

Order

Michigan Supreme Court
Lansing, Michigan

December 21, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2006-47

Michael F. Cavanagh
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Justices

Proposed Amendment of Rules
1.109, 2.107, 2.113, 2.114, 2.518,
3.001, 3.101, 3.218, 3.800, 3.901,
3.903, 3.930, 4.001, 5.101, 5.113,
5.731, 6.007, 8.108, and 8.119
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109, 2.107, 2.113, 2.114, 2.518, 3.001, 3.101, 3.218, 3.800, 3.901, 3.903, 3.930, 4.001, 5.101, 5.113, 5.731, 6.007, 8.108, 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 www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

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 ~~Paper and Type Size Standard~~ Court Records Defined; Document Defined; Filing Standards; Signatures; and Access

(A) Court Records Defined.

- (1) Court records are defined by MCR 8.119 and this subrule. Court records are recorded information of any kind that has been created by the court or filed with the court in accordance with Michigan Court Rules. Court records may be created using any means and may be maintained in any medium authorized by these court rules provided those records comply with other provisions of law and these court rules.

(a) Records include, but are not limited to:

- (i) documents, attachments to documents, exhibits, discovery materials, and other materials filed with the clerk of the court,
- (ii) documents, recordings, data, and other recorded information created or handled by the court, including all data produced in conjunction with the use of any system for the purpose of transmitting, accessing, reproducing, or maintaining court records.

(b) For purposes of this subrule:

- (i) Documents include, but are not limited to, pleadings, orders, and judgments.
- (ii) Recordings refer to audio and video recordings (whether analog or digital), stenotapes, log notes, and other related records.
- (iii) Data refers to any information entered in the case management system that is not ordinarily reduced to a document, but that is still recorded information.
- (iv) Other recorded information includes, but is not limited to, notices, bench warrants, arrest warrants, and other process issued by the court that do not have to be maintained on paper or digital image.

(2) Discovery materials or exhibits not filed with the clerk of the court that are offered into evidence pursuant to MCR 2.518 or MCR 3.930 are not court records even though received and maintained by the court.

(B) Document Defined. A document means 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.

(C) Filing Standards.

~~(A)~~(1) All pleadings and other documents papers prepared for filing in the courts of this state must comply with MCR 8.119(C) and be filed on good quality

8½ by 11 inch paper, or transmitted through an approved electronic means or created electronically by the court and maintained in a digital image. and ~~the print must be no smaller than 12-point type 10 characters per inch (nonproportional) or 12-point (proportional), except with regard. This requirement does not apply to~~

- ~~(1)~~ forms approved by the State Court Administrative Office, ~~and~~.
- (2) attachments and exhibits, but parties are encouraged to reduce or enlarge such papers to 8½ by 11 inches, if practical. All other materials submitted for filing shall be prepared in accordance with this subrule and standards established by the state court administrative office. An attachment, discovery material, or an exhibit that is submitted for filing shall be made part of the public case file unless otherwise confidential.
- (3) All original documents filed on paper may be reproduced and maintained by the court as a digital image in place of the paper original in accordance with standards and guidelines established by the state court administrative office.
- ~~(B)(4) Court clerks~~ A clerk of the court may not accept reject nonconforming papers documents as prescribed by MCR 8.119 except on written direction of a judge.

(D) Signatures.

- (1) A signature, as required by these court rules and law, means a written signature as defined by MCL 8.3q or an electronic signature as defined by this subrule.
- (2) An electronic signature means an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (3) 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.
- (4) Retention of a signature electronically affixed to a document that will be retained by the court in electronic format must not be dependent upon the mechanism that was used to affix that signature.

- (E) Requests for access to public court records shall be granted in accordance with MCR 8.119(H).

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A) – (F) [unchanged.]

- (G) Filing With Court Defined. ~~The filing of p~~ Pleadings and other ~~papers~~ materials filed with the court as required by these rules must be filed with the clerk of the court in accordance with standards prescribed by MCR 1.109(C), except that the judge to whom the case is assigned may accept ~~papers~~ materials for filing when circumstances warrant. A judge who does so shall note the filing date on the ~~papers~~ materials and immediately transmit them ~~forthwith~~ to the clerk. It is the responsibility of the party who presented the ~~papers~~ materials to confirm that they have been filed with the clerk. If the clerk ~~docket~~ records ~~papers~~ the receipt of materials on a date other than the filing date, the clerk shall ~~not~~ record the filing date on the register of actions.

Rule 2.113 Form of Pleadings and Other Papers

(A) [Unchanged.]

- (B) Preparation. Every pleading must be legibly printed in the English language ~~in type no smaller than 12 point~~ and in compliance with MCR 1.109.

(C)–(G) [Unchanged.]

Rule 2.114 Signatures of Attorneys and Parties; Verification; Effect; Sanctions

(A)–(B) [Unchanged.]

(C) Signature.

(1)–(2) [Unchanged.]

- (3) An electronic signature is acceptable provided it complies with MCR 1.109(D).

(D)–(F) [Unchanged.]

Rule 2.518 Receipt and Return or Disposal of Exhibits

- (A) Receipt of Exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by Michigan Supreme Court trial court case file management standards. As defined in MCR 1.109, exhibits received and accepted into evidence under this rule are not court records.
- (B) Return or Disposal of Exhibits. At the conclusion of a trial or hearing, the court shall direct exhibits should be retrieved by the parties to retrieve the exhibits submitted by submitting them except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If the exhibits are not retrieved by the parties as directed, within 56 days after conclusion of the trial or hearing, the court may properly dispose of the exhibits without notice to the parties.
- (C) Confidentiality. If the court retains an exhibit filed pursuant to MCR 1.109(C) after a hearing or trial and the exhibit is confidential as provided by law, court rule, or court order pursuant to MCR 8.119(I), the court must continue to maintain the exhibit in a confidential manner.

Rule 3.001 Applicability and Scope

The rules in this chapter apply in circuit court and in other courts as provided by law or by these rules. Except as otherwise provided in this chapter and law, proceedings under this chapter are governed by Michigan Court Rules.

Rule 3.101 Garnishment After Judgment

(A)–(B) [Unchanged.]

- (C) ~~Forms. The state court administrator shall publish approved forms for use in garnishment proceedings. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and disclosure filed in garnishment proceedings~~Unless this rule requires use of a form approved by the state court administrator, documents prepared under this rule must be substantially in the form approved by the state court administrator.
- (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 request for a writ of garnishment shall be made and filed by the plaintiff, or someone on the plaintiff's behalf, makes and files a statement on a form approved by the state court administrator. The request shall be verified in the manner provided in MCR 2.114(A) stating and shall state:

- (1) that a judgment has been entered against the defendant and remains unsatisfied;
 - (2) the amount of the judgment; the total amount of the postjudgment interest accrued to date; the total amount of the postjudgment costs accrued to date; the total amount of the postjudgment payments made to date, and the amount of the unsatisfied judgment now due (including interest and costs);
 - (3) that the person signing the verified statement knows or has good reason to believe that
 - (a) a named person has control of property belonging to the defendant,
 - (b) a named person is indebted to the defendant, or
 - (c) a named person is obligated to make periodic payments to the defendant.
 - (4) that payments withheld by the garnishee pursuant to the writ are to be made directly to either the
 - (a) plaintiff or
 - (b) plaintiff's attorney.
- (E) Writ of Garnishment.
- (1) Issuance of Writ.
 - ~~(1)(a)~~ The clerk of the court shall issue a writ of garnishment on a form approved by the state court administrator ~~must have attached or must include a copy of the verified statement requesting issuance of the writ, and 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)~~ Upon issuance of the writ, it shall be if the request complies with subrule (D) and a judgment was entered by that court and remains unsatisfied. ~~served upon the garnishee as provided in subrule (F)(1).~~ The writ shall include the date on which it was issued and the last

day by which it must be served to be valid, which is 91 days after it was issued.

