

Order

Michigan Supreme Court
Lansing, Michigan

April 3, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-06

Brian K. Zahra

David F. Viviano

Amendments of Rules
6.110 and 8.119 of the
Michigan Court Rules

Richard H. Bernstein

Megan K. Cavanagh

Elizabeth M. Welch

Kyra H. Bolden,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 6.110 and 8.119 of the Michigan Court Rules are adopted, effective July 2, 2024.

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

Rule 6.110 The Preliminary Examination

(A)-(F) [Unchanged.]

(G) Return of Examination. Immediately on concluding the examination, the court must certify and transmit to the court before which the defendant is bound to appear the case file, any recognizances received, and a copy of the register of actions.

(i) The court need not transmit recordings of any proceedings to the circuit court.

(ii) If an interested party requests a transcript of a district or municipal court proceeding after the case is bound over, the circuit court shall forward that request to the district or municipal court for transcription as provided in MCR 8.108. The circuit court shall forward this request only if the circuit court case record is publicly-accessible~~prosecutor's authorization for a warrant application, the complaint, a copy of the register of actions, the examination return, and any recognizances received.~~

(H)-(I) [Unchanged.]

(J) Remand. If the circuit court remands the case to the district or municipal court for further proceedings, the circuit court must transmit to the court where the case has been remanded the case file, any recognizances received, and a copy of the register of actions.

- (i) The circuit court need not transmit recordings of any proceedings to the district or municipal court.
- (ii) If an interested party requests a transcript of a circuit court proceeding after the case is remanded, the district or municipal court shall forward that request to the circuit court for transcription as provided in MCR 8.108. The district or municipal court shall forward this request only if the district or municipal court case record is publicly-accessible.

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(G) [Unchanged.]

(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.

(1)-(9) [Unchanged.]

(10) Circuit Court Bindover or Remand. For cases bound over to the circuit court on or after July 2, 2024, all case records and court records maintained by the district or municipal court become nonpublic immediately after entry of the order binding the defendant over to the circuit court. The circuit court case record, which includes the records transmitted under MCR 6.110(G), and court records remain accessible as provided by this rule.

For cases bound over to the circuit court and remanded to the district or municipal court on or after July 2, 2024, all case records and court records maintained by the circuit court become nonpublic immediately after entry of the order to remand. The district or municipal court case record, which includes the records transmitted under MCR 6.110(J), and court records become accessible after an order to remand as provided by this rule.

As used in this subrule, “nonpublic” means that term as defined in MCR 1.109(H)(2).

(I)-(L) [Unchanged.]

Staff Comment (ADM File No. 2023-06): The amendments of MCR 6.110(G) and 8.119(H) require all case and court records maintained by a district or municipal court to become nonpublic immediately after bindover to the circuit court. Similarly, upon remand to the district or municipal court, all case and court records maintained by a circuit court would become nonpublic.

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.

VIVIANO, J. (*concurring in part and dissenting in part*). I agree with the amendments to MCR 6.110, but I disagree with the addition of MCR 8.119(H)(10). Court records maintained by district and municipal courts after a felony case is bound over to circuit court have always been accessible to the public unless the records are later suppressed under an applicable law.¹ I oppose MCR 8.119(H)(10) because it impedes access to court records and imposes an unnecessary burden on court clerks and staff.

The new requirements will make it more difficult to obtain court records that have always been accessible to the public up until now. This Court has a duty to ensure that court records are easily accessible by members of the public. See *In re Leopold*, 448 US App DC 77, 79 (2020) (“The public’s right of access to judicial records is a fundamental element of the rule of law.”). For many Michiganders, local district or municipal courts may be the easiest place to access a court record. See Michigan Manual 2023–2024, p 544 (“The district court is often referred to as ‘The People’s Court,’ because the public has more contact with the district court than with any other court in the state . . .”). I see no good reason to force individuals wishing to access information about a felony case to obtain that information from the circuit court. If the case is public and the local court has the relevant records or information sought, the public should have a right to access it at that court.

MCR 8.119(H)(10) also creates additional work for court clerks and staff by requiring them to make all records nonpublic simply due to *the possibility* that some cases may later become nonpublic. Circuit court staff will be further burdened because any requests for records of bound-over felonies that could have previously been made in the district or municipal court will now have to be made in the circuit court. It is noteworthy that of the three comments the Court received on this proposal, one was from a district court administrator and the other was from a county clerk. Both highlighted the unnecessary nature of the change and the problems that are likely to result.

¹ See, e.g., Holmes Youthful Trainee Act, MCL 762.11 *et seq.* (closing records regarding criminal offenses by young adults to public inspection under MCL 762.14(4)); MCL 333.7411(2) (closing certain records regarding proceedings for first-time controlled substance offenses). Likewise, court records maintained by circuit courts have always been accessible to the public after a remand to the district or municipal court unless the records are later suppressed.

For these reasons, I respectfully dissent from the inclusion of MCR 8.119(H)(10) in this set of amendments.



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.

April 3, 2024

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk