MICHIGAN SUPREME COURT

PUBLIC ADMINISTRATIVE HEARING

NOVEMBER 19, 2025

CHIEF JUSTICE MEGAN CAVANAGH: Okay, welcome everyone to our November public hearing. We will start with item number one, which is ADM File 2021-29, and that is a proposed amendment of MCR 6.201 that would require, before providing a police report or interrogation record to the defendant, redaction of personal identifying information and information otherwise protected under the rule. And we have, I believe, five speakers on this item beginning with Jessica Zimbleman from the Criminal Defense Attorneys of Michigan.

JESSICA ZIMBELMAN, STATE APPELLATE DEFENDER OFFICE: Good morning, Your Honors, Jessica Zimbelman. I am with the State Appellate Defender Office, and here today on behalf of the Criminal Defense Attorneys of Michigan. I'm going to start with some dates for this Court. *People v Jack* was decided by the Court of Appeals in March of 2021. *People v Antaramian* was decided in May of 2023. And I talked to some of you almost three years ago now, on November 16th of 2022, at another public hearing about a different version of this proposal. And I want to talk to you today about why the proposal as it is before the Court is essentially a solution looking for a problem.

The State Bar of Michigan in their comment noted that the hypothetical harms from *Jack* and *Antaramian* have not materialized. And it's been almost five years since the Court of Appeals decided *Jack* and what the State Bar says is true. There has not been mass victimization or threats to witnesses or to victims. And in fact, not only is this a solution looking for a problem, it would actually create problems of a constitutional magnitude. One only needs to look to MIDC Standard 3 and multiple decisions by this Court and the United States Supreme Court that impose a duty on defense counsel to investigate fully; an independent investigation. The prosecutors and the Attorney General in their comment—I'm gonna quote a couple things—that we "don't need to needlessly provide the contact information," "unnecessary disclosure during a criminal discovery," "instances where there is truly good cause for the defendant to have access to a victim or a witness will be rare." That's a fundamental misunderstanding and has things backwards. The way our system works and should work. Defense attorneys need access to this information under their obligations under the Sixth Amendment in Michigan's Constitution to independently investigate the witnesses that the State is bringing against our clients.

And one last point for this Court. This is to provide information to defense attorneys. This is not broad public disclosure. So the prosecutors and Attorney General's reliance on Senate Bill 82, the Crime Victim's Rights Act, FOIA, and the address confidentiality program are not relevant to this discussion. This is about providing necessary information to officers of the court—criminal defense attorneys—so that we can do our jobs as required by the Constitution. Happy to answer any questions, but that's what I wanted to tell the Court today.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you. Ms. Zimbelman, can I ask you—I understand the point you that you've made about the need for this information. What about things like social security number and bank account number? Like PII that, in general, there has been an effort across the courts to limit that to prevent future personal identity theft and all of that. I mean, is that in fact necessary? I get the point that's been made in the comments about birth date in order to identify actually who the witnesses are, but is all of that personal identifying information necessary?

JESSICA ZIMBELMAN, STATE APPELLATE DEFENDER OFFICE: I don't think so. The birth date, obviously, is a big concern for us. Mary Soo Anderson, who's SADO's investigative supervisor, is going to talk to the Court this morning, and she is probably actually the best person to answer that question based on her experience as an investigator and an attorney. But she can answer what those things listed in the court rule mean to an investigation. Certainly, the date of birth, though, as Your Honor noted, is relevant and essential.

CHIEF JUSTICE MEGAN CAVANAGH: All right. Thank you. I appreciate it. Any other questions for Ms. Zimbelman?

JUSTICE ELIZABETH WELCH: Yes, I have one. Thank you, Chief Justice. Ms. Zimbelman, thanks for being here today and your time put into this. We do have obviously this argument about crime victims. Is there any merit to maybe treating victims different from other witnesses? I'm sort of thinking about home address. Do we need everybody's home address or maybe are victims different? Just wondering about your thoughts on that.

JESSICA ZIMBELMAN, STATE APPELLATE DEFENDER OFFICE: Yes, and I appreciate that question and the possible distinction. The Court of Appeals in their two opinions didn't necessarily treat them any differently. But the Attorney General and PAAM cited to the constitutional provisions that require—I can't remember the exact phrasing right now, but—reasonable assurance. "Reasonably protected from the accused," that's the language that PAAM cited to. So, I do think that that word "reasonable" means something, and it might have to give way to the constitutional rights of people on trial. That said, I don't think that providing addresses or contact information to a defense attorney would threaten that protection for victims. I know that we've been talking about this issue as a criminal defense bar since *Jack* came out, and we as a group don't provide unredacted reports to our clients. We need that information. But nobody is saying here that, as a matter of course, that the people actually on trial, our clients, need the information or the home address or that kind of information that goes to us as defense attorneys.