~~(2)~~(3) The writ shall direct the garnishee to:

- (a) serve a copy of the writ on the defendant as provided in subrule (F)(2);
- (b) within 14 days after the service of the writ, ~~file with the court clerk~~ prepare and mail or deliver to the plaintiff and defendant a verified disclosure pursuant to subrule (G) indicating the garnishee's liability (as specified in subrule [G][1]) to the defendant and mail or deliver a copy to the plaintiff and the defendant;
- (c) deliver no tangible or intangible property to the defendant, unless allowed by statute or court rule;
- (d) pay no obligation to the defendant, unless allowed by statute or court rule; ~~and~~
- (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 his or her attorney; and
 - ~~(ii) send the funds to the court in the manner specified in the writ.~~
- (f) pursuant to subrule (J)(5) for periodic garnishments, prepare and mail or deliver to the plaintiff and defendant a final statement of the total amount paid on the writ.

~~(3)~~(4) The writ shall direct the defendant to refrain from disposing of

- (a) any negotiable instrument representing a debt of the garnishee (except the earnings of the defendant), or
- (b) any negotiable instrument of title representing property in which the defendant claims an interest held in the possession or control of the garnishee.

~~(4)~~(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,

- (a) without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff's judgment, and
- (b) periodic payments due to the defendant may be withheld for as long as 91 days after the issuance of the writ and ~~in the discretion of the court~~ paid directly to the plaintiff.

~~(5)(6)~~ The writ shall direct the plaintiff to:

- (a) serve on the garnishee, in the manner prescribed by subrule(F)(1), the following: the garnishee
 - (i) a copy of the writ along with information in a separate writing that will permit the garnishee to identify the defendant, such as the defendant's social security number, employee identification number, federal tax identification number, employer number, or account number, if known as provided in subrule (F)(1),
 - (ii) a state court administrator-approved disclosure form.

The identifying information shall not be filed with the court.

- (b) ~~and to~~ file a proof of service with the court.

(F) Service of Writ.

- (1) The plaintiff shall serve ~~the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees,~~ on the garnishee within 91 days after the date the writ was issued in the manner provided for the service of a summons and complaint in MCR 2.105 the following:
 - (a) the request and writ of garnishment for the garnishee's records along with the identifying information specified in subrule (E)(5)(a)(i).
 - (b) a copy of the request and writ for serving on the defendant.
 - (c) a state court administrator-approved disclosure form for the garnishee's use, and
 - (d) any applicable fees.

- (2) The garnishee shall within 7 days after being served with the ~~writ~~ items specified in subrule (1) deliver a copy of the writ to the defendant or mail a copy to the defendant at the defendant's last known address by first-class mail.
- (G) [Unchanged.]
- (H) Disclosure. The garnishee shall mail or deliver to ~~the court,~~ the plaintiff, and the defendant, ~~a verified disclosure~~ within 14 days after ~~being served with~~ service of the writ a verified disclosure substantially in the form approved by the state court administrator. If the disclosure is subsequently filed with the court for any reason, it shall be nonpublic.
- (1) Nonperiodic Garnishments.
- (a) If indebted to the defendant, the garnishee shall ~~file~~ prepare a disclosure revealing the garnishee's liability to the defendant as specified in subrule (G)(1) and claiming any setoff that the garnishee would have against the defendant, except for claims for unliquidated damages for wrongs or injuries.
- (b) If not indebted to the defendant, the garnishee shall ~~file~~ prepare a disclosure so indicating.
- (c) If the garnishee is indebted to the defendant, but claims that withholding is exempt under MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the specific exemption. If the garnishee is indebted, but claims that withholding is exempt for some reason other than those set forth in MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the basis for its claim of exemption and cite the legal authority for the exemption.
- (2) [Unchanged.]
- (I) Withholding. This subrule applies only if the garnishee is indebted to or obligated to make periodic payments to the defendant.
- (1)-(3)[Unchanged.]
- (4) At the time that a periodic payment is withheld, the garnishee shall provide the following information to the plaintiff and defendant:
- (a) the name of the parties;

- (b) the case number;
- (c) the date and amount withheld;
- (d) the balance due on the writ.

