

STATE OF MICHIGAN
IN THE SUPREME COURT

MARK EDWARD TOBIAS FOLEY,

Plaintiff-Appellant (In Pro Per),

v. Supreme Court Case No. 170670

Court of Appeals Case No. 381330

BARRY COUNTY 5TH CIRCUIT COURT,

Trial Court Case No. 2020-656-DM

HON. VICKY L. ALSPAUGH,

HON. WILLIAM DOHERTY,

Defendants-Appellees.

**BRIEF AMICUS CURIAE OF RITA WILLIAMS,
EDITOR OF CLUTCH JUSTICE, IN SUPPORT OF PLAINTIFF-APPELLANT'S
APPLICATION FOR LEAVE TO APPEAL**

ORAL ARGUMENT NOT REQUESTED

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Statement of Interest of Amicus Curiae

Rita Williams is the founder and editor of Clutch Justice, an independent investigative journalism and public accountability platform covering Michigan judicial and prosecutorial accountability, court system administration, sentencing integrity, and institutional forensics, with particular attention to Barry County's Fifth Circuit Court. See, e.g., Williams, Rita, "Whatever Happened to Sigmund Rumpf?" Clutch Justice (July 1, 2026). Amicus has no financial or personal stake in the outcome of this proceeding and is not counsel for, or otherwise affiliated with, any party.¹

Amicus supports leave to consider the relationship between mandatory service, meaningful access to review, and superintending control. Reliable court notice matters beyond any custody dispute: a remedy may exist on paper yet fail in practice if the procedure challenged prevents timely use of it.

This is not the first time amicus has documented this exact reasoning failure in Barry County's own records. On July 8, 2026, amicus filed correspondence with the Clerk of this Court concerning prison mail delivery in Michigan Supreme Court Case No. 167549, a matter separate from this one. This Court's own docket in that case recorded the filing as Entry No. 46, described as "SCt Correspondence Received," with the comment "Email from Rita Williams re prison mail delivery." That entry has remained on this Court's docket without interruption. The Barry County Circuit Court's docket in the underlying trial court matter, Case No. 2022-0000000523-FH, did not. Independent USPS delivery confirmation establishes that an incarcerated litigant's motion for relief from judgment and related filings were physically delivered to the Barry County Circuit Court on July 1, 2026, and to the Barry County Prosecutor's Office on July 2, 2026, and the circuit court's docket initially reflected those motions as filed July 1, 2026. On July 8, 2026, the same day amicus filed the correspondence with this Court described above, the circuit court's docket entries for those filings disappeared. They did not reappear until August 7, 2026, after amicus produced the USPS delivery records establishing that the filings had in fact been

¹ Pursuant to MCR 7.312(H)(5), amicus states that no counsel for a party authored this brief in whole or in part; neither counsel for a party nor a party made a monetary contribution intended to fund its preparation or submission; and no person or entity other than amicus made such a contribution.

delivered, and raised the disappearance directly with the circuit court. Four days later, on August 11, 2026, the circuit court entered an order denying the motions, which its own docket represents was mailed to the litigant by first-class mail. A subsequent certified Michigan Department of Corrections records production covering that period showed no record of that order, or of any comparable correspondence from the county, ever reaching him.

Separately, amicus has reported, under its own byline, a documented instance in which a stamped Barry County court filing never reached the Register of Actions after its received stamp was obscured with correction fluid before the document was returned, a matter that remains the subject of a pending State Court Administrative Office investigation into the conduct of a Barry County chief probation officer. See Williams, Rita, “When a Court Stamp Disappears: Why White-Out on a Barry County Motion Undermines Justice,” Clutch Justice (Feb. 15, 2026, updated Mar. 26, 2026).

Amicus offers this history not to ask this Court to resolve the facts of those separate matters, and takes no position on their disputed details, but because it demonstrates that the reasoning challenged in this case, that a court's own failure to serve or accurately record a filing may be excused so long as a litigant eventually learns enough by other means, is not confined to Foley's case alone.

Questions Presented

I. Does the availability of an appeal from an individual order necessarily foreclose superintending control of an alleged continuing court practice, without determining whether that appeal provides an adequate remedy?

Amicus answers: No.

II. Do uncertainty about the service facts and an inference of prior knowledge eliminate the duty imposed by the applicable domestic-relations service rules?

Amicus answers: No. Foley must nevertheless establish a breach attributable to defendants and the absence of an adequate alternative remedy.

