

Order

Michigan Supreme Court
Lansing, Michigan

April 2, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2013-11

Michael F. Cavanagh
Stephen J. Markman

Proposed Amendments of
Rule 9.106 and Rule 9.128
of the Michigan Court Rules

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rule 9.106 and Rule 9.128 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 9.106 Types of Discipline; Minimum Discipline

Misconduct is grounds for:

- (1) disbarment of an attorney from the practice of law in Michigan;
- (2) suspension of the license to practice law in Michigan for a specified term, not less than 30 days, with such additional conditions relevant to the established misconduct as a hearing panel, the board, or the Supreme Court may impose, and, if the term exceeds 179 days, until the further order of a hearing panel, the board, or the Supreme Court;
- (3) reprimand with such conditions relevant to the established misconduct as a hearing panel, the board, or the Supreme Court may impose;
- (4) probation ordered by a hearing panel, the board, or the Supreme Court under MCR 9.121(C); or
- (5) requiring restitution, in an amount set by a hearing panel, the board, or the Supreme Court, as a fine, penalty, or forfeiture payable to and for the benefit of the Supreme Court to promote rehabilitation and to protect the public irrespective of whether the restitution calculation is based on actual pecuniary loss which shall be a condition of an order of discipline.

Restitution payable to the Supreme Court may be paid directly to a person or entity as directed in the order of discipline. An order under this subrule is enforceable both as a condition for reinstatement and as a money judgment for the person or entity to be paid the restitution.

Rule 9.128 Costs

- (A) Generally. The hearing panel and the board, in an order of discipline, a finding of misconduct but no discipline, or an order granting or denying reinstatement, must include a provision directing the payment of costs within a specified period of time. Under exceptional circumstances, the board may grant a motion to reduce administrative costs assessed under this rule, but may not reduce the assessment for actual expenses. Reimbursement must be a condition in a reinstatement order. An order pursuant to this subdivision is enforceable both as a condition for reinstatement and as a money judgment.
- (B) Amount and Nature of Costs Assessed. The costs assessed under these rules are penalties payable to and for the benefit of the Supreme Court to promote rehabilitation and to protect the public, and the calculation of such costs based on actual expenses does not affect their penal nature. Calculation of costs shall include both basic administrative costs and disciplinary expenses actually incurred by the board, the commission, a master, or a panel for the expenses of that investigation, hearing, review and appeal, if any.

(1)-(2) [Unchanged.]

(C)-(E)[Unchanged.]

Staff Comment: The proposed amendments of MCR 9.106 and MCR 9.128, requested by the Attorney Grievance Commission, would identify costs and restitution imposed on an attorney in a disciplinary proceeding as a fine, penalty, or forfeiture.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2014, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-11. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 2, 2014


Clerk