~~The information shall also be provided to the court if funds are sent to the court.~~

(5)-(6)[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 or the ~~court~~ plaintiff's attorney as directed ~~by the court in the writ~~ pursuant to subrule (E)(~~32~~)(e) unless notified that objections have been filed.
- (2) For periodic garnishments, all future payments shall be paid as they become due as directed ~~by the court in the writ~~ pursuant to subrule (E)(~~32~~)(e) until expiration of the garnishment.
- (3) ~~Upon receipt of proceeds from the writ, the court shall forward such proceeds to the plaintiff.~~
- (~~4~~)(3) Payment to the plaintiff may not exceed the amount of the unpaid judgment, interest, and costs stated in the verified statement requesting the writ of garnishment. If the plaintiff claims to be entitled to a larger amount, the plaintiff must proceed by motion with notice to the defendant.
- (~~5~~)(4) In the case of earnings, the garnishee shall maintain a record of all payment calculations and shall make such information available for review by the plaintiff, the defendant, or the court, upon request.
- (~~6~~)(5) For periodic garnishments, within 14 days after the expiration of the writ or after the garnishee is no longer obligated to make periodic payments, the garnishee shall ~~file with the court and~~ mail or deliver to the plaintiff and the defendant, a final statement of the total amount paid on the writ. ~~If the garnishee is the defendant's employer, the statement is to be filed within 14 days after the expiration of the writ, regardless of changes in employment status during the time that the writ was in effect.~~ The statement shall include the following information:

- (a) the names of the parties and the court in which the case is pending;
- (b) the case number;
- (c) the date of the statement;
- (d) the total amount withheld;
- (e) ~~the difference between the amount stated in the verified statement requesting the writ and the amount withheld.~~

~~(6)~~(7) If the disclosure states that the garnishee holds property other than money belonging to the defendant, the plaintiff must proceed by motion (with notice to the defendant and the garnishee) to seek an appropriate order regarding application of the property to satisfaction of the judgment. If there are no pending objections to the garnishment, and the plaintiff has not filed such a motion within 56 days after the filing of the disclosure, the garnishment is dissolved and the garnishee may release the property to the defendant.

(K)–(T) [Unchanged.]

Rule 3.218 ~~Access to~~ Friend of the Court Records; Access

- (A) General Definitions. When used in this subrule, unless the context indicates otherwise,
 - (1) “records” means paper files, computer files, microfilm, microfiche, audio tape, video tape, ~~and~~ photographs, and includes records as defined in MCR 1.109;
 - (2)-(3) [Unchanged.]

(B)–(H) [Unchanged.]

Rule 3.800 Applicable Rules; Interested Parties; Indian Child

- (A) Generally. Except as modified by MCR 3.801-3.806~~7~~, adoption proceedings, are governed by ~~the rules generally applicable to civil proceedings~~ Michigan Court Rules.
- (B) [Unchanged.]

Rule 3.901 Applicability of Rules

(A) Scope.

(1) The rules in this subchapter, in subchapter 1.100, ~~and~~ in MCR 5.113, and in subchapter 8.100 govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.

(2)–(3) [Unchanged.]

(B) [Unchanged.]

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)–(24) [Unchanged.]

(25) “Records” are as defined in MCR 1.109 and include ~~means the~~ pleadings, motions, authorized petitions, notices, memoranda~~ums~~, briefs, exhibits, available transcripts, findings of the court, registers of actions, and court orders.

(26)–(27) [Unchanged.]

(B)–(F) [Unchanged.]

Rule 3.930 Receipt and Return or Disposal of Exhibits in Juvenile Proceedings

(A) Receipt of Exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by the Michigan Supreme Court trial court cCase fFile mManagement sStandards. As defined in MCR 1.109, exhibits received and accepted into evidence under this rule are not court records.

