

Order

Michigan Supreme Court
Lansing, Michigan

December 18, 2019

Bridget M. McCormack,
Chief Justice

ADM File No 2002-37

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendments of Rules
1.109, 2.002, 2.302, 2.306, 2.315,
2.603, 3.101, 3.222, 3.618, 4.201,
and 8.119 of the Michigan Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.101, 3.222, 3.618, 4.201, and 8.119 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures;
Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1) Form and Captions of Documents.

(a) All documents prepared for filing in the courts of this state and all documents ~~prepared~~prepared issued by the courts for placement in a case file must be legible and in the English language, comply with standards established by the State Court Administrative Office, and be on good quality 8½ by 11 inch paper or transmitted through an approved electronic means and maintained as a digital image. The 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. Transcripts filed with the court must contain only a single transcript page per document page, not multiple pages combined on a single document page.

(b)-(g) [Unchanged.]

(2)-(8) [Unchanged.]

(E) Signatures.

(1)-(3) [Unchanged.]

(4) An electronic signature is acceptable in accordance with this subrule.

(a) [Unchanged.]

(b) If a law or court rule requires a signature to be notarized or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law or court rule, is attached to or logically associated with the signature pursuant to MCL 55.286b.

(~~b~~c) [Relettered but otherwise unchanged.]

(5)-(7) [Unchanged.]

(F) [Unchanged.]

(G) Electronic Filing and Service.

(1) [Unchanged.]

(2) Electronic-Filing and Electronic-Service Standards. Courts shall implement electronic filing and electronic service capabilities in accordance with this rule and shall comply with the standards established by the State Court Administrative Office. Confidential and nonpublic information or documents and sealed documents must be that are electronically filed or electronically served must be filed or served in compliance with these standards to ensure secure transmission of the information.

(3) Scope and Applicability.

(a)-(d) [Unchanged.]

- (e) If a party or attorney in a case is registered as an authorized user in the electronic-filing system, Aa court ~~may~~must electronically ~~serve~~send to that authorized user any notices, orders, opinions, and~~or~~ other documents issued by the court in that case by means of either the
- (i) electronic-filing system, or
 - (ii) the court's on-premise electronic document management system, without the need for the e-mail agreement required under MCR 2.107(C)(4).
- (f) For the required case types, attorneys must electronically file documents in courts where electronic filing has been implemented, unless an attorney filing on behalf of a party is exempted from electronic filing under subrule (j) because of a disability. All other filers are required to electronically file documents only in courts that have been granted approval to mandate electronic filing by the State Court Administrative Office under AO 2019-~~XX~~2.
- (g) [Unchanged.]
- (h) Upon request, the following persons are exempt from electronic filing without the need to demonstrate good cause:
- (i) a person who has a disability as defined under the Americans with Disabilities Act that prevents or limits the person's ability to use the electronic filing system;
 - (ii)-(iii) [Unchanged.]
- (i) A request for an exemption under subrule (h)(i) must be requested as a reasonable accommodation in accordance with subrule (j). A request for an exemption under subrules (h)(ii) or (iii) must be filed with the court in paper where the individual's case will be or has been filed as follows: ~~If the individual filed paper documents at the same time as the request for exemption, the clerk shall process the documents for filing. If the documents meet the filing requirements of subrule (D), they will be considered filed on the day they were submitted.~~
- (i) The request for an exemption must be on a form approved by the State Court Administrative Office, must specify the reasons

that prevent the individual from filing electronically, and be verified under MCR 1.109(D)(3). The individual may file supporting documents along with the request for the court's consideration. There is no fee for the request.

~~(ii) The request must specify the reasons that prevent the individual from filing electronically. The individual may file supporting documents along with the request for the court's consideration.~~

(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. For all other requests,

~~(iii) A judge must review the request and any supporting documentation and issue an order granting or denying the request within two business days of the date the request was filed.~~

(j) A person with a disability as defined under the Americans with Disabilities Act that prevents or substantially limits the person's ability to use the electronic-filing system may request and shall be granted an exemption from electronic filing as a reasonable accommodation as follows:

(i) A request for exemption under this subrule shall be filed as a request for reasonable accommodation in the court in which the individual's case has or will be filed. When submitted in writing, the request shall be made on the SCAO-approved form "Request for Reasonable Accommodations and Response."

(ii) Whether or not the court determines any other reasonable accommodations are appropriate, the court shall prepare an order exempting the person from electronic filing.

(k) If the individual filed paper documents at the same time as the request for exemption under either subrule (i) or (j), the clerk shall process the documents for filing. If the documents meet the filing requirements of subrule (D), they will be considered filed on the day they were submitted.

~~(l)(iv)~~ The clerk of the court must hand deliver or promptly mail the clerk approval granted or order entered under subrule (i) or (j) to the

individual. The clerk must place the request, any supporting documentation, and the clerk approval or order in the case file. If there is no case file, the documents must be maintained in a group file.

~~(m)(v)~~ An exemption granted under this rule is valid only for the court in which it was filed and for the life of the case unless the individual exempted from filing electronically registers with the electronic-filing system. In that event, the individual waives the exemption and becomes subject to the rules of electronic filing and the requirements of the electronic-filing system. An individual who waives an exemption under this rule may file another request for exemption.

(4)-(5) [Unchanged.]

(6) Electronic-Service Process.

(a) General Provisions.

(i) [Unchanged.]

(ii) Service of process of all other documents electronically filed shall be accomplished electronically among authorized users through the electronic-filing system, ~~unless one or more parties have~~ If a party has been exempted from electronic filing, or a party has not filed a response or answer or has not registered with the electronic-filing system and that party's e-mail address is unknown. ~~In those circumstances,~~ service shall be made on that party by any other method required by Michigan Court Rules.

(iii)-(v) [Unchanged.]

(b)-(c) [Unchanged.]

(7) Transmission Failures.

(a)-(c) [Unchanged.]

(d) In the event the electronic-filing system fails to transmit a document selected for service, if deemed necessary to ensure due process rights are protected, the State Court Administrator shall provide notice to the affected persons in either of the following ways:

- (i) file, as a nonparty, a notice of defective service in each affected case and, as deemed appropriate, serve the notice, or
- (ii) send notice of a system-wide transmission failure to each affected system user.
- (e) If notice is provided under subrule (d), the clerk of the court where the affected case is filed must enter the event in the case history in accordance with MCR 8.119(D)(1)(a).
- (f) A fee shall not be assessed on a motion filed claiming that rights in the case were adversely affected by transmission failure of a document selected for service.

Rule 2.002 Waiver of Fees for Indigent Persons

(A) Applicability and Scope.

(1)-(3) [Unchanged.]

- (4) If fees are waived under this rule before judgment, the waiver continues through the date of judgment unless ordered otherwise under subrule (J). If fees are waived under this rule postjudgment, the waiver continues through the date of adjudication of the postjudgment proceedings. In probate proceedings, “postjudgment” means any proceeding in the case after the original petition is adjudicated. If jurisdiction of the case is transferred to another court, the waiver continues in the receiving court according to this rule unless ordered otherwise by the receiving court under subrule (J). If an interlocutory appeal is filed in another court, the waiver continues in the appellate court.

(5) [Unchanged.]

(B)-(K) [Unchanged.]

Rule 2.302 Duty to Disclose; General Rules Governing Discovery

(A)-(G) [Unchanged.]

(H) Filing and Service of Disclosure and Discovery Materials.

- (1) Unless required by a particular rule, disclosures, requests, responses, depositions, and other discovery materials may not be filed with the court

except as follows:

- (a) If the materials are to be used in connection with a motion, they must ~~either be filed separately or~~ be attached to the motion, response, or an accompanying affidavit;
- (b) If the materials are to be used at trial, they shall not be filed with the court, but must be submitted to the judge and made an exhibit under MCR 2.518 or MCR 3.930;
- (c) [Unchanged.]

(2)-(4) [Unchanged.]

Rule 2.306 Depositions on Oral Examination of a Party

(A)-(E) [Unchanged.]

(F) Certification and Transcription; Filing; Copies.

(1)-(2) [Unchanged.]

(3) 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), after transcription and certification; and shall give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.

- (a) ~~If the transcript is personally delivered to the court, securely seal the transcript~~ it must be securely sealed in an envelope endorsed with the title and file number of the action and marked “Deposition of [*name of witness*],²” ~~and promptly file it with the court in which the action is pending as prescribed in accordance with MCR 2.105(A) or send it by registered or certified mail to the clerk of that court for filing;~~
- (b) ~~give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.~~

(G) [Unchanged.]

Rule 2.315 Video Depositions

(A)-(D) [Unchanged.]

(E) Filing; Notice of Filing. If a party requests that the deposition be filed, the person who made the recording shall

(1)-(3) [Unchanged.]

A video deposition cannot be electronically filed with the court.

(F)-(I) [Unchanged.]

Rule 2.603 Default and Default Judgment

(A) Entry of Default; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the clerk must enter the default of that party if that fact is:

(a) known to the clerk of the court, or

(b) and that fact is verified in the manner prescribed by MCR 1.109(D)(3) and filed with the court in the request for default, the clerk must enter the default of that party.

(2)-(3) [Unchanged.]

(B)-(E) [Unchanged.]

Rule 3.101 Garnishment After Judgment

(A)-(B) [Unchanged.]

(C) Forms. ~~The state court administrator~~State Court Administrative Office shall publish approved forms for use in garnishment proceedings. The verified request and writ forms approved by the State Court Administrative Office must be used. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and~~The~~ disclosure filed in garnishment proceedings must be substantially in the form approved by the ~~state court administrator~~State Court Administrative Office.

- (D) Request for and Issuance of Writ. The clerk of the court that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement verified in the manner provided in MCR 1.109(D)(3) stating:

(1)-(3) [Unchanged.]

(4) whether the garnishee is to make all payments directly to the plaintiff or the plaintiff's attorney or to send the funds to the court.

- (E) Writ of Garnishment.

(1) The writ of garnishment ~~must have attached or must include a copy of the~~ and the verified statement requesting for issuance of the writ must be included on the same form., and The writ must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.

(2) [Unchanged.]

(3) The writ shall direct the garnishee to:

(a)-(d) [Unchanged.]

(e) ~~in the discretion of the court and~~ in accordance with subrule (J), ~~order the garnishee either to~~

(i) make all payments directly to the plaintiff or the plaintiff's attorney or

(ii) send the funds to the court, ~~in the manner as~~ specified by the plaintiff in the writ request under subrule (D)(4).

(4) [Unchanged.]

(5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant or as otherwise provided under MCL 600.4012,

(a) without further notice the property or debt held ~~pursuant to~~ under the

garnishment may be applied to the satisfaction of the plaintiff's judgment, and

- (b) periodic payments due to the defendant may be withheld and paid according to subrule (3)(e) until the judgment is satisfied ~~and in the discretion of the court paid directly to the plaintiff.~~

(6) [Unchanged.]

(F)-(I) [Unchanged.]

(J) Payment.

- (1) After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff, plaintiff's attorney, or the court as directed by the court pursuant to subrule (E)(3)(e) unless notified that objections have been filed.

(2)-(7) [Unchanged,]

(K)-(T) [Unchanged.]

Rule 3.222 Uniform Collaborative Act Process and Agreements

(A)-(B) [Unchanged.]

- (C) Establishing Jurisdiction and Starting the Statutory Waiting Period. At any time after a collaborative law participation agreement is signed, if the parties are not already under the court's jurisdiction, the parties may commence an action to submit to the court's jurisdiction.

(1) [Unchanged.]

- (2) To commence an action at any time before the conclusion of the collaborative law process, the parties shall file a petition for court jurisdiction and declaration of intent to file a proposed final judgment or proposed final order on a form approved by the State Court Administrative Office.

- (a) The petition shall be brought "In the Matter of" the names of Party A and Party B and shall state the type of action corresponding to the assigned case type code in ~~under~~ MCR 8.117 ~~(listed under Case File Management Standard [A][6])~~. The petition shall:

(i)-(v) [Unchanged.]

The petition may also contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(b)-(e) [Unchanged.]

(D)-(F) [Unchanged.]

Rule 3.618 Emancipation of Minor

(A)-(F) [Unchanged.]

(G) Order. To fulfill requirements of the Social Security Administration, the court must provide the minor with a copy of the order of emancipation that includes the minor's full social security number, if the minor has one. The court shall not include the minor's social security number on the order maintained in the court's file.

(1) The minor must show his or her social security card to the judge at the hearing and the judge shall enter the number on the minor's copy of the order. If the minor does not bring his or her social security card to the hearing or does not have a social security card, the minor can present his or her social security card to the clerk of the court at a later date, and after verifying the identity of the minor, the clerk of the court shall enter the social security number on a copy of the order to be given to the minor.

(2) The order must be entered on a form approved by the State Court Administrative Office, consisting of two parts. The first part is placed in the case file and shall not contain the minor's social security number. The second part shall contain the minor's social security number and a statement that the order is a certified copy of the order on file with the court except that the social security number appears only on the minor's copy of the order. The minor's copy of the order shall be signed by the clerk of the court. There is no fee for the certified copy.

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(C) [Unchanged.]

(D) Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by 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:

(1)-(3) [Unchanged.]

(E)-(O) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(B) [Unchanged.]

(C) **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. 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.

(D) **Records Kept by the Clerk of the Court.** The clerk of the court shall maintain the following case records in accordance with the Michigan Trial Court Records Management Standards. Documents and other materials made nonpublic or confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated accordingly and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court under subrule (I) that makes a document or other materials in that case nonpublic or confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

(1) [Unchanged.]

(a) **Case History.** The clerk shall create and maintain a case history of each case, known as a register of actions, in the court's automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case and shall also be capable of searching a case by number or party name (previously known as numerical and alphabetical indices) and

displaying the case number, date of filing, names of parties, and names of any attorneys of record. The case history shall contain both pre- and post-judgment information and shall, at a minimum, consist of the data elements prescribed in the Michigan Trial Court Records Management Standards. Each entry shall be brief, but shall show the nature of each item filed, each ~~order or judgment of item~~ entry issued by the court, and the returns showing execution. ~~Each entry~~ The case history entry of each item filed shall be dated with ~~not only~~ the date of filing (if relevant), ~~but with~~ and the date and initials of the person recording the action, except where the entry is recorded by the electronic filing system. In that instance, the entry shall indicate that the electronic filing system recorded the action. The case history entry of each order, judgment, opinion, notice, or other item issued by the court shall be dated with the date of entry issuance and the initials of ~~and shall indicate~~ the person recording the action.

(b) [Unchanged.]

(2)-(4) [Unchanged.]

(E)-(L) [Unchanged.]

Staff comment: The proposed amendments of MCR 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.101, 3.222, 3.618, 4.201, and 8.119 are the latest proposed revisions as part of the design and implementation of the statewide electronic-filing system.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-37. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

December 18, 2019

Clerk