JUSTICE ELIZABETH WELCH: Thank you.

CHIEF JUSTICE MEGAN CAVANAGH: Anyone else? All right. Thank you, Ms. Zimbelman.

JESSICA ZIMBELMAN, STATE APPELLATE DEFENDER OFFICE: Thank you.

CHIEF JUSTICE MEGAN CAVANAGH: Next we will hear from Lindsay Abramson from the Oakland County Public Defender's Office.

LINDSAY ABRAMSON, OAKLAND COUNTY PUBLIC DEFENDER'S OFFICE: Good morning to the Chief Justice and to all the Justices. Thank you for allowing me to speak today. My name is Lindsay Abramson. I am the Deputy Chief Public Defender of the Oakland County Public Defender's Office. Prior to this, I was a judge on the Maricopa County Superior Court bench in Arizona for over four years. I was also a death penalty defender there for many years, and I was the Conviction Integrity Director of the Washtenaw County Prosecutor's Office here in Michigan after I moved back.

I want to address all of the Justices on from a practical, on-the-ground, everyday standpoint of how such a rule would affect criminal defense at the trial level. As someone who has practiced criminal defense for nearly 15 years, I think I'm in a good spot to do that. So, the practical standpoint can show all of you honorable Justices what a well-meaning change to protect victim privacy can do to a defense case and can do to the constitutional rights of defendants.

I just want to give one example because I really want to focus on conflicts of interest here. We have struggled—and I'm not trying to point fingers towards any one prosecutor's office—but we have greatly struggled since our office opened to get dates of birth to do conflicts checks. This absolutely paralyzes a public defender's office. I just want to give an example. This is actually one from Arizona. We didn't get a date of birth right away on a death penalty case that I had. Well, we had everything we needed on the death penalty case, but a trial lawyer on just a simple drug possession case got a new defendant. Didn't have a date of birth right away. And the lawyer went to talk to that defendant, and that defendant said, "Oh, hey, I have information on this guy, this capital defendant, and I know where he put the gun in that murder case." That caused us, after working on the case for 5 years, to have to get off of the capital case and withdraw from the drug case. This results in actually victims having delays of justice as well. So that is a really, really, really, huge problem. The case ended up extending for three years.

I want to talk also on the independent investigation that happens. The defense has an absolute right to do an independent investigation and that early independent investigation is so, so important. There's so much information we can get from defendants early on if we have witness information. For example, video surveillance can go away if the prosecution doesn’t get exactly what you need. And this broad continuing—that the prosecutors have a continuing investigation and can withhold information. Of course, prosecutors have a continuing investigation. That's their duty as ministers of justice. So just the fact that they need to do a continuing investigation—the defense has a right to do their own independent investigation, and it needs to be done at the same time, simultaneously, not when the prosecution is ready to give us the information. Thank you to all the Justices.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you, Ms. Abramson. Any questions? Thank you very much.

LINDSAY ABRAMSON, OAKLAND COUNTY PUBLIC DEFENDER’S OFFICE: Thank you.

CHIEF JUSTICE MEGAN CAVANAGH: Our next speaker is Eric Restuccia, on behalf of the Prosecuting Attorneys Association of Michigan and the Attorney General. Mr. Restuccia.

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: Good morning, Eric Restuccia from the Attorney General’s Office appearing on behalf of the Prosecuting Attorneys Association of Michigan and the Attorney General Dana Nessel.

The revised version of MCR 6.201 that this Court proposed earlier this year fails to protect the contact information of victims and witnesses, namely their addresses and phone numbers, from disclosure and discovery, and thus unnecessarily places them in danger and discourages them from cooperating with the police and prosecutors. The prior system in place before 2021 was working, which required the prosecutor under

6.201(A)(1) to either provide this information or otherwise make the witness available to the other party for interview. I ask that this Court adopt the prior version that was published of the proposed change which was consistent with the understanding of the rule before the Court of Appeals decision in *People v Jack*.

There's two basic reasons that PAAM and the Attorney General would ask this Court to adopt its prior proposal from 2022, which would enable the prosecutor to redact victim and witness addresses and phone numbers because the current system places victims and witnesses in danger. We've heard that there has been no mass victimization or the problems haven't materialized. Well, all the information is frankly anecdotal, but that's not the case. I mean, I got an email from a Chief Assistant from a midsize county who was talking to me about a victim who was a stranger to a defendant who was on parole. He stole her truck and crashed the truck. And then the defense attorney provided discovery to the defendant. And then the defendant now had her phone number and he was then texting this woman, who was living in a rural area, and as the prosecutor said, she lives out in the country and is afraid…and I was able to calm her down. I mean, that was his description to me. Or, I got a email from one of the elected prosecutors in a larger county about a witness who was the daughter of a public official and she saw a drive-by shooting and now the information is provided and they're frankly terrified and they're fearful of retaliation.

