Order

Michigan Supreme Court
Lansing, Michigan

April 29, 2026

ADM File No. 2025-14

Amendment of Rule 8.115 of the Michigan Court Rules

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 amendment of Rule 8.115 of the Michigan Court Rules is adopted, effective May 1, 2026.

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

Rule 8.115 Courthouse~~Courtroom~~ Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices; Civil Arrests

(A)-(C) [Unchanged.]

(D) Civil Arrests.

(1) Parties, attorneys, and subpoenaed witnesses are not subject to civil arrest while going to, attending, and returning from the places they are required to attend. See MCL 600.1821(4).

(2) No officer of any of the several courts of record, including jurors, shall be subject to civil arrest while going to, attending, or returning from any actual sitting of the court of which he is an officer. See MCL 600.1821(7).

(3) Definitions. The following definitions apply to this subrule.

(a) "Civil arrest" means any detention, restraint, or apprehension of an individual pursuant to a civil legal process. Civil arrest does not include an arrest for a criminal offense based on probable cause or an arrest for any warrant signed by a judge or magistrate.

(b) "Subpoenaed witness" means any person who has been lawfully served with a subpoena requiring their attendance at a judicial or quasi-judicial proceeding, whether for testimony or production of documents.

(c) "Places they are required to attend" means any location that a person is legally obligated to appear at for participation in a judicial or quasi-judicial proceeding or to complete a judicial function, including, but not limited to, when the person needs to file documents related to the proceeding or attend a deposition, mediation, case evaluation, settlement conference, or custody evaluation.

(d) "Going to, attending, and returning from" means the reasonable and direct travel necessary for a person to reach the required location, participate in the proceeding, and return to their residence, place of business, destination, or other activities not related to the legal proceeding. This definition excludes detours and activities unrelated to the legal proceeding that would break the continuity of travel or participation.

Staff Comment (ADM File No. 2025-14): In accordance with MCL 600.1821(4), the amendment of MCR 8.115 states that parties, attorneys, and subpoenaed witnesses are not subject to civil arrest while going to, attending, and returning from the places they are required to attend. The amendment defines several of the terms that appear in the rule.

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.

HOOD, J. (*concurring*).

I fully support the amendment of MCR 8.115. I write separately to emphasize that this amendment falls squarely within this Court's rulemaking function and does not exceed it. Three aspects of the amendment illustrate this: (1) it promotes court safety and accessibility, (2) it does not encroach on the legislative or executive branches' respective mandates to make and execute the law, and (3) in comparison to past examples in which this Court did exceed its rulemaking authority, the amendment is particularly benign. I briefly address each aspect.

First, the amendment prohibiting civil arrests falls within our authority to promote the efficient administration of justice. Cf. *People v Lafey*, ___ Mich App ___, ___ (September 27, 2024) (Docket No. 361936); slip op at 13, citing *Employees & Judge of the Second Judicial Dist Court v Hillsdale Co*, 423 Mich 705, 757 (1985) (opinion by WILLIAMS, C.J.). Michigan has one court of justice, and its divisions include the trial courts. See Const 1963, art 6, § 1. Our trial courts have inherent authority to maintain control over the courtroom and " 'to properly continue the administration of justice.' " *Lafey*, ___ Mich App at ___; slip op at 13, quoting *Employees & Judge*, 423 Mich at 757 (opinion by WILLIAMS, C.J.). So does this Court. Cf. *Lafey*, ___ Mich App at ___; slip op at 13. In other instances, we have interpreted this authority to permit courts to use various

practices to protect testifying witnesses, safeguard victims, secure defendants, and otherwise foster the orderly administration of court business. See, e.g., *People v Rose*, 289 Mich App 499, 509 (2010) (noting that trial courts have "the inherent authority to control their courtrooms"); *People v Johnson*, 315 Mich App 163, 177-178 (2016) (recognizing the broad authority and discretion afforded to a trial court to control the course of its business and collecting cases as examples); *Lafey*, ___ Mich App at ___; slip op at 13. This amendment does the same. It functions to maintain order in courthouses and courtrooms so that litigants, witnesses, and members of the public may conduct their business without unnecessary interference, including when they are en route to and from the same.

