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April 1, 2020

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

**RE: ADM File No. 2002-37 – Proposed Amendments of Rules 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119 of the Michigan Court Rules**

Dear Clerk Royster:

At its March 24, 2020 meeting, the Board of Commissioners of the State Bar of Michigan considered the above-referenced rule amendments published for comment. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, Appellate Practice Section, and Family Law Section.

Based on this review, the Board voted unanimously to support the amendments as part of the Court's continued effort to implement a statewide e-filing system. The Board recognizes that the proposed e-filing amendments are nuanced and practice specific; therefore, the Board is providing the recommendations that it has received from its sections and committees for the Court's consideration.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Dennis M. Barnes, President

**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 27 members. On February 25, 2020, the Committee adopted its position after a discussion and vote at a scheduled meeting. The Committee’s votes are detailed below:

**SUPPORT WITH AMENDMENTS**

**Explanation**

The committee supports the proposed changes to help implement a statewide e-filing system with the following amendments:

**Rule 1.109(G)(2)** – The process for establishing e-Filing and e-Service standards should not be delegated to the State Court Administrative Office (SCAO). Deferring to SCAO will result in a process that lacks transparency and fails to provide the public and the bar with the opportunity to publicly comment on the effect of such standards. Instead, the rule should be amended so that these standards are created through the open court rule amendment process.

**Position Vote on Rule 1.109(G)(2):**

- Voted for position: 17
- Voted against position: 0
- Abstained from vote: 1
- Did not vote (due to absence): 9

**Rule 1.109(G)(3)(i)** – As proposed, the subrule would require that any request for a disability-related exemption to be made on the reasonable accommodation form. The committee opposes this limitation; the rule should be **amended** to allow a person to request a disability-related exemption on either the exemption form or the reasonable accommodation form.

**Position Vote on Rule 1.109(G)(3)(i):**

Voted for position: 17

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 9

**Rule 1.109(G)(3)(i)(ii)** – This subrule should be amended to address clerk denials of requests for exemptions. The rule provides that a request for an exemption under (h) (ii) or (iii) (limited English Proficiency or confinement) shall be approved by the court clerk. However, because the committee anticipates that some clerks may deny the request, the rule should specify the process for what will happen if a clerk denies exemption request (committee’s recommended changes to the proposed rule shown in bold underline or strikethrough:

(ii) A request made under subrule (h)(ii) or (iii) shall be approved by the clerk of the court on a form approved by the State Court Administrative Office. **If the clerk of the court does not grant an exemption, the clerk shall immediately submit the request for judicial review. For all other requests,** A judge must review **requests that are not granted by a clerk, requests made under subrule (h)(i), and requests made under subrule (g). The judge shall** issue an order granting or denying the request within two business days of the date the request was filed.

**Position Vote on Rule 1.109(G)(3)(i)(ii):**

Voted for position: 18

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 8

**Rule 1.109(G)(7)(d)** – The committee recommends amending this subrule to strike the clause “if deemed necessary to ensure due process rights are protected.” The committee noted that anytime there is a transmission failure, due process rights are necessarily implicated.

**Position Vote on Rule 1.109(G)(7)(d):**

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

**Rule 2.306(F)(3)** – This subrule should be amended to clarify the appropriate method of service. The subrule refers to MCR 2.105(A), which is the rule on service on an individual, but MCR 2.306 is about filing transcripts with the court. As a result, the procedure for serving a transcript is unclear. It seems as though the intent of the rule is not to require personal or certified mail/restricted to the address for service on parties. Rather, service by first class mail should be sufficient; it is the primary method of service after process is served. The committee recommends the following amendment (the committee’s recommended changes to the proposed rule shown in bold underline and strikethrough):

Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the

transcript be filed, the person conducting the examination or the stenographer shall promptly file the certified transcript with the court in which the action is pending ~~in accordance with MCR 2.105(A)~~ and shall give prompt notice of its filing to all other parties in accordance with MCR 2.107, unless the parties agree otherwise by stipulation in writing or on the record.

**Position Vote on Rule 2.306(F)(3):**

Voted for position: 19  
 Voted against position: 0  
 Abstained from vote: 1  
 Did not vote (due to absence): 7

**Rule 2.603(A)** – The committee opposed this subrule because it would automate entry of defaults by authorizing clerks to automatically enter a default without action by a party.

Once a default is entered, complicated steps are required to set it aside, even where good cause exists. For self-represented parties, it may be impossible to navigate the process. In addition, in family law cases, a party may decide not to file a default if the parties are working toward a settlement or if notice of default to the defendant could trigger retaliation in a case involving domestic violence.

The committee is concerned that steps towards automation of bulk filings and default judgments will increase the risk that Michigan residents will face improper debt collections suits, or worse, have default judgment entered against them in a debt collection suit that never should have been filed.

**Position Vote on Rule 2.603(A):**

Voted for position: 19  
 Voted against position: 0  
 Abstained from vote: 1  
 Did not vote (due to absence): 7

**Rule 4.201(D)** – The committee supports amending the rule to change “mail” to “first-class mail,” but oppose the rest of the changes. E-Filing does not create any new circumstances that warrant reducing protections for people facing a loss of housing.

As written, the rule appears to remove the requirement of filing a proof of service in paper filed cases but requires it in e-Filed cases. The general rule on service of process of case initiating documents, MCR 1.109(G)(6)(a)(i), says that “service...shall be made in accordance with the rules and laws required for the particular case type.” With this in mind, we suggest keeping only the “first-class mail” clarification and specifying regular first-class mail since certified mail is a type of first-class mail. The committee discussed whether registered or certified mail should be substituted for first class mail. The committee determined that because a defendant must be served in other ways (e.g., by personal service), service by first class mail is sufficient. Moreover, the committee’s primary concern is that there is not a variance in service requirements between paper and e-filed cases. Therefore, the committee recommends the following amended language (committee’s recommended changes to the proposed language shown in bold underline and strikethrough):

Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by regular first-class mail. **Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service.** ~~Where e-Filing is implemented, the plaintiff must serve the defendant by first-class mail and file proof of service with the court.~~ In addition to mailing, the defendant must be served in one of the following ways:

**Position Vote on Rule 4.201(D):**

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

**Contact Persons:**

Lorray S.C. Brown [lorryb@mplp.org](mailto:lorryb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto: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 27 members. On March 7, the Committee adopted its position after a discussion and vote at a scheduled meeting. The Committee's votes are detailed below:

**SUPPORT WITH AMENDMENTS**

**Explanation**

The committee supports the proposed changes to help implement a statewide e-filing system with the following amendments:

**Rule 1.109(E)(4)(3)** – The committee opposes changes to this subrule and recommends that the rule remain as currently written. The committee believes that the proposed language is confusing and lacks adequate precision particularly with the use of “logically associated,” which may lead to questions in the future, and possibly litigation, over the meaning and requirements of the subsection. In addition, the specific reference to MCL 55.286b is redundant. The prior version of this subrule referred to “other applicable law” which would include MCL 55.286b as well as any other laws governing the electronic submission of notarized signatures.

**Position Vote on Rule 1.109(E)(4)(3):**

Voted For position: 19

Voted against position: 1

Abstained from vote: 0

Did not vote (due to absence): 7

**Rule 1.109(G)(3)(i)** – The committee recommends supporting the amendments proposed by the Access to Justice (ATJ) Committee. The ATJ committee noted that, as proposed, the subrule would require any request for a disability-related exemption to be made on the reasonable accommodation form. The ATJ committee opposed this limitation; the rule should be **amended** to allow a person to request a disability-related exemption on either the exemption form or the reasonable accommodation form.

**Position Vote on Rule 1.109(G)(3)(i):**

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 7

**Rule 2.603(A)** – The committee opposes changes to this subrule and recommends keeping the rule as it currently exists. First, this proposed change appears to be a policy change and not necessary for the implementation of a statewide e-filing system; therefore, this rule proposal is not the right vehicle to make such a policy change. The committee is also concerned about the policy presented in the proposed rule. There are circumstances under which a plaintiff may not want a default entered, such as when parties have agreed to extend the time to answer. If a default were automatically entered, as contemplated by this subrule, a client might conclude that his or her attorney had not filed an answer or obtained an agreement to extend the time to answer, thereby potentially damaging the attorney client relationship.