Think about the contrast of FOIA, which shields the numbers and addresses of victims of the Senate Bill 82 the Judicial Protection Act, which you know identifies personal identifying information to include addresses and phone numbers. There's no reason to give this information out. And I'll note this: that nothing in the rule prevents the defense attorneys from providing the information to the defendants. That's the whole point really. It's not like, "Oh, we're afraid the defense attorneys generally have this information." It's really the defendants themselves because of what they can do with that information.

And then, the second point relates to that, that prior to 2021, the rule required that the prosecutor either provide the information or make the witnesses available to the other party for interview. That's the point about the investigation. You want to be able to interview the witness. Well, the prosecutor had the obligation to make that witness available because ordinarily the address and the phone numbers aren't relevant for the investigation. That's the point about the rare circumstance in which you might need that information for other actions. But it's really about interviewing the witnesses and the prosecutor had the obligation to make those witnesses available.

This Court should adopt its proposed version from 2022 which would allow the prosecutor to redact the addresses and phone numbers.

JUSTICE NOAH HOOD: Mr. Restuccia, what's your response to what I assume the argument on the other side would be: that making the witnesses available for interview—if you're saying hey you can come talk to them at the prosecutor's office—to some degree that discloses defense theory? The prosecutor now knows which witnesses the defense is focusing on, which ones they aren't talking to, and that creates to some degree an advantage or disadvantage.

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: You know in my experience, the key witnesses are often obvious to everyone involved in the case. This idea that somehow I want to interview one witness as against another discloses a legal theory—it's hard to know why that would be the case. But it seems to me if a defense attorney was worried about it, it could just ask that multiple witnesses be made available so that would screen that fact. But, you know, I tried 25 murder cases back when I was in cold case. And this idea that somehow, oh boy, it's a mystery about which of the witnesses are key, that just wasn't, as a practical matter, a problem. Everyone knew who the key witnesses were. And the fact that you'd want to interview this witness, it doesn't disclose anything in my experience to the prosecutor.

JUSTICE NOAH HOOD: Somewhat related, what's your response to Ms. Abramson's concern regarding conflict screens? The idea that, you know, depending on the scale of a defense outfit, you might need to do a conflict screen to see, hey, are we conflicted out of this?

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: Listen, I'm not worried at all, in my experience, about giving defense attorneys specific information so they could do that kind of conflict check. The concern is about information going to the defendants themselves, frankly. So, if they want to seek a protective order that said, "Listen, we need these addresses so we can conduct this conflict screening," that's not a problem.

JUSTICE NOAH HOOD: Thank you.

JUSTICE BRIAN ZAHRA: Mr. Restuccia, Justice Welch inquired earlier about the possibility of greater protections for victims as opposed to witnesses. I take it from your presentation you don't agree with that since you pointed out the witness of the drive-by shooting who was concerned about personal information being released.

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: Victims obviously have greater constitutional protections and so if the Court drew a distinction, there would be a legal basis for it. But as a practical matter, it's the idea that you see a crime and now you're going to be asked to come forward. And of course they're going to provide all this personal information about you. And think about all the coarsening of the culture more generally and the danger that it presents. I mean, part of the difficulty for prosecutors is we now have witnesses that won't come forward, right? I mean, that's the whole point. Oh, "come forward. You know, you saw this dangerous crime." And then we're going to provide all this information to the defense counsel when that defense counsel can turn that over to the defendant frankly without it being redacted.

The difficulty of redacting all this information is it's often the path of least resistance. You have a client who asks for all your information, you just turn over your entire file. The idea that you have to independently redact it to protect the personal information of victims and witnesses, that's a real cumbersome process. In fact, we always did all those redactions and the number of times in which the defense counsel worried about having it redacted when they knew they could get this information—they could get the ability to interview the witness through the process that was already in place before 2021.

I guess circling back to Justice Zahra, your question though, is in my view protecting the information of witnesses as is almost equally important to protecting the information of victims because without witnesses you can't make out your case and witnesses are going to be afraid to come forward. They're fearful of retaliation and the ability to identify all the times in which that's occurred is very difficult because frequently they don't come forward and even if nothing does happen, think about the fear that they're placed in. I mean, the very description that was given from this larger county—these people are very afraid, and to what end? If the other side is making them available for interview is sufficient for the investigative process why wouldn't we just rely on that?

