

December 9, 2008

ADM File No. 2007-13

Proposed Amendment of  
Rule 611 of the Michigan  
Rules of Evidence

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On order of the Court, this is to advise that the Court is considering amendment of Rule 611 of the Michigan Rules of Evidence. Before the Court determines 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 will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website at [www.courts.mi.gov/supremecourt](http://www.courts.mi.gov/supremecourt).

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.

[Deletions are indicated by strikeover and insertions by underline.]

Rule 611. Mode and Order of Interrogation and Presentation

- (a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
- (b) Appearance of Parties and Witnesses. The court shall exercise reasonable control over the appearance of parties and witnesses so as to (1) ensure that the demeanor of such persons may be observed and assessed by the fact-finder, and (2) to ensure the accurate identification of such persons.

~~(b)-(e)~~ [Renumbered (c)-(d), but otherwise unchanged]

Staff Comment: This proposed amendment would clarify that a judge is entitled to establish reasonable standards regarding the appearance of parties and

witnesses to evaluate the demeanor of those individuals and to ensure accurate identification.

The proposal was suggested in response to a case in which a district judge was sued for dismissing a plaintiff's case following the plaintiff's refusal to remove her hijab during testimony. The plaintiff subsequently sued the district judge in federal court, alleging a violation under 42 USC 1983 (*Muhammad v Paruk*, 553 F Supp 2d 893 [ED Mich, 2008]). The federal court declined to exercise jurisdiction and dismissed the case, which has since been appealed. In declining to exercise jurisdiction, the federal court noted that state court review "would have avoided many of the federalism concerns" cited by the court, which prompted consideration of this proposal by the Michigan Supreme Court.

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 of Michigan and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). All comments received within the public comment period will be posted on the Court's website at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm). When filing a comment, please refer to ADM File No. 2007-13.