

Order

Michigan Supreme Court
Lansing, Michigan

October 31, 2012

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2006-47

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Amendment of Rules 1.109, 2.107,
2.113, 2.114, 2.302, 2.518, 3.001,
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, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendments of Rules 1.109, 2.107, 2.113, 2.114, 2.302, 2.518, 3.001, 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 are adopted, effective January 1, 2013.

[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) Court records include, but are not limited to:

(i) documents, attachments to documents, 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 that are not filed with the clerk of the court are not court records. Exhibits that are maintained by the court reporter or other authorized staff pursuant to MCR 2.518 or MCR 3.930 during the pendency of a proceeding are not court records.

(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

~~(4)~~ 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 or

discovery material 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 papersdocuments as prescribed by MCR 8.119except on written direction of a judge.

~~(C)(D)~~ [Unchanged from language adopted May 24, 2012, except subrule (C) is now relettered subrule (D).]

(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 papersmaterials 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 papersmaterials and immediately transmit them forthwith to the clerk. It is the responsibility of the party who presented the papersmaterials to confirm that they have been filed with the clerk. If the clerk docketrecords papers the receipt of materials on a date other than the filing date, the clerk shall noterecord 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 2.302 General Rules Governing Discovery

(A)-(G) [Unchanged.]

(H) Filing and Service of Discovery Materials.

(1) Unless a particular rule requires filing of discovery materials, requests, responses, depositions, and other discovery materials may not be filed with the court except as follows:

(a) If discovery materials are to be used in connection with a motion, they must either be filed separately or be attached to the motion or an accompanying affidavit;

(b) If discovery materials are to be used at trial they must be ~~either filed or~~ made an exhibit pursuant to MCR 2.518 or MCR 3.930;

(c) The court may order discovery materials to be filed.

(2) Copies of discovery materials served under these rules must be served on all parties to the action, unless the court has entered an order under MCR 2.107(F).

(3) On appeal, only discovery materials that were filed or made exhibits are part of the record on appeal.

(4) Removal and destruction of discovery materials are governed by MCR 2.316.

Rule 2.518 Receipt and Return or Disposal of Exhibits

(A) Receipt of Exhibits. Except as otherwise required by statute or court rule, materials that are intended to be used as evidence at or during a trial shall not be filed with the clerk of the court, but shall be submitted to the judge for introduction into evidence as 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 discovery materials filed pursuant to MCR 1.109(C) or an exhibit submitted pursuant to this rule after a hearing or trial and the material is confidential as provided by law, court rule, or court order pursuant to MCR 8.119(I), the court must continue to maintain the material 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 3.218 ~~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, memorandaums, 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. Except as otherwise required by statute or court rule, materials that are intended to be used as evidence at or during a trial shall not be filed with the clerk of the court, but shall be submitted to the judge for introduction into evidence as 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 discovery materials filed pursuant to MCR 1.109(C) or an exhibit submitted pursuant to this rule after a hearing or trial and

the ~~exhibit material~~ 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 material~~ 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 a 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,
 - (3) captioning prescribed by MCR 2.113(C)(1) and MCR 5.113,
 - (4) signature prescribed by MCR 2.114(C) and MCR 5.114, 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 (F)I, 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) establish a policy for whether to provide access for records defined in subrule (F) and if access is to be provided, outline the procedure for accessing those records;

~~(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 court creates 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 amendments of these rules update the rules making them less “paper” focused and reflecting the use of electronic technology in the way courts process court records. The amendments also clarify and delineate the types of records and other materials maintained by a court, and clarify how access is provided.

The staff comment is not an authoritative construction by the Court.



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.

October 31, 2012

Corbin R. Davis

Clerk