JUSTICE BRIAN ZAHRA: Thank you.

CHIEF JUSTICE MEGAN CAVANAGH: Mr. Restuccia, there obviously are competing concerns, as we've talked about, of protecting witnesses and victims and trying to avoid silencing them or having them not come forward or that. But am I correct in that that is not necessary in every case?

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: Oh, no. You are right that there are some cases which there is this just doesn't—

CHIEF JUSTICE CAVANGH: Right. But there are cases, and I recognize that sometimes it's hard to anticipate in which cases that issue may arise, but it's not in every case. But on the other side—the defendant's need to investigate and conflict screen and those type of things, that is existing in every case.

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: Yes.

CHIEF JUSTICE MEGAN CAVANAGH: So if we're trying to balance how to address those, and we have on the one side that in those cases—which is not every case—where there are needs to protect witness and victim information, we have a mechanism of a protective order that would allow that. Why isn't that a balance when we know in every case that that the defendant has the need to investigate witnesses and do conflict screening, so making sure that they have that available to them. Why shouldn't we balance it that way?

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: Right. Two points. One, the predicate of the question is that making witnesses available is not sufficient for investigation. And so I push back on that. I don't understand when you say investigation, why do I need the address and the phone number? The reason I need the address and the phone number is so I can contact that witness and interview that witness. So I'm not clear why 6.201 is not sufficient. That's how it existed before 2021. That's what was happening all over the place. If you wanted to investigate, you would ask to be able to interview those witnesses. It's not like I'm going to do a stake-out of the house, right? That's not the same thing. I want to know what those witnesses are going to say, so I need to interview them. That's the point. And so my question is, why is that interview process not sufficient for investigation? It's baffling to me because when cases are all about the witnesses, it's not about where they live and it's not about their phone numbers. I mean, there's a rare case where somehow the location or their phone number may play into the case. That's the rare case. But for investigation, if I'm able to interview the witness, that's the point. That's what I needed to be done. And the rule already provides for it under 6.201(A).

Second point, though, is you said, "Well, can't you get the protective orders?" Well, frankly, Kent County tried this, right? They did a blanket policy for all of their high-end crime, for the violent crime, and the Court said, "No, you got to show specific instances." Well, it's impossible. I mean, that's the whole point is you have a guy who committed assault with intent to murder or they committed a murder or it's a rape case. The answer is, well, unless I know some specific information that that person is going to retaliate, then you can't shield the information. Well, you don't know when it's going to happen and witnesses are always afraid, right? And victims are always afraid. So then you have to wait until there's actually been a firebombing of the house or a drive-by shooting or some threats been made by text. At that point, the bell's been rung. You can't fix it.

In any event, my thought is that what this Court proposed would bring us back to the pre-2021 system. In so far as Ms. Zimbelman makes the point that this is a solution looking for a problem, I think that's what happened with the *Jack* case. It wasn't like, "Oh before 2021, the defense bar wasn't doing its job. And now since 2021, everything has changed and it is." I don't think there's any evidence to support that because previous to 2021, you could interview witnesses because the prosecutor had to make them available.

JUSTICE KIMBERLY THOMAS: Mr. Restuccia, there may be practical limitations to this, and I think defense attorneys might have some issues with it, but just as a conceptual matter, you don't object to unredacted information going to defense attorneys, it's the defendants. And so, imagine a world where two pieces of discovery were handed over. One that was unredacted that was for the attorneys and their investigators, and one that was redacted that would be able to be shared with the defendants themselves. Conceptually, is there anything wrong with that?

ERIC RESTUCCIA, OFFICE OF THE ATTORNEY GENERAL: For me—I'm here for PAAM and the Attorney General and I haven't run that past the PAAM board and the Attorney General—but for me, I'm not worried about defense attorneys having this information. I'm worried about defendants having this information. So if somehow the circumstances were that essentially this information could go to the defense attorneys themselves—because often they have their investigators and often those investigators are known to the prosecution; they know that those persons doing the investigation are people who are reliable—the concern is, it going to the defendants? At least that's my view of it. And I don't have PAAM and the Attorney General sign off on this, but if this Court were going to revisit it and maybe recast it and say, "all right, this information has to go to the defense bar but the defense bar is not able to provide the information to their clients without leave of the Court"—something along those lines, that would go a long way to addressing what I think are the problems. But that's Eric Restuccia, you know, as an Assistant Attorney General. That's not necessarily PAAM and the Attorney General's Office.

JUSTICE KIMBERLY THOMAS: Thank you, Mr. Restuccia.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you. Any other questions? Thank you, Mr. Restuccia. Next we will hear from Maya Menlo, on behalf of multiple law professors and legal educators. Ms. Menlo.