Second, and relatedly, the amendment does nothing to impair federal or state executives from lawfully executing existing laws. For example, under the amendment, a county sheriff could potentially still coordinate and cooperate with federal authorities to execute lawful administrative immigration detainers.[1] A county sheriff would not be required to do so, see *Printz v United States*, 521 US 898, 919-920 (1997), but under the amendment, they could if they chose to. Likewise, nothing in the amendment prohibits the execution of judge-authorized writs and warrants for criminal matters.[2] The rule only applies to civil arrests without a warrant. It is doubtful that this will in any way impair core police work. This is evidenced by the fact that for decades—if not longer—the police have been able to faithfully execute their duties without disrupting court business.

At the same time, the amendment does not encroach on the Legislature's ability to make laws related to this issue. On the contrary, the amendment largely tracks subparts of an existing statute, MCL 600.1821, albeit omitting other antiquated and potentially unconstitutional features, see, e.g., MCL 600.1821(2) ("No female shall be imprisoned on any process in any civil action."); MCL 600.1821(3) ("No minor under 16 years of age

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[1] An immigration detainer or "ICE detainer" is "a request from [United States Immigration and Customs Enforcement (ICE)] that asks a federal, state or local law enforcement agency—including jails, prisons or other confinement facilities"—to (1) notify the requesting agency before releasing a "removable alien," and (2) "[h]old the [removable] alien for up to 48 hours beyond the time they would ordinarily release them so [the United States Department of Homeland Security] has time to assume custody . . . ." U.S. Immigration and Customs Enforcement, *Immigration Detainers* <https://www.ice.gov/immigration-detainers> (accessed April 7, 2026) [https://perma.cc/JHJ6-NTFF].

[2] Though I would strongly caution against the execution of such warrants in a way that disrupts court proceedings. This is not a novel concept. Criminal defendants with outstanding capias warrants enter courthouses all the time to address them. Professional law enforcement officers are well-practiced at executing their duties while maintaining order in our courts.

shall be imprisoned on any process in any civil action."). The existing statute likely already prohibits civil and administrative arrests in courthouses. See MCL 600.1821(4). This amendment merely reiterates and clarifies its application. The statute underpinning the amendment has existed in one form or another since 1846, nine years after Michigan entered the Union. See 1846 RS, ch 102, § 62. The amendment does nothing to modify this longstanding statutory precedent. It also does nothing to hamstring the Legislature from abolishing the nearly 200-year-old statute.

Third, when compared to past examples of this Court's exercise of its rulemaking function, the amendment is a modest exercise of our authority. Compare Proposed MCR 8.115(D) to MCR 7.215(J)(1) and Administrative Order No. 1994-4, 445 Mich xci (1994) (amending MCR 7.215, among other rules).[3] For example, in 1997, this Court, ostensibly under its rulemaking authority, changed the precedential value of Court of Appeals opinions. See AO 1994-4; MCR 7.215(J)(1); MCR 7.215(C)(2). Now, following that rule change, published Court of Appeals cases are strictly binding if issued on or after November 1, 1990. See MCR 7.215(J)(1). But they are binding only under the doctrine of stare decisis if issued before that date. See MCR 7.215(C)(2). In other words, this Court decided that published opinions issued between the Court of Appeals' founding in 1963 and October 31, 1990, would carry less authority than opinions issued on or after November 1, 1990. We can debate the wisdom—or possible motivations—of such a rule. But it was a change in substantive law. That is different from what we are doing here. I highlight MCR 7.215(J)(1) for two reasons. First, I must acknowledge that any concern the public has about our rulemaking function is reasonable. Second, to the extent that those concerns target this rule as opposed to others, that concern is misplaced. There are many excesses that warrant our review. This is not one of them.

In sum, I support this amendment. Put simply, our courts are service providers. That service only works if the people seeking to use it can actually access it free from undue harassment or interference. It only works if litigants, witnesses, and victims are able to come into court to file their documents, state their cases, and appear in "the places they are required to attend." MCL 600.1821(4). If we do not act to safeguard access to our courts, we will not be able to fully measure the harm of our inaction. We will not know when someone chooses not to file a case. We will not know why a witness fails to appear. We will not know why a victim chooses not to allocute. But we will have failed in our duty to fairly and efficiently administer justice.

I respectfully and enthusiastically agree with the amendment.

ZAHRA, J. (*dissenting*).

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[3] AO 1994-4 was repealed effective September 1, 1997. See Resolution of Conflicts in Court of Appeals Decisions, 454 Mich cxii (1997).

