

Appendix C
Court Rule Requirements

Court Rules Referencing Ability to Pay:

[MCR 1.111](#)

[MCR 6.005](#)

Court Rules Referencing Ability to Pay:

Rule 1.111 Foreign Language Interpreters

(A) Definitions. When used in this rule, the following words and phrases have the following definitions:

(1) “Case or Court Proceeding” means any hearing, trial, or other appearance before any court in this state in an action, appeal, or other proceeding, including any matter conducted by a judge, magistrate, referee, or other hearing officer.

(2) “Party” means a person named as a party or a person with legal decision-making authority in the case or court proceeding.

(3) A person is “financially able to pay for interpretation costs” if the court determines that requiring reimbursement of interpretation costs will not pose an unreasonable burden on the person’s ability to have meaningful access to the court. For purposes of this rule, a person is financially able to pay for interpretation costs when:

(a) The person’s family or household income is greater than 125% of the federal poverty level; and

(b) An assessment of interpretation costs at the conclusion of the litigation would not unreasonably impede the person’s ability to defend or pursue the claims involved in the matter.

(4) “Certified foreign language interpreter” means a person who has:

(a) passed a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator,

(b) met all the requirements established by the state court administrator for this interpreter classification, and

(c) registered with the State Court Administrative Office.

(5) “Interpret” and “interpretation” mean the oral rendering of spoken communication from one language to another without change in meaning.

(6) “Qualified foreign language interpreter” means:

(a) A person who provides interpretation services, provided that the person has:

(i) registered with the State Court Administrative Office; and

(ii) met the requirements established by the state court administrator for this interpreter classification; and

(iii) been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or

(b) A person who works for an entity that provides in-person interpretation services provided that:

(i) both the entity and the person have registered with the State Court Administrative Office; and

(ii) the person has met the requirements established by the state court administrator for this interpreter classification; and

(iii) the person has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or

(c) A person who works for an entity that provides interpretation services by telecommunication equipment, provided that:

(i) the entity has registered with the State Court Administrative Office; and

(ii) the entity has met the requirements established by the state court administrator for this interpreter classification; and

(iii) the person has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services

(B) Appointment of a Foreign Language Interpreter.

(1) If a person requests a foreign language interpreter and the court determines such services are necessary for the person to meaningfully participate in the case or court proceeding, or on the court's own determination that foreign language interpreter services are necessary for a person to meaningfully participate in the case or court proceeding, the court shall appoint a foreign language interpreter for that person if the person is a witness testifying in a civil or criminal case or court proceeding or is a party.

(2) The court may appoint a foreign language interpreter for a person other than a party or witness who has a substantial interest in the case or court proceeding.

(3) In order to determine whether the services of a foreign language interpreter are necessary for a person to meaningfully participate under subrule (B)(1), the court shall rely upon a request by an LEP individual (or a request made on behalf of an LEP individual) or prior notice in the record. If no such requests have been made, the court may conduct an examination of the person on the record to determine whether such services are necessary. During the examination, the court may use a foreign language interpreter. For purposes of this examination, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

(C) Waiver of Appointment of Foreign Language Interpreter. A person may waive the right to a foreign language interpreter established under subrule (B)(1) unless the court determines that the interpreter is required for the protection of the person's rights and the integrity of the case or court proceeding. The court must find on the record that a person's waiver of an interpreter is knowing and voluntary. When accepting the person's waiver, the court may use a foreign language interpreter. For purposes of this waiver, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

(D) Recordings. The court may make a recording of anything said by a foreign language interpreter or a limited English proficient person while testifying or responding to a colloquy during those portions of the proceedings.

(E) Avoidance of Potential Conflicts of Interest.

(1) The court should use all reasonable efforts to avoid potential conflicts of interest when appointing a person as a foreign language interpreter and shall state its reasons on the record for appointing the person if any of the following applies:

(a) The interpreter is compensated by a business owned or controlled by a party or a witness;

(b) The interpreter is a friend, a family member, or a household member of a party or witness;

(c) The interpreter is a potential witness;

(d) The interpreter is a law enforcement officer;

(e) The interpreter has a pecuniary or other interest in the outcome of the case;

(f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;

(g) The interpreter does have, or may have, a perceived conflict of interest;

(h) The appointment of the interpreter creates an appearance of impropriety.

(2) A court employee may interpret legal proceedings as follows:

(a) The court may employ a person as an interpreter. The employee must meet the minimum requirements for interpreters established by subrule (A)(4). The state court administrator may authorize the court to hire a person who does not meet the minimum requirements established by subrule (A)(4) for good cause including the unavailability of a certification test for the foreign language and the absence of certified interpreters for the foreign language in the geographic area in which the court sits. The court seeking authorization from the state court administrator shall provide proof of the employee's competency to act as an interpreter and shall submit a plan for

the employee to meet the minimum requirements established by subrule (A)(4) within a reasonable time.

(b) The court may use an employee as an interpreter if the employee meets the minimum requirements for interpreters established by this rule and is not otherwise disqualified.

(F) Appointment of Foreign Language Interpreters.