MAYA MENLO, REPRESENTING MULTIPLE LAW PROFESSORS AND LEGAL EDUCATORS: Good morning, Your Honors. Maya Menlo, I work at the State Public Defender Office, but as the Chief said, I'm here today on behalf of the law professors and legal educators who submitted a comment opposing the proposed rule change to 6.201. As Ms. Zimbelman mentioned, we lack any data or specific demonstration that unredacted discovery poses a danger. I understand there are some anecdotes, but we are really not aware of any large changes, or any changes at all, since *Jack* that suggests that there's a problem. Even if we accept that there's a problem for the purposes of today's conversation, and we also accept that that problem is in need of a court rule solution, depriving defense attorneys of proper discovery is not the appropriate measure. And Mr. Restuccia himself said that the problem is not defense attorneys having the information. And so this proposed rule change is necessarily overbroad. And I would encourage the Court and any interested parties to go back to the drawing board to identify precisely what the issue is, and then to propose a rule change that addresses exactly that problem—where we seem to all be in agreement that defense lawyers having this information is either essential, or not a problem, or both, we should not deprive them of that information.

As was mentioned, there's already a procedure for redacting discovery where needed. There's a statute, there's caselaw, including *Stanway*; this Court is very familiar with those measures. And we fear as law professors and those invested in the administration of justice that if adopted, this proposal will lead to over redaction certainly and then potentially undiscovered *Brady* violations, more than even exist today, and thus that would result in more wrongful convictions that remain uncorrected.

One thing I was thinking about as I was listening to Mr. Restuccia is that very often in cases that are old—so I'm thinking, you know, 10 years or more—I am approaching various parties, trial counsel, I'm submitting FOIAs, I'm contacting the Prosecutor's Office to get discovery that is just missing because you know someone or the other doesn't have it anymore, and I've got to go to these great lengths to get it. I fear, based on my experience, that if I were in that position after this court rule change—I'm thinking 10 or 15 years out—there's no guarantee that an unredacted version of discovery will exist. So let's suppose that on appeal I could show whatever this rule is requiring me to show to prove that I need this access to dates of birth, to addresses, to other information that has been redacted or was redacted in trial counsel's version of the discovery. I don't feel that this rule creates any obligation on prosecutors to retain unredacted discovery and, in fact, my experience suggests that that may not exist after some time because I'm routinely told that the prosecutor's file no longer exists and I'm made to go through some other route. So my concern is that yes, there's a trial level issue here, and the Public Defender's comments to this court rule address that in great detail and make great comments about conflict checks and preparing for trial. But even on appeal, I have real concerns that when it comes to raising issues that weren't raised on trial or that have to do with sentencing mitigation or something else that's relevant to defending a client on appeal that we're not going to have access to the unredacted discovery, even if we can show that we need it. I'll wrap up there, but just say that this proposed rule does not improve the administration of justice, and that of course is one goal of the court rules. The administration of justice requires making sure that the defense is not disadvantaged, and this unfortunately would result in great disadvantages to the defense. Happy to answer any questions the Court has.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you. Any questions? No. Thank you, Ms. Menlo.

MAYA MENLO, REPRESENTING MULTIPLE LAW PROFESSORS AND LEGAL EDUCATORS: Thank you.

CHIEF JUSTICE MEGAN CAVANAGH: Appreciate you being here. And our final speaker on this item is Mary Soo Anderson from the State Appellate Defender Office.

MARY SOO ANDERSON, STATE APPELLATE DEFENDER OFFICE: Good morning Justices. My name is Mary Soo Anderson and I supervise investigations at the State Appellate Defender Office, and I'm here speaking on behalf of SADO today. I'm speaking about how the proposed amendment to MCR 6.201 would directly undermine our ability to do our work.

So redacting this identifying information, particularly birth dates, will make it significantly harder for defense investigators to locate witnesses, verify identities, and also meet our ethical and constitutional obligations. Investigators, we don't work in theory, we work in neighborhoods. We track down people who don't answer phones, who move around a lot, who may not trust anyone connected to the legal system. And when you give us a common name without a birth date, we can be flying blind. It really isn't an exaggeration. A name like James Johnson in Wayne County, without a birthday, we could be looking at hundreds of people potentially. So, there's no precision. There's no efficiency. And ultimately, there's no reliable investigation. And when we're forced to guess, cases can stall for months and perhaps even years.

This isn't about wanting more access than we need. As has already been mentioned, if a prosecutor believes that there's a real risk in disclosing certain information, the current rule already gives them a remedy. They can file for a protective order. And that's been the practice and it's effective and we don't need an overhaul to the rule to fix a problem that doesn't exist.

