



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Jennifer Warner
Director

MEMORANDUM

DATE: December 6, 2012

TO: Chief Judges
cc: Court Administrators/Clerks
Probate Registers
County Clerks
SCAO Regional Administrators

FROM: Amy L. Garoushi, Forms and Records Manager

RE: Court Rule Amendments Pertaining to Court Records
ADM File No. 2006-47; Effective January 1, 2013

On October 31, 2012, the Supreme Court adopted a comprehensive set of revisions to the Michigan Court Rules designed to update and clarify various rules pertaining to court records, as recommended by the Court-appointed Access to Records Committee. The amendments are effective January 1, 2013. This memo describes the highlights of those changes.

The primary rules involved are MCR 1.109 and MCR 8.119. MCR 1.109 provides definitions and standards for all persons filing documents with the court and complements MCR 8.119, which provides administrative direction to the courts with regard to creation, maintenance, retention, and destruction of all court records, including records that are not filed with the clerk of the court.

Highlights of Court Rule Amendments:

- Court Records Defined – MCR 1.109(A), MCR 8.119(D), (E), (F), and (G).

Defines records filed with the clerk of the court and records handled by the court but not necessarily filed with the clerk of the court. Clarifies that discovery materials not filed with the clerk are not court records and exhibits maintained for purposes of trial are not court records. Distinguishes records kept by the clerk of the court from other case records (e.g. wills filed for safekeeping, case evaluations, friend of the court records,

exhibit logs, probation files), court recordings and other related records, and other court records (administrative and fiscal records or materials).

- Public Court Records are Those Records Filed With the Clerk of the Court – MCR 1.109(E) and MCR 8.119(D).

Clarifies that confidential documents and other materials must be designated as such and maintained accordingly, including extending confidentiality in the event of transfer or appeal of a case.

- Document Defined - MCR 1.109(B).

A document is defined as a record produced on paper or a digital image of a record originally produced on paper or originally created by an approved electronic means, the output of which is readable by sight and can be printed to paper.

- Filing and Records Standards - MCR 1.109(C), MCR 8.119(B) and (C).

Provides that documents must meet filing standards established by the State Court Administrative Office, whether filed on paper or by electronic means, and that original documents on paper may be reproduced and maintained in digital format in accordance with standards and guidelines established by the State Court Administrative Office. Still restricted by MCL 600.2137 and SCAO Administrative Memorandum 2006-05.

- Electronic Signatures Permitted – MCR 1.109(D), MCR 2.114, MCR 5.114.

Adopted May 24, 2012 as MCR 1.109(C).

- Requests for Access – MCR 1.109(E), MCR 8.119(H).

Clarifies that only case records as defined in MCR 8.119(D) are deemed public records, subject to access in accordance with these rules. Gives courts the authority to refuse to provide access or to reproduce materials (e.g. discovery materials) that have been filed with the court when the court does not have the means to readily access or reproduce the materials.

- Discovery Materials That Will be Submitted as Exhibits for Use at Trial Cannot be Filed With the Court – MCR 2.302(H)(1)(b).

Prohibits filing with the clerk of the court exhibits that are being admitted into evidence pursuant to MCR 2.518 or 3.930.

- Court Reporter/Recorder Records – MCR 8.108(C), MCR 8.119(F), MCR 8.119(H).

Clarifies that all records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by a court reporter/recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). These records include court recordings, log notes, jury seating charts, tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings. A court can establish a policy for whether to provide access to these records, and if access is to be provided, outline the procedure for accessing those records.

- Rejecting Documents for Filing - MCR 1.109(C)(4), MCR 8.119(C).

Specifies the instances in which the clerk of the court may reject documents, including those that do not conform to the filing standards in MCR 1.109(C).

- Posting Electronic Records Except Public Portion of Register of Actions Prohibited – MCR 8.119(H).

Prohibits courts from posting court records on local trial court websites for unrestricted access. Provides that the public portion of the registers of actions (ROA) can be posted and anyone wanting access to records identified on an ROA can order those records to be sent to them, either electronically or on paper.

- Charging Access Fees Permitted Only in Accordance with Supreme Court Order – MCR 8.119(J.)

Establishes the authority for charging access fees for case records. Courts may charge only in accordance with underlying Supreme Court order. There is no Supreme Court order currently in place that provides authority to charge fees for accessing records. Clarifies that a court may not charge an access fee when the court is required by law or court rule to provide that access without charge (e.g. other court, state agency, or other governmental entity).

- Authority for Charging Reproduction Fees – MCR 8.119(H)(2), MCR 8.119(J)(3).

Establishes the authority for charging reproduction fees for case records. Courts may charge only in accordance with a local administrative order issued pursuant to MCR 8.119(H)(2). Clarifies that a court may not charge a reproduction fee when the court is required by law or court rule to provide copies without charge (e.g. other court, state agency, or other governmental entity).

- Retention Periods and Destruction – MCR 8.119(K).

References the use of the General Records Retention and Disposal Schedule #16 for Michigan Trial Courts and sets forth the foundational rules for retention and destruction of records.

Also, attached are an overview of the issues the amendments were designed to address and a brief explanation of the amended rules associated with those issues.

The *Michigan Trial Court Case File Management Standards* have been amended to reflect these court rule amendments. A document highlighting the changes to these standards is available at http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_stds_highlights2012.pdf. A complete set of the updated case file management standards is accessible at http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf.

If you have questions about the court rules or the standards, contact Amy Garoushi at 517-373-4864 or elgaroushia@courts.mi.gov, Jill Booth at 517-373-3756 or boothj@courts.mi.gov, or Jim Inloes at 517-373-0122 or inloesj@courts.mi.gov.