Statement of the Case

Defendants describe the underlying case as postdivorce custody proceedings and characterize Foley's complaint as challenging repeated mailing of orders to incorrect addresses. Answer, p 1. They report that Foley filed his complaint for superintending control on June 23, 2026; the Court of Appeals denied relief on August 14; Foley was arrested on August 17 and arraigned on August 19; and a further hearing was scheduled for September 16. *Id.*, pp 1–2. They also report that he has appointed counsel in the proceedings concerning his arrest. *Id.*, pp 1, 4.

These procedural events are recited as defendants describe them. Amicus does not treat defendants' account as an admission that service was defective or that the arrest was unlawful. Nor does amicus ask this Court to resolve disputed service facts from this brief. The issue addressed here is whether the legal grounds advanced in the answer adequately dispose of the asserted procedural challenge.

Foley's own application recites two separate instances in which his correct mailing address was placed on the court's record, once in a written communication from a deputy clerk on October 3, 2022, and again when a Friend of the Court referee read the address into the record on June 16, 2023, and that mail addressed to him nonetheless continued going to an incorrect address after each correction. Application, pp 5-6. Amicus recites this only as Foley's own account, not as an adjudicated fact, but it bears directly on the duty question addressed below: an address requirement is not satisfied by correcting the record once and reverting to the old address afterward.

Foley's application further states that opposing counsel, Attorney Brad Gee, was copied on the October 3, 2022 correction, and that Gee's own response to a grievance filed with the Attorney Grievance Commission reflects the same address issue. Application, Exs. E, F. Amicus again recites this only as Foley's own account. But if his application is accurate, both the court and the attorney representing the opposing party had the corrected address in hand from the same communication, and mail to Foley nonetheless continued to the old one. That is a harder pattern to explain as isolated human error than a single missed update by one office.

Summary of Argument

Defendants' answer substitutes a list of potential remedies for an assessment of their adequacy. It cites rules governing domestic-relations relief but omits MCR 3.203, the rule governing service in those proceedings. It infers knowledge from Foley's effort to obtain judicial review without identifying service of particular orders. And it treats uncertainty about performance as uncertainty about the legal duty itself.

The governing precedents require a more discriminating analysis. *In re Hague* recognizes that an individual appeal may be inadequate to correct a persistent practice. Defendants' own authority, *Rivergate Manor*, sustained superintending control addressing procedural illegality. Those decisions do not establish Foley's entitlement to relief; they foreclose the categorical reasoning offered against it. Review should focus on the complaint and record, the particular duty allegedly breached, and whether ordinary remedies could adequately correct that breach.

I. The answer does not establish an adequate alternative remedy

Defendants correctly invoke the limits on superintending control. MCR 3.302(B) prohibits the remedy when another adequate remedy is available, and MCR 3.302(D)(2) directs use of an available appeal. A litigant cannot avoid those limits merely by describing adverse decisions as a pattern. But the answer treats the existence of appellate procedures as the end of the inquiry. Answer, pp 3–4. That treatment leaves out the adequacy question.

In re Hague, 412 Mich 532, 546–547; 315 NW2d 524 (1982), explained that an available individual appeal does not preclude superintending relief when it is inadequate. The Court considered repetitive appeals an impractical response to a judge's persistent dismissal of hundreds of cases. *Hague* arose in judicial discipline proceedings involving an established, extreme practice; it does not convert every recurring allegation into a supervisory case. Its pertinent principle is that adequacy must be assessed in relation to the practice and relief at issue.

In re Credit Acceptance Corp, 273 Mich App 594, 598; 733 NW2d 65 (2007), likewise recognized superintending control as a means to challenge an inferior court's general practices, while retaining both requirements: breach of a clear legal duty and no adequate legal remedy. The court reversed dismissal of a challenge to extra procedural requirements imposed on

garnishment filings. *Id.* at 598–601. Foley must establish the requisite practice in his own record; describing repeated errors in one case is not by itself proof of a general policy.

In re Payne, 444 Mich 679, 687; 514 NW2d 121 (1994), does not answer that distinct question. *Payne* concerned review of a municipal civil service commission, for which the Legislature had provided no appeal. Its statement of the ordinary appeal rule must be read with *Hague*'s treatment of inadequate appeals. The answer identifies no analysis of whether the particular review routes it lists could correct the asserted continuing service practice.

Defendants' reliance on *Public Health Department v Rivergate Manor*, 452 Mich 495, 500–502; 550 NW2d 515 (1996), is especially incomplete. Answer, p 3. The Court affirmed superintending relief where an administrative tribunal modified a certificate without required procedural safeguards, including notice and an opportunity to object. It distinguished an attack on the substantive decision from a challenge to authority to proceed in that manner. *Rivergate* involved a statutory bar to the department's appeal and does not establish that Foley lacks an adequate remedy. But its actual disposition defeats the suggestion that any challenge connected with an underlying order necessarily belongs only in a merits appeal.

The necessary distinction is concrete. A request to change custody or support ordinarily belongs in the domestic-relations action and its authorized appeals. A properly supported request to require compliance with service obligations presents a different inquiry: whether ordinary proceedings can effectively secure that compliance. If Foley's complaint only repackages objections to individual orders, defendants' objection has force. If the complaint and record establish a continuing unlawful practice that those remedies cannot adequately correct, the answer's categorical bar does not follow.

The cited rules also require greater specificity. MCR 7.202(6)(a)(iii) defines a particular category of postjudgment custody or domicile orders as final; it does not make every postjudgment domestic-relations order appealable by right. MCR 7.203 distinguishes appeals by right from applications for leave. And MCR 7.204(A) ties the ordinary appeal period to entry, not simply eventual receipt. The relevant inquiry is which order was reviewable, when Foley learned enough to seek review, and what corrective relief remained available—not whether appellate rules exist.

Nor should MCR 2.612 be dismissed as categorically inadequate. Defendants invoke that rule, and it may supply effective relief on an appropriate showing. Answer, p 3. Foley must explain why a motion, a resulting appeal, or other available relief could not adequately address his claim. A bare reference to the rule does not establish adequacy; a bare allegation of nonservice does not establish inadequacy. The Court should examine the actual remedies against the actual procedural wrong alleged.

II. The service rules supply a clear duty whose breach must be proved

Defendants cite MCR 3.204 through MCR 3.211 while omitting the immediately preceding rule governing the conduct at issue: MCR 3.203. Answer, p 3. MCR 3.203(A) expressly addresses notice and court documents in domestic-relations cases where jurisdiction continues. Subject to more specific provisions, it incorporates MCR 2.107 and requires mailed service at the party's last known mailing address. MCR 3.203(B) further defines that address when the judgment or order requires address updates to the friend of the court. That omission is not incidental. An answer that defends a mailing practice by citing the rules that surround the service requirement, while skipping the one rule that actually governs it, illustrates the same substitution of proximity for compliance that Foley alleges has become Barry County's practice: citing something adjacent to the obligation instead of satisfying it.

This is not a problem that resolved itself with time. Foley's two address corrections were placed on the record in 2022 and 2023; amicus's own documented experience with this Court's docket and the underlying circuit court's docket, described above, arose in 2026. An address or a filing correctly entered once does not stay corrected merely because it was corrected. Whatever accounts for that, the record here spans years and more than one case, which is itself relevant to whether the underlying duty is being met as a matter of practice, not simply misapplied on a single occasion.

Defendants assert that factual uncertainty prevents identification of a clear legal duty. Answer, p 3. That collapses two inquiries. The governing rules identify the duty; the record establishes which provision applies, who owed the duty, and whether it was performed. A dispute about the address actually used does not make an applicable address requirement discretionary. Conversely, an abstract rule cannot establish that a named defendant breached it.

Attribution matters here. MCR 2.602(E)(1) ordinarily assigns service of a signed judgment or order to the party securing its signing. The allegation therefore must identify a duty owed by the court or officials against whom supervisory relief is sought, rather than assume that every failure by opposing counsel is a failure by the court. The proper analysis identifies each disputed document, its governing service requirement, the responsible actor, and the claimed departure from that requirement.

People v Flint Municipal Judge, 383 Mich 429, 431–432; 175 NW2d 750 (1970), requires performance of a clear legal duty while forbidding substitution of supervisory judgment for the lower tribunal’s discretion. It contemplates examination of the record. It does not establish that defendants’ characterization of the facts as uncertain dissolves an otherwise applicable legal obligation. An insufficient record can defeat relief; it cannot justify rewriting a mandatory rule as optional.

III. Inferred knowledge does not establish compliant service

The answer acknowledges uncertainty yet infers prior notice because Foley filed his complaint before his arrest. Answer, p 1. That sequence may show awareness of some asserted wrongdoing by June 23. It does not identify which orders he knew about, when he obtained them, or whether he had a meaningful opportunity to challenge their entry or enforcement. An attempt to obtain relief from defective service is not itself proof that service occurred.

The distinction works in both directions. MCR 2.107(C)(3) completes mail service at mailing; nonreceipt alone does not establish a violation. Equally, eventual knowledge does not prove compliant mailing to the address required by MCR 3.203. Proof of service and the governing exceptions, including authorized electronic service under MCR 2.107, must be examined. The answer’s inference supplies none of those missing particulars.