(1) When the court appoints a foreign language interpreter under subrule (B)(1), the court shall appoint a certified foreign language interpreter whenever practicable. If a certified foreign language interpreter is not reasonably available, and after considering the gravity of the proceedings and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in (A)(6). The court shall make a record of its reasons for using a qualified foreign language interpreter.

(2) If neither a certified foreign language interpreter nor a qualified foreign language interpreter is reasonably available, and after considering the gravity of the proceeding and whether the matter should be rescheduled, the court may appoint a person whom the court determines through voir dire to be capable of conveying the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding without prejudice to the limited English proficient person.

(3) The court shall appoint a single interpreter for a case or court proceeding. The court may appoint more than one interpreter after consideration of the nature and duration of the proceeding; the number of parties in interest and witnesses requiring an interpreter; the primary languages of those persons; and the quality of the remote technology that may be utilized when deemed necessary by the court to ensure effective communication in any case or court proceeding.

(4) The court may set reasonable compensation for interpreters who are appointed by the court. Court-appointed interpreter costs are to be paid out of funds provided by law or by the court.

(5) If a party is financially able to pay for interpretation costs, the court may order the party to reimburse the court for all or a portion of interpretation costs.

(6) Any doubts as to eligibility for interpreter services should be resolved in favor of appointment of an interpreter.

(7) At the time of determining eligibility, the court shall inform the party or witness of the penalties for making a false statement. The party has the continuing obligation to inform the court of any change in financial status and, upon request of the court, the party must submit financial information.

(G) Administration of Oath or Affirmation to Interpreters. The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following: "Do you

solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?"

(H) Request for Review.

(1) Any time a court denies a request for the appointment of a foreign language interpreter or orders reimbursement of interpretation costs, it shall do so by written order.

(2) An LEP individual may immediately request review of the denial of appointment of a foreign language interpreter or an assessment for the reimbursement of interpretation costs. A request for review must be submitted to the court within 56 days after entry of the order.

(a) In a court having two or more judges, the chief judge shall decide the request for review de novo.

(b) In a single-judge court, or if the denial was issued by a chief judge, the judge shall refer the request for review to the state court administrator for assignment to another judge, who shall decide the request de novo.

(c) A pending request for review under this subrule stays the underlying litigation.

(d) A pending request for review under this subrule must be decided on an expedited basis.

(e) No motion fee is required for a request for review made under this subrule.

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings

(A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant

(1) of entitlement to a lawyer's assistance at all subsequent court proceedings, and

(2) that the court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one.

The court must question the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.

(B) Questioning Defendant About Indigency. If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the defendant is indigent. The determination of indigency must be guided by the following factors:

(1) present employment, earning capacity and living expenses;

(2) outstanding debts and liabilities, secured and unsecured;

(3) whether the defendant has qualified for and is receiving any form of public assistance;

(4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned; and

(5) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel.

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer.

(C) Partial Indigency. If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution.

(D) Appointment or Waiver of a Lawyer. If the court determines that the defendant is financially unable to retain a lawyer, it must promptly appoint a lawyer and promptly notify the lawyer of the appointment. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

(1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

(2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) the defendant must reaffirm that a lawyer's assistance is not wanted; or

(2) if the defendant requests a lawyer and is financially unable to retain one, the court must appoint one; or

(3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one. The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate lawyers unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:

(1) the lawyer or lawyers state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;

(2) the defendants state on the record after the court's inquiry and the lawyer's statement, that they desire to proceed with the same lawyer; and

(3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

(G) Unanticipated Conflict of Interest. If, in a case of joint representation, a conflict of interest arises at any time, including trial, the lawyer must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate lawyers. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require.

(H) Scope of Trial Lawyer's Responsibilities. The responsibilities of the trial lawyer who represents the defendant include

(1) representing the defendant in all trial court proceedings through initial sentencing,

(2) filing of interlocutory appeals the lawyer deems appropriate, and

(3) responding to any preconviction appeals by the prosecutor. The defendant's lawyer must either:

(i) file a substantive brief in response to the prosecutor's interlocutory application for leave to appeal, or

(ii) notify the Court of Appeals that the lawyer will not be filing a brief in response to the application.

(4) Unless an appellate lawyer has been appointed or retained, or if retained trial counsel withdraws, the trial lawyer who represents the defendant is responsible for filing postconviction motions the lawyer deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing.

(5) when an appellate lawyer has been appointed or retained, promptly making the defendant's file, including all discovery material obtained, available for copying upon request of that lawyer.

The trial lawyer must retain the materials in the defendant's file for at least five years after the case is disposed in the trial court.

(I) Assistance of Lawyer at Grand Jury Proceedings.

(1) A witness called before a grand jury or a grand juror is entitled to have a lawyer present in the hearing room while the witness gives testimony. A witness may not refuse to appear for reasons of unavailability of the lawyer for that witness. Except as otherwise provided by law, the lawyer may not participate in the proceedings other than to advise the witness.

(2) The prosecutor assisting the grand jury is responsible for ensuring that a witness is informed of the right to a lawyer's assistance during examination by written notice accompanying the subpoena to the witness and by personal advice immediately before the examination. The notice must include language informing the witness that if the witness is financially unable to retain a lawyer, the chief judge in the circuit court in which the grand jury is convened will on request appoint one for the witness at public expense.