

# MICHIGAN STATE PLANNING BODY

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## Co-Chairs:

**Hon. Judith E. Levy**  
*U.S. District Court  
Eastern District Of Michigan*

**Angela R. Tripp**  
*Co-Executive Director  
Michigan Statewide  
Advocacy Services*

## Agenda Committee:

**Bob Gillett**  
*Michigan Advocacy  
Program*

**Hon. Elizabeth Hines**  
*15<sup>th</sup> District Court*

**Hon. Denise Page Hood**  
*U.S. District Court  
Eastern District of Michigan*

**Ashley Lowe**  
*Lakeshore Legal Aid*

August 27, 2019

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

Re: File Number 2018-30; MCR 8.115  
Proposed Rule on the use of portable electronic devices in court houses

Dear Mr. Royster,

We are writing to comment on the rule referenced above.

We are writing as the Co-Chairs of the Legal Services Association of Michigan (Ms. Hoekwater) and the Michigan State Planning Body (Mr. Gillett). We are writing to express our support for the proposed amendments to MCR 8.115.

As you know, the member programs of the Legal Services Association of Michigan (LSAM), the largest twelve civil legal aid programs in the state, provide direct legal services to over 50,000 Michigan residents each year. The Michigan State Planning Body (MSPB) is an unincorporated association of about 35 individuals who are leaders in the judiciary, the State Bar, and state and regional advocacy programs who are interested in Michigan's indigent civil legal aid and indigent defense systems. Both LSAM and MSPB members are well aware of the thousands of people who go to court every day without lawyers. We see that both self-represented litigants and our own clients face many hardships because they aren't able to bring their phones into court.

Both LSAM and the MSPB were involved in the development of the rule change proposal that was submitted by the MSPB to the Court. Both bodies reviewed and formally voted to support this new rule. Both bodies also had the chance to review the comments prepared by the Michigan Legal Help Program (MLHP), and without repeating them here, strongly support the issues raised and recommendations made in those comments.

We write separate from the MLHP comment to raise one additional consideration. We believe that a court policy that prevents non-attorneys from bringing cell phones into court may be vulnerable to a constitutional challenge. For example, if a litigant in a family law case has critical evidence on their phone and is precluded from presenting that evidence because of a court's cell phone ban, due process is implicated. See **Boddie v. Connecticut**, 401, U.S. 371 (1971). And a court policy that permits lawyers to bring cell phones into a court proceeding but prevents a self-represented litigant in that same case from having access to their cell phone may be subject to challenge under the equal protection clause. In court proceedings where a fundamental right is implicated the court policy would be subject to heightened scrutiny. We suggest that, under this standard, there is not a justification for assuming that self-represented litigants as a class are so dangerous or disruptive that they must be denied access to the tools necessary to fully present their case.

While we believe that current court policies banning cell phones are subject to challenge, we believe that after the implementation of e-filing these challenges will be even more compelling. Through e-filing, the Court is essentially requiring a device to access case records in the courthouse. Through a cell phone ban, the local court is essentially prohibiting that access.

These arguments are equally or more compelling in criminal cases. While there is a right to counsel in criminal cases, that right is sometimes waived and many courts do not provide counsel at every stage of a criminal case, especially for misdemeanors. There are thousands of pro se criminal case events in the state each year. But even where there is counsel, the blanket ban on cell phones for non-lawyers implicates the constitutional rights of criminal defendants. The Fifth Amendment protects a person's right to due process and the Sixth Amendment protects a person's right to confront adverse witnesses and to present evidence

in her or his defense. A party's cell phone may contain evidence of an alibi, or document communications that are relevant to a defense, or contain information for contacting witnesses. Depriving a defendant of access to this information may effectively prevent that person from fully participating in their defense.

While we believe that the most compelling reasons to support the proposed rule are affirmative—the rule will facilitate meaningful access to the court system for thousands of non-attorney court users—we also see the rule as requiring local courts to modify current policies that are subject to legal challenge.

In summary, we support this rule change and see it as critical to affording people access to the courts. Both LSAM and the MSPB are available to assist the Court in any way in this process—from answering questions about the current proposed rule to assisting with education about and the implementation of any new rule adopted by the Court.

Respectfully submitted,

*Pamela Hoekwater*

Pamela Hoekwater  
Legal Services Association of Michigan

*Robert Gillett*

Robert F. Gillett  
Michigan State Planning Body