Defendants' position, taken to its logical endpoint, would make the mailing requirement optional in every case: a litigant who eventually learns an order exists, however belatedly and by whatever means, would be deemed to have received all the process the court rules require. A service rule that yields whenever a litigant later demonstrates awareness is not a service rule. It is

a standing invitation to mail nothing and see what the litigant discovers on his own, and if that is enough to satisfy MCR 3.203 and MCR 2.107, then service was never actually required at all.

Actual knowledge may bear on prejudice, the opportunity to respond, and the appropriate remedy. Amicus therefore does not contend that knowledge is irrelevant or that every service error requires vacatur. The constitutional inquiry concerns notice and opportunity to be heard in the circumstances. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314–315 (1950); US Const, Am XIV; Mich Const 1963, art 1, § 17. A generalized assertion of knowledge cannot resolve that inquiry without timing and content.

The same precision avoids an unnecessary jurisdictional overstatement. Service of the summons and complaint and service of later documents are separately addressed in MCR 3.203(A). Failure to serve a later order does not, merely by that fact, establish that previously acquired personal jurisdiction disappeared. MCR 2.612(C)(1)(d) supplies relief for a void judgment; it does not declare every unserved order void. This Court can address compliance and meaningful review without adopting automatic voidness or deciding the enforceability of every disputed order.

IV. The chronology and appointment of counsel do not resolve the challenge

Defendants are correct that a possible adverse ruling on September 16 cannot establish error in the Court of Appeals' August 14 decision. Answer, p 2. The August 17 arrest likewise postdates that decision and cannot retroactively supply proof absent from the record then before the Court of Appeals. Amicus seeks review of the legal treatment of the complaint already filed, not a forecast of a hearing's outcome.

But the answer's own chronology also prevents treating every asserted consequence as merely anticipated: it recounts an arrest and arraignment that had already occurred by the time of the answer. *Id.*, p 1. Those events do not prove illegality or preservation of an issue. They do show why the asserted service problem cannot fairly be reduced to fear of a future ruling. Review of the existing supervisory claim and review of later enforcement proceedings must be analyzed separately.

Appointment of counsel can matter to the adequacy of relief in the enforcement proceeding. It does not establish earlier service, restore an expired opportunity for review by itself, or show that counsel's appointment encompasses the separate supervisory action. *Id.*, pp 1, 4. If contempt for disobedience is implicated, MCR 2.107(B)(1)(b) specifically addresses delivery of the initiating notice or order, subject to a contrary court order. The applicable procedure and record must be identified before drawing conclusions about compliance.

Amicus does not ask this Court to find that Foley was incarcerated merely for objecting to defective service, or that a warrant necessarily required advance service. The answer does not establish either proposition. The supported challenge is narrower: defendants have not resolved the underlying service issue or the adequacy of its remedies simply by citing representation and a forthcoming hearing.

Conclusion and Relief Requested

This application presents an important boundary between ordinary error correction and supervision of court procedure. The public interest lies in ensuring that mandatory notice obligations and meaningful opportunities for review operate together. Review under MCR 7.305(B)(2) and (3) would clarify that boundary in a case against a court and judicial officers, without resolving collateral accusations or disputed service facts on an amicus submission.

Amicus respectfully requests that the Court grant leave to appeal. Alternatively, under MCR 7.305(I)(1), the Court should remand for consideration of whether the complaint and record establish a failure to perform a clear legal duty and whether the identified alternative remedies adequately address that failure, applying *Hague* and the procedural distinction recognized in *Rivergate Manor*. Any relief should remain confined to the issues properly presented in Foley's application.

Respectfully submitted,

/s/ Rita Williams
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Dated: September 11, 2026

Certificate of Compliance

This brief uses 12-point Times New Roman type, at least 1.5-line spacing in the body, and one-inch margins. Excluding the cover page, table of contents, index of authorities, signature blocks, and proof of service, and including the statement of interest, questions presented, statement of the case, summary of argument, argument, conclusion, and the disclosure footnote, this brief contains 3,141 words, within the limit incorporated by MCR 7.305(F), MCR 7.312(H) (3), and MCR 7.212(B).

/s/ Rita Williams

Proof of Service

On September 11, 2026, I served this Brief Amicus Curiae and the accompanying motion for leave to file on all parties or their counsel of record by MiFILE, the Michigan Supreme Court's electronic filing system, which serves registered users upon filing:

Allan C. Vander Laan, Douglas J. Curlew, and Kevin J. Campbell, Cummings, McClorey, