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August 28, 2019

p 800-968-1442

f 517-482-6248

www.michbar.org

Larry Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

RE: ADM File No. 2002-37: Proposed Amendment of Rules 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of Rules 2.226 and 8.125 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendments published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy, Civil Procedure & Courts, and Criminal Jurisprudence & Practice committees, and the Family Law Section.

After this review, the Board voted unanimously to support the Court's ongoing efforts to implement a state-wide electronic filing system. To assist with this effort, the State Bar is enclosing the recommendations from its committees and section for the Court's consideration.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Jennifer Grieco, President, State Bar of Michigan

**Public Policy Position
ADM File No. 2002-37**

The Access to Justice Policy Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Access to Justice Policy Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar’s position in this matter is to support the Court’s ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court’s consideration.

The Access to Justice Policy Committee has a public policy decision-making body with 23 members. On July 12, 2019, the Committee adopted its position after a discussion and vote at a scheduled meeting and a further electronic discussion and vote. 19 members voted in favor of the Committee’s position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 4 members did not vote.

Support with Amendments

Explanation:

The Committee supports the proposed rule changes with the following amendments (proposed changes are capitalized and in bold):

1. Prohibit judges from requesting judge’s copies of motions (p 3, 4)

Rule 2.116(G)(1)(c):

Except where electronic filing has been implemented, a~~A~~ copy of a motion, response (including brief and any affidavits), or reply 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. Where electronic filing has been implemented, a judge’s copy ~~may~~ **SHALL** not be required.

Same change to Rule 2.119(A)(2)(d)

Rationale: The purpose of this amendment is to make the filing process consistent statewide, to eliminate the practice of courts enforcing rules without providing notice to the public, and to eliminate the need for attorneys or self-represented parties to make and deliver (by mail or in person)

a paper copy to specific judges. Such a prohibition is not a hardship to the court because, where electronic filing has been implemented, a judge can print a paper copy from the electronic file.

2. Clarify that a fee waiver continues after transfer of a case (p 4)

Rule 2.222(D)(1):

The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the party that moved for change of venue to pay the applicable statutory filing fee to the receiving court **UNLESS FEES HAVE BEEN WAIVED IN ACCORDANCE WITH MCR 2.002.**

Same change to the following sections:

2.223(B)(1)

2.225(B)(1)

2.227(B)(1)

4.002(C)(1)

Rationale: If a party has had his or her fees waived and the case is subsequently transferred because of change of venue, lack of jurisdiction or from district to circuit court, that waiver should continue in the new court. The additional language is already included in the rules regarding post-judgment transfer of a domestic relations cases (see p. 12).

3. Expand the definition of alternate mailing address to be provided to the Friend of the Court (p 10)

Rule 3.206(C)(1):

The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party. If the party submitting the verified statement excludes an address for good cause, that party shall provide an alternate address where mail can be received. **AN ALTERNATE ADDRESS MAY INCLUDE AN ELECTRONIC OR EMAIL ADDRESS.**

Rationale: This section is problematic for domestic violence survivors attempting to maintain a confidential address, low income or homeless parties who cannot afford the cost of a post office box or lack a reliable address available from third parties. We understand the need for Friend of the Court to be able to send notices to parties – and the importance of parties receiving court notices – but with e-filing and the wide availability of email addresses and public places with internet access, we think an email alternative serves the needs of the court and parties.

4. Clarify that jury demand is filed with the complaint in summary proceedings (p 24)

Rule 4.201(B)(2):

Jury Demand. If the plaintiff wishes a jury trial, the demand must be made on a form approved by the State Court Administrative Office. The jury trial fee must be paid when the demand is made. **THE JURY DEMAND MUST BE FILED WITH THE COMPLAINT.**

Rationale: Although it's implied by the placement of this new section that a jury demand is filed with the complaint, it should be stated specifically for clarity and to reduce any confusion among parties or the court.

5. Increase time to file original will with the court (p 26)

Rule 5.302(A)(2):

Where electronic filing is implemented, if the application or petition to commence a decedent estate indicates that there is a will, it is available, and that it is not already in the court's possession, an exact copy of the will and any codicils must be attached to the application or petition. Within 14 days of the filing of the application or petition, the original will and any codicils must be filed with the court or the case will be dismissed without notice and hearing. Notice of a dismissal for failure to file the original will and any codicils shall be served on the petitioner and any interested persons in a manner provided under MCR 5.105(B).