In January 2025, the United States Department of Homeland Security (DHS) issued interim guidance providing that civil immigration enforcement actions are authorized when an Immigration and Customs Enforcement (ICE) agent has credible information leading to the belief that a targeted individual will be present at a specific location and where such action is not precluded by laws imposed by the local jurisdiction.[1] The policy states that actions should "take place in non-public areas of the courthouse, be conducted in collaboration with court security staff," and be conducted "discreetly to minimize their impact on court proceedings."[2] Special approvals are necessary for ICE to conduct an enforcement action in or near a courthouse (or an area within a courthouse) that is "wholly dedicated to non-criminal proceedings (e.g., family court, small claims court)."[3] These policies are a significant departure from those in place since 2021, which limited ICE to taking enforcement action in or near a courthouse only under certain circumstances, such as when the action involved a national security threat, imminent serious risk was present, the ICE officer was in hot pursuit, or there was an imminent risk of destruction of evidence.[4]

The Americal Civil Liberties Union of Michigan and the Michigan Immigrant Rights Center submitted a letter and proposal asking this Court to adopt a rule that would prohibit ICE from arresting a person at or near a courthouse if that person is required to attend court proceedings at the time of the arrest. The letter states that such a rule would implement two Michigan statutory provisions, MCL 600.1821 and MCL 600.1835. These provisions are both located within the Revised Judicature Act of 1961. The latter provision grants a privilege "from service of process" to anyone "going to, attending, or returning from" a court proceeding, but only if service could not have been made but for the subject's

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[1] See ICE, *Interim Guidance: Civil Immigration Enforcement Actions In or Near Courthouses* (January 21, 2025) <https://www.ice.gov/doclib/foia/policy/11072.3_CivilImmEnfActionsCourthouses_01.21.2025.pdf> (accessed April 21, 2026) [https://perma.cc/4RQJ-5BEW]. This interim guidance has since been superseded by official policy. See ICE Policy Memorandum 11072.4, *Civil Immigration Enforcement Actions In or Near Courthouses* (May 27, 2025) <https://www.ice.gov/doclib/foia/policy/11072.4.pdf> (accessed April 21, 2026) [https://perma.cc/NP6U-4U5D].

[2] *Interim Guidance*, p 2.

[3] *Civil Immigration Enforcement Actions*, p 2. Before conducting an enforcement action in these locations, the agent or officer must receive approval of the field office director, special agent in charge, or their designee. See *id*.

[4] See DHS, *Guidelines for Enforcement Actions In or Near Protected Areas* (October 27, 2021) <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw10272021.pdf> (accessed April 21, 2026) [https://perma.cc/U97A-BTEQ].

presence at the proceeding. The former provision, on the other hand, sets forth several exemptions to "arrest on civil process."

The proposed amendment essentially republishes the above-mentioned statutory provisions and then provides a third section defining the following phrases found in those provisions: "[c]ivil arrest," "[s]ubpoenaed witness," "[p]laces they are required to attend," and "[g]oing to, attending, and returning from."

This amendment of our court rules is unnecessary and ill-advised. Despite the overwhelming number of comments received in support of the proposed amendment, there was only one comment reporting an instance in Michigan in which an alien was arrested by an ICE agent after attending a proceeding in a Michigan state courthouse. Michigan has more than 10 million residents, and given the ubiquity of cell phone cameras as well as public and private surveillance, it is implausible that ICE agents in this state are engaging in the conduct that this proposal is aimed at addressing. Indeed, local media promptly reported this single instance,[5] and it stands to reason that additional instances would likewise have been reported. Given the dearth of evidence to the contrary, I conclude that ICE is abiding by MCL 600.1821(4) and (7). In sum, this proposed amendment is at best a political statement framed as a solution in search of a problem.

More troublesome is that the proposed amendment will actually create problems in this state. In particular, the proposal cannot be effectively enforced, and attempting to enforce the proposal will likely have an inimical result. The United States Constitution states that the federal Constitution and laws made pursuant to it "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[6] The United States Supreme Court has long interpreted this provision, referred to as the Supremacy Clause, to mean that "the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress . . . ."[7] The United States Constitution also provides that the federal government has exclusive authority to "establish an uniform Rule of Naturalization."[8] Congress accordingly enacted laws governing the entry, admission, presence, status, and removal of

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[5] Stanton, *U.S. Citizen Mistakenly Detained by ICE Outside Michigan Courthouse Speaks Out*, MLive (updated April 8, 2025) <https://www.mlive.com/news/ann-arbor/2025/04/us-citizen-mistakenly-detained-by-ice-outside-michigan-courthouse-speaks-out.html?outputType=amp> (accessed April 21, 2026).

