of filing as appears in the title of the motion and in accordance with MCR 2.107.
- (3) The failure to file a response to a motion will result in the treatment of the motion as uncontested.
- (4) If the court sets a different time for serving a motion or response its authorization must be endorsed in writing on the face of the motion or response, or made by separate order.
- (5) Unless the court sets a different time, any discovery motion must be filed at least 21 days before the discovery cut-off date.

(D) Uncontested Orders.

- (1) Before filing a motion, a party may serve on the opposite party a copy of a proposed order and a request to stipulate to the court's entry of the proposed order.
- (2) On receipt of a request to stipulate, a party may
 - (a) stipulate to the entry of the order by signing the following statement at the end of the proposed order: "I stipulate to the entry of the above order"; or
 - (b) waive notice and hearing on the entry of an order by signing the following statement at the end of the proposed order: "Notice and hearing on entry of the above order is waived."

A proposed order is deemed rejected unless it is stipulated to or notice and hearing are waived within 7 days after it is served.

- (3) If the parties have stipulated to the entry of a proposed order or waived notice and hearing, the court may enter the order. If the court declines to enter the order, it shall notify the parties by written order or notice a hearing on the motion. If a hearing is noticed by the court, the matter then proceeds as a contested motion under subrule (E).
- (4) Notwithstanding the provisions of subrule (D)(3), stipulations and orders for adjournment are governed by MCR 2.503.

(E) Contested Motions.

- (1) Contested motions will be deemed submitted for decision 21 days after the date of filing as appears in the title of the motion unless otherwise specified by the court or noticed for hearing by the court.
- (2) When a motion is based on facts not appearing of record, the court may hear the motion on affidavits presented by the parties, or may direct that the motion be heard wholly or partly on oral testimony or deposition.
- (3) In its discretion, the court may grant, dispense with, or limit oral arguments on motions; and may require the parties to file supplemental briefs in support of and in opposition to a motion.
- (4) Appearance at a hearing noticed by the court is governed by the following:
 - (a) A party who, pursuant to subrule (D)(2), has previously rejected the proposed order before the court, and the court thereafter notices a hearing, must
 - (i) appear at the hearing held on the motion, and
 - (ii) before the hearing, if no response to the motion has been filed, file a response containing a concise statement of reasons and supporting authorities in opposition to the motion.

A party who fails to comply with this subrule is subject to assessment of costs under subrule (E)(4)(c).

- (b) Unless excused by the court, the moving party must appear at a hearing on the motion. A moving party who fails to appear is subject to assessment of costs under subrule (E)(4)(c); in addition, the court may assess a penalty not to exceed \$100, payable to the clerk of the court.
- (c) If a party violates the provisions of subrule (E)(4)(a) or (b), the court shall assess costs against the offending party, that party's attorney, or both, equal to the expenses reasonably incurred by the opposing party in appearing at the hearing, including reasonable attorney fees, unless the circumstances make an award of expenses unjust.

(F) Motions for Rehearing or Reconsideration.

- (1) Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604[A], 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 21 days after entry of an order deciding the motion.
- (2) No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs.
- (3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

(G) Motion Fees. The following provisions apply to actions in which a motion fee is required:

- (1) A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled "motion," "petition," "application," or otherwise.

- (2) The clerk shall charge a single motion fee for all motions filed at the same time in an action regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions.
- (3) A motion fee may not be charged:
 - (a) in criminal cases;
 - (b) for a notice of settlement of a proposed judgment or order under MCR 2.602(B);
 - (c) for a request for an order waiving fees under MCR 2.002 or MCL 600.2529(4) or MCL 600.8371(6);
 - (d) if the motion is filed at the same time as another document in the same action as to which a fee is required; or
 - (e) for entry of an uncontested order under subrule (D).

Staff Comment: Local Court Rule 2.119 for the Court of Claims is adopted May 21, 2014, at the request of that court, effective immediately.

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



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.

May 21, 2014


Clerk