Rationale: Seven days is not sufficient time for an attorney or party to mail or hand-deliver the original will to the court; 14 days is a more reasonable deadline.

6. Require clerks to continue to deliver judgments or orders to both parties (p 28)

Rule 8.105(C)

Notice of Judgments, Orders, and Opinions. Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by ~~the court clerk~~ must deliver, in the manner provided in MCR 2.107, a copy of the judgment, final order, written opinion, or findings entered in a civil action to the ~~attorneys~~ **ATTORNEYS OF RECORD IN THE CASE or THE party PARTIES IF UNREPRESENTED. Who sought the order, judgment, opinion or findings. Except where e-Filing is implemented, if the attorney or party does not provide at least one copy when filing a proposed order or judgment, the clerk, when complying with this subrule, may charge the reproduction fee authorized by the court's local administrative order under MCR 8.119(H)(2).** of record in the case, in the manner provided in MCR 2.107.

Rationale: Particularly where the court issues the order, judgment, or opinion in a case, the clerk should serve both parties with a copy. Otherwise, one party is at the mercy of the party who receives the order to timely serve, which could impact the rights of the other party, including the right to appeal. Additionally, it's not always easy to determine which party is the "party who sought the order, judgment, opinion or findings," as required by the current proposal. For example, in a divorce action

where a counter complaint is filed, either party may be the moving party.

Position Vote:

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote: 4

Contact Persons:

Lorray S.C. Brown lorrayb@mplp.org

Valerie R. Newman vnewman@waynecounty.com

**Public Policy Position
ADM File No. 2002-37**

The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Civil Procedure & Courts Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Civil Procedure & Courts Committee has a public policy decision-making body with 26 members. On June 8, 2019, the Committee adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Committee's position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 8 members did not vote.

Support with Amendments

Explanation

The Civil Procedure & Courts Committee continues to support the Michigan Supreme Court's ongoing efforts to implement a statewide electronic filing system.

The committee, however, recommends that the language in MCR 2.222(E)(1) be clarified as follows (proposed changes shown in bold and underline):

The party that moved for change of venue must pay to the receiving court within 28 days of the date **of service** of the transfer order the applicable filing fee as ordered by the transferring court. No further action may be had in the case until payment is made. If the fee is not paid to the receiving court within 28 days of the date **of service** of the order, the reviewing court must order the case transferred back to the transferring court.

The committee recommends that the same change be made to similar language contained in proposed MCR 2.223(C)(1), 2.225(C)(1), 2.227(C)(1), 4.002(D)(1), and 4.002(D)(3).

Position Vote:



CIVIL PROCEDURE & COURTS COMMITTEE

Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com

Public Policy Position
ADM File No. 2002-37

The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Criminal Jurisprudence & Practice Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Criminal Jurisprudence & Practice Committee has a public policy decision-making body with 17 members. On June 28, 2019, the Committee adopted its position after a discussion and vote at a scheduled meeting. 10 members voted in favor of the Committee's position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 7 members did not vote.

Support

The committee supports these proposed amendments of the rules to further the Court's efforts in implementing a statewide e-filing system.

Position Vote:

Voted For position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

Contact Person:

Sofia V. Nelson snelson@sado.org

**Public Policy Position
ADM File No. 2002-37**

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,510 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Family Law Section has a public policy decision-making body with 21 members. On June 8, 2019, the Section adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Section's position on ADM File No. 2002-37, 8 members voted against this position, 1 members abstained, 0 members did not vote.

Support with Recommended Amendments

Explanation:

Council voted to support this ADM file with a friendly amendment to clarify that the Judge's copy "shall not be required to be provided unless specifically requested by the hearing officer."

Position Vote:

Voted For position: 12

Voted against position: 8

Abstained from vote: 1

Did not vote (absent): 0

Contact Person: Robert C. Treat, Jr.

Email: bob.treat@qdroexpressllc.com