(B) Return or Disposal of Exhibits. At the conclusion of a trial or hearing, the court shall direct exhibits should be retrieved by the parties who to retrieve the exhibits submitted by them except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If the exhibits are not retrieved by the parties as directed, within 56 days after conclusion of the trial or hearing, the court may properly dispose of the exhibits without notice to the parties.

- (C) Confidentiality. If the court retains an exhibit filed pursuant to MCR 1.109(C) after a hearing or trial and the exhibit is confidential as provided by MCR 3.903(A)(3) or order of the court pursuant to MCR 8.119(I), the court must continue to maintain the exhibit in a confidential manner.

Rule 4.001 Applicability

~~Procedure in the district and municipal courts is governed by the rules applicable to other actions.~~ The rules in this chapter apply to the specific types of proceedings within the jurisdiction of the district and municipal courts. Except as otherwise provided in this chapter, proceedings under this chapter are governed by Michigan Court Rules.

Rule 5.101 Form and Commencement of Action; Confidential Records

(A)–(C) [Unchanged.]

(D) Records are public except as otherwise indicated in court rule and statute.

Rule 5.113 Papers; Form and Filing

(A) Form of Papers Generally.

- (1) An application, petition, motion, inventory, report, account, or other paper in a proceeding must
 - (a) comply with MCR 1.109 and be legibly typewritten or printed in ink in the English language, and
 - (b)–(c) [Unchanged.]
- (2) A judge or register ~~shall not receive and file a nonconforming paper may reject nonconforming documents~~ in accordance with MCR 8.119.

(B)–(D) [Unchanged.]

Rule 5.731 Confidential Records

Records are public except as otherwise indicated in court rule or statute.

Rule 6.007 Confidential Records

Records are public except as otherwise indicated in court rule or statute.

Rule 8.108 Court Reporters and Recorders

(A)–(B) [Unchanged.]

(C) Records Kept. All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or 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). The court reporter or recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case the reporter or recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in ~~his or her office~~ the court according to the Michigan Trial Court Case File Management Standards. If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript.

(D) Transfer of Records; Inspection. If the court reporter or recorder dies, resigns, is removed from office, or leaves the state, ~~his or her~~ records he or she created and kept in each case pursuant to subrule (C) must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records ~~subject to the direction of the court~~ in accordance with the Michigan Trial Court Case File Management Standards and MCR 8.119(F). ~~The records are part of the record of each case and are subject to inspection in the same manner as other records.~~ On order of the court, a transcript ~~may~~ shall be made from the records and filed as a part of the public record in the case.

(E)–(G) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A) Applicability. This rule applies to all ~~actions~~ records in every trial court ~~except that subrule (D)(1) does not apply to civil infractions.~~ For purposes of this rule, records are as defined in MCR 1.109, MCR 3.218, MCR 3.903, and MCR 8.119(D)–(G).

(B) Records Standards. The clerk of the court shall comply with the records standards in this rule, MCR 1.109, and as otherwise prescribed by the Michigan Supreme Court.

(C) Filing of Papers–Documents and Other Materials. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Papers Documents and other materials filed with the clerk of the court as defined in MCR 2.107(G) must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may only reject papers–documents which do not conform to MCR 2.113(C)(1) and MCR 5.113(A)(1) that do not meet the following minimum filing requirements:

- (1) standards prescribed by MCR 1.109,
- (2) legibility and language as prescribed by MCR 2.113(B) and MCR 5.113(A),
- (3) captioning prescribed by MCR 2.113(C)(1) and MCR 5.113(A)(1),
- (4) signature prescribed by MCR 2.114(C) and MCR 5.114(A), and
- (5) the filing fee is not paid at the time of filing, unless waived or suspended by court order.

(D) Records Kept by the Clerk of the Court. The clerk of the court ~~of every trial court~~ shall keep the following case records in the form and style the court prescribes and in accordance with the court rules, Michigan Supreme Court records standards and local court plans. A court may adopt a computerized, microfilm, or word-processing system for maintaining records that substantially complies with this subrule. Documents and other materials made confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated as confidential 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 pursuant to subrule (I) that makes a document or other materials in that case confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

- (1) Indexes and Case Files. ~~Except for civil infractions,~~ the clerk shall keep and maintain records of each case consisting of a numerical index, an alphabetical index, a register of actions, and a case file in such form and style as may be prescribed by the Supreme Court. Each case shall be assigned a case number on receipt of a complaint, petition, or other initiating document. The case number shall comply with MCR 2.113(C)(1)(c) or MCR 5.113(A)(1)(b)(ii) as applicable. In addition to the case number, a separate petition number shall be assigned to each petition filed under the Juvenile Code as required under MCR 5.113(A)(1)(b)(ii). The case number (and petition number if applicable) shall be recorded on

the register of actions, file folder, numerical index, and alphabetical index. The records shall include the following characteristics:

- (a) Numerical Index. The clerk shall maintain a numerical index as a list of consecutive case numbers on which the date of filing and the names of the parties are recorded. The index may be maintained either as a central index for all cases filed in the court or as separate lists for particular types of cases or particular divisions of the court.
- (b) Alphabetical Index. The clerk shall maintain a central alphabetical index or separate alphabetical indexes for particular types of cases or particular divisions of the court on which the date of filing, names of all parties, and the case number are recorded.
- (c) Register of Actions. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre- and post-judgment information. When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:
 - (i) the offense (if one);
 - (ii) the judge assigned to the case;
 - (iii) the fees paid;
 - (iv) the date and title of each filed ~~document~~ item;
 - (v) the date process was issued and returned, as well as the date of service;
 - (vi) the date of each event and type and result of action;
 - (vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;
 - (viii) the orders, judgments, and verdicts;

- (ix) the judge at adjudication and disposition;
- (x) the date of adjudication and disposition; and
- (xi) the manner of adjudication and disposition.

Each notation shall be brief, but shall show the nature of each ~~paper item~~ filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

- (d) Case file. The clerk of the court shall maintain a paper and/or electronic file folder for each action, bearing the case number assigned to it, in which the clerk shall keep all pleadings, process, written opinions and findings, orders, and judgments filed in the action. Additionally, the clerk shall keep in the file all other ~~documents-materials~~ prescribed by court rule, statute, or as ordered by the court to be filed with the clerk of the court. If other records of a case file are maintained separately from the file ~~folder~~, the clerk shall keep them as prescribed by trial court case file management standards.
- (2) Calendars. The clerk may maintain calendars of actions. A calendar is a schedule of cases ready for court action that identifies times and places of activity.
 - (3) Abolished Records.
 - (a) Journals. Except for recording marriages, journals shall not be maintained.
 - (b) Dockets. A register of actions replaces a docket. Wherever these rules or applicable statutes require entries on a docket, those entries shall be entered on the register of actions.
- (E)(4) Other Case Records. The clerk or other persons designated by the chief judge of the court shall keep in such the form-manner as may be prescribed by these rules court, other papers, documents, materials, and things filed with or handled by the court for purposes of case processing, including but not limited to wills for safekeeping, case evaluations, exhibits logs, and other discovery materials, probation files, and friend of the court records requests for search warrants, marriage records, and administrative activities.

- (F) Court Recordings, Log Notes, Jury Seating Charts, and Media. Court recordings, log notes, jury seating charts, and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(2)(b).
- (G) Other Court Records. All court records not included in subrules (D), (E), and (F) are considered administrative and fiscal records or nonrecord materials and are not subject to public access under subrule (H). These records are defined in the approved records retention and disposal schedule for trial courts.
- ~~(E)~~(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk may not permit any case record or paper on file in the clerk's office to be taken from it the court without the order of the court. A court may provide access to the public information in a register of actions through a publicly accessible website; however, all other public information in its case records may be provided through electronic means only upon request. The court may provide access to any case record that is not a document, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(C)(2), in a medium in which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.
- (1) Unless access to a ~~file, a document~~ case record, or information contained in a ~~file or document~~ record as defined in subrule (D) is restricted by statute, court rule, or an order entered pursuant to subrule (F1), any person may inspect ~~pleadings and other papers in the clerk's office~~ that record and may obtain copies as provided in subrule ~~(E)(2) and (E)(3)~~(J).
 - (2) ~~If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the reasonable cost of reproduction. If the clerk prefers, the requesting person may be permitted to make copies at personal expense under the direct supervision of the clerk. Except for copies of transcripts or as otherwise directed by statute or court rule, a standard fee may be established for providing copies of papers on file.~~
 - (3) ~~A court is not required to create a new record, except to the extent required by furnishing copies of a file, paper, or record. A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does~~

~~not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (F). In accordance with subrule (J), the court may collect a fee for the cost of this service, including the cost of providing the new record in a particular medium.~~

~~(4)~~(2) Every court, shall adopt an administrative order pursuant to MCR 8.112(B) to

(a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

~~(b)~~ outline the procedure for accessing records defined in subrule (F);

~~(b)~~(c) specify the reasonable cost of reproduction of records provided under subrule ~~(E)(2)~~(J); and

~~(e)~~(d) specify the process for determining costs under subrule ~~(E)(3)~~(J).

~~(F)~~(I) [Relettered, but otherwise unchanged]

(J) Access and Reproduction Fees.

(1) A court may not charge an access or reproduction fee for a case record that the court is required by law or court rule to provide without charge to a person or other entity, irrespective of the medium in which the case record is retained, the manner in which access to the case record is provided, and the technology used to create, store, retrieve, reproduce, and maintain the case record.

(2) The court may provide access to its public case records in any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403. If a court maintains its public records in electronic format only,

(a) the court may not charge a fee to access those case records when access is made on-site through a public terminal or when a verbal request for public information is made on-site to the clerk.

(b) the court or a contracted entity may charge a fee, in accordance with Supreme Court order, to access those case records when the access is made off-site through a document management, imaging, or other electronic records management system.

- (3) Reproduction of a case record means the act of producing a copy of that record through any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403.
- (a) A court may charge only for the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal, to reproduce a case record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce a case record.
 - (b) If a person wishes to obtain copies of documents in a file, the clerk shall provide copies upon receipt of the actual cost of reproduction.
 - (c) Except as otherwise directed by statute or court rule, a standard fee may be established, pursuant to (H)(2), for providing copies of documents on file.
- (4) A court is not required to create a new record out of its existing records. A new record means the compilation of information into a format that does not currently exist or that cannot be generated electronically using predefined formats available through a court's case management system. Providing access to documents or furnishing copies of documents in an existing file does not constitute creation of a new record, even when the output appears in a format different than the format of the original record or document because the output is the result of predefined formats.
- (a) A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (I).
 - (b) A court may charge only for the actual cost of labor and supplies and the actual use of the system to develop, generate, and validate the accuracy of a new record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the information or documents for creating a new record.
 - (c) If a person requests the creation of a new record, the clerk shall provide access to the new record upon receipt of the actual cost of creating _____ the _____ record.

(K) Retention Periods.

For purposes of retention, the records of the trial courts include: (1) administrative and fiscal records, (2) case records, (3) and nonrecord material. The records of the trial courts shall be retained in the medium prescribed by MCR 1.109. The records of a trial court may not be destroyed except upon order by the chief judge of that court. Before destroying records subject to the order, the court shall first transfer to the Archives of Michigan any records specified as such by State Archives in the Michigan trial courts approved records retention and disposal schedule. An order of destruction shall comply with the retention periods established by the State Court Administrative Office and approved by the state court administrator, Attorney General, State Administrative Board, and Archives and Records Management Services of the Department of Management and Budget, in accordance with MCL 399.5.

~~(G)~~(L) [Relettered, but otherwise unchanged.]

Staff Comment: The proposed amendments of these rules would update the rules making them less “paper” focused and reflecting the use of electronic technology in the way courts process court records.

The staff comment is not an authoritative construction by the 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, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2006-47. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, 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 21, 2011

Corbin R. Davis

Clerk