**Position Vote on Rule 2.603(A):**

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 7

**Contact Person:** Randy J. Wallace**Email:** [rwallace@olsmanlaw.com](mailto: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 21 members. On January 10, 2020, the Committee adopted its position after a discussion and vote at a scheduled meeting. 14 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 due to absence.

**Explanation**

The committee voted unanimously (14) to support the proposed amendments as drafted.

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)  
Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)

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

The Appellate Practice Section is a voluntary membership section of the State Bar of Michigan, comprised of 769 members. The Appellate Practice Section is not the State Bar of Michigan and the position expressed herein is that of the Appellate Practice 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 Appellate Practice Section has a public policy decision-making body with 24 members. On March 23, 2020, the Section adopted its position after an electronic discussion and vote. 22 members voted in favor of the Section's position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 2 members did not vote due to absence.

**Support with Recommended Amendments**

**Explanation**

Add the following sentence to precede the final sentence in MCR 8.119(C): "Regardless of the date a filing is accepted by the clerk of the court, the date of filing is the date submitted."

This additional language, by confirming that a document is considered to have been filed on the date it was submitted, would clarify that a document meets the applicable filing deadline even if it is rejected by the clerk due to a filing defect and needs to be resubmitted thereafter.

Additional details are included in the attached letter.

**Contact Person:** Bradley R. Hall

**Email:** [bhall@sado.org](mailto:bhall@sado.org)

APPELLATE PRACTICE SECTION

March 23, 2020

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Via email: [csharlow@mail.michbar.org](mailto:csharlow@mail.michbar.org)

Re: ADM File No. 2002-37: Proposed Amendments of E-Filing Rules

Dear Board Members:

The Appellate Practice Section Council has reviewed the proposed amendments of e-filing court rules. The Council has voted to recommend alternate language for the proposed amendment to MCR 8.119(C), which addresses trial court clerks' authority to reject documents that are not signed or that do not comply with MCR 1.109(D)(1) and (2). Currently, it is not clear what happens when a document is e-filed at the last minute on the day it is due, but is then rejected by the clerk for something as simple as a defective caption. Assuming the defect is corrected, it is not clear whether the document is still considered timely for purposes of the filing deadline.

To provide a safe harbor, we propose the following additional language (in red with double-underline; the Court's own proposed amendments are underlined once), which borrows from MCR 1.109(G)(5)(b):

Filing of Documents and Other Materials. The clerk of the court shall process and maintain documents filed with the court as prescribed by Michigan Court Rules and the Michigan Trial Court Records Management Standards and all filed documents must be file stamped in accordance with these standards. The clerk of the court may only reject documents submitted for filing that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver, unless already waived or suspended by court order. Regardless of the date a filing is accepted by the clerk of the court, the date of filing is the date submitted. Documents prepared or issued by the court for placement in the case file are not subject to rejection by the clerk of the court and shall not be stamped filed but shall be recorded in the case history as required in subrule (D)(1)(a) and placed in the case file.

This additional language, by confirming that a document is considered to have been filed on the date it was submitted, would clarify that a document meets the applicable filing deadline even if it is rejected by the clerk and needs to be resubmitted.

Thank you for considering our concerns and suggested alternate language. Please contact me if you have any questions.

Sincerely,

s/Bradley R. Hall  
Chair

**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 2,499 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 18 members. On March 7, 2020, 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, 0 members voted against this position, 0 members abstained, 0 members did not vote.

**Support with Amendments**

**Explanation:**

A motion was made to support ADM File No. 2002-37 with:

A) a friendly amendment of Rule 1.109(D)(1)(a) to include the phrase "Excluding exhibits" before "[t]he font size must be 12 or 13 point for body text and no less than 10 point for footnotes, except with regard to forms approved by the State Court Administrative Office"; and

B) the following question posed: "Regarding Rule 1.109(G)(3)(e), does that mandate include the FOC or not?"

The motion unanimously passed 18-0 with no abstentions.

**Contact Person:** Jennifer Johnsen

**Email:** [jenjohnsen@westmichigandivorce.com](mailto:jenjohnsen@westmichigandivorce.com)