

Order

Michigan Supreme Court
Lansing, Michigan

May 15, 2019

Bridget M. McCormack,
Chief Justice

ADM File No. 2018-30

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendment of
Rule 8.115 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 an amendment of Rule 8.115 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 8.115 Courtroom Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices

(A)-(B) [Unchanged.]

(C) Use of Establishment of a Policy Regarding Portable Electronic Communication Devices in a Courthouse.

- (1) Purpose. This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. This rule does not modify or supersede the guidelines for media coverage of court proceedings set forth in AO No. 1989-1.A facility that contains a courtroom may determine use of electronic equipment in nonjudicial areas of the facility.
- (2) ~~The chief judge may establish a policy regarding the use of cell phones or other portable electronic communication devices within the court, except that no photographs may be taken of any jurors or witnesses, and no photographs may be taken inside any courtroom without permission of the court. The policy regarding the use of cell phones or other portable electronic communication devices shall be posted in a conspicuous location outside~~

~~and inside each courtroom. Failure to comply with this section or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both for contempt of court.~~
Definitions. The following definitions apply in this rule:

- (a) “portable electronic device” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.
 - (b) A “courthouse” includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court. A “courthouse” also includes areas outside a court building where a judge conducts an event concerning a court case.
 - (c) “Courtroom participant” includes a litigant (plaintiff or defendant), witness, or juror who is present in the courtroom as part of a proceeding.
- (3) Photography and audio or video recording or broadcasting. The following restrictions apply to photography, audio recording, video recording or broadcasting in a courthouse.
- (a) In a courtroom: In a courtroom, no one may use a portable electronic device to take photographs or for audio or video recording or broadcasting unless that use is specifically allowed by the Judge presiding over that courtroom.
 - (b) Outside a courtroom: In areas of a courthouse other than courtrooms, no one may photograph, record, or broadcast an individual without that individual’s prior express consent.
 - (c) Jurors: No one may photograph, record, or broadcast any juror or anyone called to the court for jury service.
 - (d) Local orders: By local administrative order, a court may adopt further reasonable limits on photography and audio or video recording or broadcasting in a courthouse that are not inconsistent with this rule.

- (e) Violations of this subsection: Violations of this subsection are punishable by appropriate sanctions up to and including contempt of court as determined in the discretion of the court.

- (4) Jurors and witnesses. The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.
 - (a) Jurors: Jurors must turn off their portable electronic devices while present in a courtroom. A court may order jurors to turn over to the court their portable electronic devices during deliberations. If so, the court must provide jurors with a phone number where they can be reached in case of an emergency during deliberations.
 - (b) Witnesses: A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.

- (5) Attorneys, parties, and members of the public. The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this paragraph is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice.
 - (a) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information. Attorneys, parties, and members of the public may use a portable electronic device to reproduce public court documents in a clerk's office as long as the device leaves no mark or impression on the document and does not unreasonably interfere with the operation of the clerk's office.
 - (b) Prohibited uses: Attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for any other audible function while court is in session. Portable electronic devices may not be used to communicate in any way with any courtroom participant including, but not limited to, a party, a witness, or juror at any time during any

court proceedings. Additional prohibited uses related to photography, recording, and broadcasting are found in 8.115(C)(3) above.

- (6) Use of a portable electronic device outside a courtroom; limitations. Except as provided in paragraphs (3), (4) and (5) of this rule, a person may use a portable electronic device in a courthouse, subject to the authority of judges, Clerks of the Court, or court administrators to limit or terminate activity that is disruptive to court operations or that compromises courthouse security. Such limitations and terminations must be consistent with this rule.
- (7) Violations of this rule. If these rules are violated, the presiding judge may confiscate the device for the remainder of the day or order that the phone be turned off and put away. After a serious intentional violation, or multiple violations, the presiding judge may impose any other appropriate sanction, including contempt of court and/or the removal of person or persons from the courtroom during a time when they are not actively involved in the case being heard.

Staff comment: The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another, and broaden the ability of litigants to use their devices in support of their court cases when possible.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-30. 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.

May 15, 2019

Clerk