Finally, the proposed catchall category concerns us. It gives the prosecution broad discretion to withhold information without a clear standard and in practice it leaves again the defense in the dark about what's being withheld and why. At the end of the day, we can't reliably identify and contact witnesses. And if we can't do that, we can't investigate. And if we can't investigate, we can't defend. And the constitutional part is more than that. So, thank you for your time and I'm willing to answer any questions you may have.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you, Ms. Anderson. Ms. Zimbelman suggested you might be able to answer my question regarding the need for birth date and the relevance of why a defense attorney or investigator needs that information. What about things like social security number, license number, passport number, financial account number—which is typically PII that is redacted in numerous ways in proceedings throughout the court system?

MARY SOO ANDERSON, STATE APPELLATE DEFENDER OFFICE: Yes. Yeah, that information could certainly be helpful to helping the defense investigator identify who a witness is. It's definitely less often used. I would say the birthday is the most critical, and perhaps if there's even greater question as to the identity of a person, to then cross-check the social security number. Outside of that, we don't use that information very often to identify witnesses.

CHIEF JUSTICE MEGAN CAVANAGH: Okay. Thank you.

MARY SOO ANDERSON, STATE APPELLATE DEFENDER OFFICE: Mhm.

CHIEF JUSTICE MEGAN CAVANAGH: Any other questions?

JUSTICE ELIZABETH WELCH: Ms. Anderson, I'll just repeat my question I asked earlier. What about home address? I realize why the birth date's important when you have names that are common. What about address? I also realize how you do a search maybe reveals lots of locations where people are, but to have the report from the outset have the address—why can't we just eliminate that?

MARY SOO ANDERSON, STATE APPELLATE DEFENDER OFFICE: The address that's on the report might not be available and the other searches that the investigators do—the address on the report should be something that is directly derived from the witness. So, they didn't just look at their driver's license number and write down the address that was there. They actually asked them, or they were at the location where they were at investigating, and they put that address on there. So we might not be able to find that same address when we do an online data search because it may not be part of a public record. It may not be part of their previous addresses that have been listed on TLO or Lexis Nexus or one of the other systems that we use. So it could still be critical. It might be the only place where we could find the address.

JUSTICE ELIZABETH WELCH: Thank you.

MARY SOO ANDERSON, STATE APPELLATE DEFENDER OFFICE: Yes.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you. Thank you, Ms. Anderson, appreciate you being here. Our next item is item number four on our agenda, which is a proposed amendment of MCR 1.111 that would prohibit reimbursement for interpreter services in criminal cases, update the definitions for certified foreign language interpreter and qualified foreign language interpreter, and add a new definition for a registered interpreter firm. We have three speakers on this item. The first being Kim Kramer from Michigan Legal Help.

KIM CRAMER, MICHIGAN LEGAL HELP: Good morning, Justices. Thank you for the opportunity to comment this morning. I'm Kim Kramer, and I'm a lawyer at the Michigan Legal Help Program. Michigan Legal Help strongly supports the amendment prohibiting interpreter costs in criminal cases. And we also strongly urge the Court to extend this protection to civil proceedings. The proposed amendment correctly recognizes that requiring defendants to pay interpreter costs in their criminal cases creates a barrier to participation in the justice system. The same principle applies with equal force in civil proceedings. LEP—limited English proficient—individuals in civil cases face life-altering consequences like loss of housing, losing child custody, inability to get protection from domestic violence, and just as in criminal cases, imposing interpreter fees might discourage LEP individuals from asking for necessary language assistance, which undermines the fairness of the proceedings as a whole.

Michigan Legal Help, as you all know, serves self-represented litigants throughout Michigan. LEP individuals among this population are disproportionately likely to have lower incomes, which makes them really vulnerable to interpreter fees. When self-represented LEP litigants can't predict or afford interpreter costs because these are not fixed fees that they will have a dollar amount for the beginning of the case, they face a really impossible choice. They can risk an unknown financial liability or attempt to navigate proceedings without language assistance or avoid the courts altogether.

It's also important to highlight that interpreters serve the integrity of the entire judicial process, not just one individual litigant. When LEP individuals can't understand proceedings or they can't afford interpreters, the whole system is undermined. Again, folks might participate without fully understanding, leading to inaccurate outcomes. They may choose not to attend or to bring a case. This leaves disputes unresolved and rights unenforced. And so, courts shouldn't place the financial burden of ensuring fair and accurate proceedings on this single LEP litigant in a case. It's a cost of administering justice itself. As I highlighted in our written comment, Michigan is increasingly isolated on this issue. 35 other states now provide free interpreter services in civil proceedings, recognizing that meaningful access can't depend on someone's ability to pay for language assistance.