[6] US Const, art VI, cl 2.

[7] *McCulloch v Maryland*, 17 US 316, 436 (1819).

[8] US Const, art I, § 8, cl 4.

aliens within the United States through the Immigration and Nationality Act of 1952 (INA), 8 USC 1101 *et seq.*, and other related laws.

> Responsibility for enforcing the immigration laws rests primarily with [DHS] and two of its components—[ICE] and United States Customs and Border Protection ("CBP"). Congress has provided these agencies several tools to carry out their duties under the INA. As relevant here, the INA authorizes federal agents to make civil immigration arrests, with or without an administrative warrant.[9]

At first blush, it would seem that the proposed court rule would apply to ICE agents. MCL 600.1821 does not discriminate in regard to who makes the arrest. Indeed, MCL 600.1821(9) states:

> Every person making or procuring a civil arrest contrary to [MCL 600.1821(1) through (7)] is guilty of contempt of court and is liable to the person arrested in double the amount of damages which a jury finds that he has sustained and also is liable in an action at the suit of any injured person for the loss, hindrance, and damage the injured person has sustained in consequence of the arrest.

And it further states that "[a]ny civil arrest made contrary to [MCL 600.1821(1) through (7)] is void."

But state courts have no authority to void a federal arrest.[10] The appropriate action would be to seek a writ of habeas corpus in federal court. Yet even if a state court were to take action, such as holding an ICE agent in contempt or allowing a suit to proceed against the agent, the Department of Justice would undoubtedly remove the case to federal court[11] "to preserve the supremacy of federal law and prevent federal officers and their agents from

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[9] *United States v New York*, 810 F Supp 3d 329, 334 (ND NY, 2025), citing 8 USC 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.") and 8 USC 1357(a)(2) (providing that immigration officers "shall have power without warrant" to "arrest any alien who . . . is entering or attempting to enter the United States in violation of any [immigration] law or regulation . . . , or to arrest any alien in the United States, if . . . the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained").

[10] See *In re Spangler*, 11 Mich 298 (1863); *In re Abbott*, 267 Mich 703 (1934).

[11] See 28 USC 1442(a)(1).

being improperly sued or punished when they attempt to perform their duties."[12] The proposed amendment offers only false assurance that parties, attorneys, subpoenaed witnesses, and officers while going to, attending, and returning from court may not be arrested by the federal government. Moreover, as a practical matter, the prospect of having an arrest "voided" by a state court offers false comfort to someone being held in federal custody.

In addition, Michigan law enforcement has no similar immunity from federal prosecution. The same goes for private individuals. The proposed rule encroaches on the federal government's authority and that encroachment, as stated by the Michigan Sheriffs' Association in its comment opposing the rule, "could put Michigan law enforcement officers, tasked with providing security operations to a court, in an untenable position of attempting to enforce the rule, while interfering with a federal officer in the performance of their duties." 18 USC 111 states that anyone who "forcibly assaults, resists, opposes, impedes, intimidates, or interferes with" "any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services)"[13] while that federal officer or employee is engaged in the performance of official duties shall be fined or imprisoned, with the length of imprisonment being determined by whether the acts constitute a simple assault or something more serious. Therefore, any Michigan police officer or sheriff's deputy who enforced the amended rule by impeding ICE agents in the performance of their federal duties would be in legal jeopardy.

Law enforcement is not alone. As was widely reported, a Wisconsin state court judge attempted to prevent the arrest by administrative warrant of an individual who had come to the courthouse to appear for a state court proceeding. A federal jury recently convicted the judge of obstruction, a felony. There is no reason to believe that a court rule, such as the one proposed here, would have deterred the Department of Justice from pursuing legal action against the judge, and there is no reason to believe that such a rule would protect law enforcement, judges, and staff from being convicted of obstruction under 18 USC 1505.

All told, the proposed amendment to our court rules is unnecessary and ill-advised. For these reasons, I would not adopt the proposal.

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[12] Cong Research Serv, HR 2553 and HR 8569, Removal to Federal Court of Cases Against Federal Officials and Agents (updated November 13, 2024), p 2.

[13] 18 USC 1114(a).