

MICHIGAN SUPREME COURT



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**PROPOSED COURT RULES DEFINING “COURT RECORDS,” GOVERNING PUBLIC ACCESS ON AGENDA FOR SUPREME COURT PUBLIC HEARING
Also on September 27 administrative agenda: Should indigent prisoners have court-appointed attorneys if prosecutors or crime victims challenge parole grants?**

LANSING, MI, September 13, 2012 – A proposed rule that defines “court records” and “public records” – and that would govern access to court records – leads the agenda for the Michigan Supreme Court’s public administrative hearing on Thursday, September 27.

The Court’s administrative hearings are open to the public. Anyone who wishes to address the Court on an agenda item may reserve a place on the agenda by contacting the Clerk of the Court via e-mail at MSC_clerk@courts.mi.gov or in writing at P.O. Box 30052, Lansing, MI 48909. The hearing, which begins at 9 a.m., will be held in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice in Lansing.

In addition to addressing access to court records, the first agenda item (**ADM File No. 2006-47**) includes proposed rules for access and reproduction fees for public records. For example, the proposed rule provides that a court may not charge access or reproduction fees for case records “that the court is required by law or court rule to provide without charge to a person or other entity,” regardless of whether the record is electronic or in some other form. Courts also may not charge for electronic access to court records via a public court terminal “or when a verbal request for public information is made on-site to the clerk.” But the court or a vendor may charge for off-site electronic access, the proposal states, and a court may charge reproduction costs based on “the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal”

Among other matters, the proposal addresses the duties of court clerks for keeping court records and record retention policies. The full text of the proposal is available at http://www.courts.michigan.gov/supremecourt/Resources/Administrative/2006-47_2011-12-21_order.pdf. Comments on this proposal, including reactions from the Detroit Free Press, The Detroit News, and Michigan Association of Broadcasters, may be viewed at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed> (see ADM File No. 2006-47).

A staff comment states that “The proposed amendments of these rules would update the [court] rules making them less ‘paper’ focused and reflecting the use of electronic technology in the way courts process court records.” The Supreme Court earlier adopted a provision in the rule that allows the use of electronic signatures on court records. (See http://www.courts.michigan.gov/supremecourt/Resources/Administrative/2006-47_2012-05-24_order.pdf).

The Court will also consider a proposed court rule change (**ADM File No. 2011-10**) for cases in which a crime victim or prosecutor opposes the Michigan Parole Board's decision to grant parole to a prisoner. Under the rule, which was proposed by the State Bar of Michigan Prisons & Corrections Section, "the court shall appoint" an attorney to represent the prisoner in the parole challenge if the prisoner makes a timely request and the court determines that the prisoner cannot afford to hire a lawyer.

Also on the Supreme Court's agenda:

ADM File No. 2010-34, proposed amendment of Michigan Court Rule 6.419, "Motion for Directed Verdict of Acquittal." Before the Court are two alternative revisions to the court rule. In a criminal case, a judge may direct a verdict of acquittal on the basis that the prosecution's evidence is insufficient for the jury to find the defendant guilty. Alternative A is similar to the MCR 6.419's federal counterpart, FR Crim P 29[b], in allowing a trial judge to reserve judgment on a motion for directed verdict. Alternative B would allow a trial court to reconsider its decision to grant a directed verdict, as suggested by the U.S. Supreme Court decision in *Smith v Massachusetts*. The *Smith* Court indicated that the Constitution's double jeopardy clause allows states to establish rules for judges to reconsider a midtrial determination that the prosecution's evidence was insufficient.

ADM File No. 2011-03, proposed amendment of MCR 9.113, "Answer by Respondent." The rule applies to attorney ethics proceedings before the Attorney Grievance Commission. Under the court rules, a person who believes an attorney has violated ethics rules may file a complaint, called a "request for investigation," with the AGC. The court rules direct the AGC to give the complainant a copy of the attorney's answer to the ethics complaint plus supporting documents the attorney provided. The proposed rule would clarify that, for good cause, the AGC may refrain from providing some or all of the attorney's supporting documents to the complainant, but must provide the answer to the complainant.

ADM File No. 2011-06, proposed amendment of MCR 2.603, "Default and Default Judgment." The proposed amendment is aimed at clarifying that a court clerk may enter a default judgment if the requested damages are less than the amount claimed in the original complaint.

ADM File No. 2011-08, proposed amendment of MCR 2.116, "Summary Disposition." According to the staff comment, the proposed change "would clarify the procedure for bringing a motion for summary disposition on the grounds of a forum selection clause."

ADM File No. 2012-10, proposed amendment of MCR 3.979, "Juvenile Guardianships." The proposed changes track legislative changes in 2011 that permit young adults to voluntarily remain in foster care, and receive extended guardianship services, until age 21. The changes would make clear that courts continue to have jurisdiction over such cases involving court wards over 18. In addition, the proposed amendment requires that courts hold annual review hearings for young adults who elect to remain in foster care. Under state and federal law, courts are charged with determining that young adults in foster care are meeting the criteria – such as staying in school or seeking employment – for extended guardianship benefits.

Proposals for all public hearing items and related comments are online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.