So, in conclusion, MLH supports the proposed amendment, but we also urge the Court to extend the prohibition on interpreter costs to civil cases. Thank you for the opportunity to comment today, and I'm happy to answer any questions you might have.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you, Ms. Kramer. Any questions? No. Okay. Thank you for your time for being here and for your written comment as well. Our next speaker on this is Megan Reynolds from the Michigan State Planning Body and Michigan Poverty Law Program.

MEGAN REYNOLDS, MICHIGAN STATE PLANNING BODY AND MICHIGAN POVERTY LAW PROGRAM: Yes. Good morning, Justices. My name is Megan Reynolds, and I am an attorney for Michigan Poverty Law Program and today I'm also speaking on behalf of the State Planning Body. Both organizations strongly support the proposed amendment, and like my colleague at Michigan Legal Help just shared and many of other of our partner organizations, we urge you to further amend the court rule to include civil cases within its scope.

In our comments, Michigan Poverty Law Program provided data illustrating how cases handled by our affiliated civil legal aid programs are negatively impacted by the current version of MCR 1.111. We also noted the 2025 Court of Appeals decision in the case *In re DRRR* where the panel found that the trial court's critical errors in providing our client with an interpreter denied them equal access to justice.

Respectfully, we believe that some of the uncertainty around who is entitled to a interpreter at court expense in civil matters contributes to many of the delays that cause our clients uncertainty when they appear for appearances, whether there will in fact be an interpreter. In some cases, those are critical denials and permanent denials of justice.

We also ask that if this court does not prohibit the cost of interpreters being passed on to civil litigants altogether that at a minimum the court should take this opportunity to lift the current income limit from 125% of the federal poverty limit and also to align it with the other fee waiver processes that simplify the fee waiver for clients of civil legal aid organizations.

The State Planning Body emphasized in their comments that when the Court adopted the current version of MCR 1.11 in 2013, they did so under the shadow of a U.S. DOJ investigation into discriminatory practices towards LEP individuals. State Planning Body members served on the implementation advisory committee and they remind this Court that the DOJ expressed grave concerns about the 2013 rule's B provisions and characterized those as a retreat rather than progress towards Title 6 compliance. Meaning that the 2013 rule was a compromise that did not and has not fully guaranteed language access. 12 years later, we have proof that providing interpreters is not unduly burdensome to the courts and that fees charged to LEP litigants continue to deny them equal access to justice both in criminal and civil matters.

This Court has also since embraced access to justice as a core value. And so we propose and recommend that now is the moment to finish what was begun in 2013 and remove interpreter fees in all cases. And that doing so would fulfill the promise of equal justice and align Michigan with the majority of other states. Thank you for the opportunity to comment and I'd be happy to address any questions.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you. Any questions for Ms. Reynolds? Thank you, Ms. Reynolds, for being here. And our final speaker on this issue is Judge Cylenthia LaToye Miller from the Third Circuit Court. Welcome, Judge Miller.

JUDGE CYLENTHIA LaTOYE MILLER: Thank you very much, Madam Chief Justice and all of the Justices. Good morning to all. I'm here in my capacity not just as a judge of the Third Judicial Circuit Court but as a member of the Foreign Language Review Board. The Foreign Language Review Board has reviewed and considered the Court's proposed changes to MCR 1.111. The Board holds public meetings once a year. We have for the last few years had a lot of concerns raised with us from the interpreters, especially in the Arabic speaking community and in the Spanish speaking community. And so we have submitted to the Honorable Justices our proposed changes to MCR

1.111, which would provide two additional types of interpreters: specifically, the provisionally certified foreign language interpreter, and secondly, the registered foreign language interpreter.

Our letter was submitted by our current chair, Judge Tiffany Ankley, and that was on July 28th, 2025. I want to point out why we think this is critical, and I'm not going to go through the language because I'm sure you have it and you have our letter. But I do want to point out to you that recently some of the staff went to a conference where the Foreign Language Review Board's category of interpreters was addressed and also the oral exam statistics.

The statistics are staggering. In 2024, there were a total of 1,294 oral examinations administered: 952 were Spanish, and 342 were languages other than Spanish. This is on a test that has been designed and created by the National Center for State Courts. We met with them last year in November. They are reporting that out of those folks who took the exam 1,072 were full exams 222 were partial exams, that resulted in an overall passage rate of 6.34%. 68 candidates met or exceeded the 70% NCSC score requirement.

That cannot be acceptable. There's something that we've pointed out to them that we think is a problem with their exam. They are currently reviewing other exams to bring them up to date, make absolutely certain that there's no implicit bias that's presented within the context of their exams. But these are the types of stats that are coming out of their current exam and we've asked them to revise and take a look at the Arabic exam and the Spanish exam. The top five languages requested are Spanish, Mandarin, Portuguese, Arabic, and Korean in that order.

We would certainly ask you to please consider our proposal to add these other interpreters so we don't run out of interpreters for the Spanish language and the Arabic language because they can't get past the tests as they are at this time. Thank you very much for the time to speak to you. I appreciate it.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you. Judge Miller, can you help me understand? I just want to make sure I'm fully understanding the perspective and why the proposal of the Board is to suggest these two additional categories. I understand and share the concern about the passage rate. Am I correct in understanding that the concern of the Board is that the test isn't accurately reflecting somebody who can in fact provide adequate interpretation services? So even though they haven't passed this exam because of inherent problems with the exam, allowing those who are in the process or continuing to try—or however that is defined—still are adequately reliable interpreters for purposes of making sure that’s the case.

JUDGE CYLENTHIA LaTOYE MILLER: Madam Chief Justice, you've nailed the issue exactly. There are a couple of different concerns. One, that the tool itself, the test taking tool, needs to be revised, as I indicated. But secondly, these are folks who are passing the written exam. They are working as interpreters every day. And don't misunderstand what I'm saying as that they should somehow get a pass. They are continuing to try to take and pass the oral exam at the level that's required, which is 70% for the NCSC and for the state of Michigan. However, they just can't seem to get past this oral portion.

We are looking at several changes. One, we have a video that we're putting on our website that's going to help people to navigate the website and get to the types of supportive resources that they can use to educate themselves. Two, we're proposing to NCSC—and this is something that will be coming down the pike—that we would have posttest feedback of a greater nature to help people to understand, “Okay, you're doing well with this area, but this is where you need to work on things in order to get past the hurdle.” They're not going to get a pass. They ultimately have to pass the oral exam in order to be licensed in Michigan, but they can be working on that and still be able to work as an interpreter, as a provisionally certified interpreter or as a registered interpreter. So, we're giving them a path to say, "We recognize you passed the written part. You can keep working on the oral part. You can keep working as an interpreter because we know you're working on this.

And in the meantime, NCSC will hopefully get to the Arabic exam and make some changes because everyone can't be wrong. You know, if only 6.83% of the people are passing the exam, there's something, in my mind, that's wrong with the exam. And I take off my hat as a judge and put on my hat as a former adjunct professor. When I wrote an exam and only 5% of my class passed it, I knew I was the problem. I rewrote that exam, did some additional teaching with them, and everybody passed the exam. And this is what we've pointed out to NCSC and that they're very much aware of.

CHIEF JUSTICE MEGAN CAVANAGH: Okay. Just to read it, it’s that they’ve taken the written exam. They're continuing to work as an interpreter. They're continuing to work on that, and we are confident that they are in fact capable.

JUDGE CYLENTHIA LaTOYE MILLER: Yes.

CHIEF JUSTICE MEGAN CAVANAGH: And providing interpretive services that we in fact can rely on as a court.

JUDGE CYLENTHIA LaTOYE MILLER: Absolutely.

CHIEF JUSTICE MEGAN CAVANAGH: All right. Thank you very much. I appreciate it.

JUDGE CYLENTHIA LaTOYE MILLER: Thank you very much, Madam Chief Justice and all the Justices.

CHIEF JUSTICE MEGAN CAVANAGH: Any other questions for Judge Miller?

JUSTICE KIMBERLY THOMAS: Judge Miller, just a follow-up. I take the implication to be that if we limited it to the current two categories, you think we would have insufficient interpreters for the needs of our court system? That's sort of the counter to the worry about adequacy of competence.

JUDGE CYLENTHIA LaTOYE MILLER: That is exactly the concern, Justice Thomas, and thank you for that question. I ran out of time before I could hit that. You know, it is an access to justice issue, as you've heard from the other speakers today. And in Michigan, we have the largest Arabic speaking population outside of the Middle East. This is a crisis. We don't have enough interpreters who are certified or registered to be able to come forward. We need to be able to have these other categories in order to have a sufficient amount of interpreters. And we're confident that based on our review of their credentials, including from other states—we've got people who are passing in Ohio but cannot pass here. I mean, they're literally going all over the country to take training courses and all kinds of things and still not passing this test, and yet they're working every day as interpreters. So you nailed it. Absolutely. And that is one of our major concerns. Thank you very much.

CHIEF JUSTICE MEGAN CAVANAGH: Thank you, Judge Miller. We appreciate it. And that will conclude our public hearing. Thank you everyone for your participation.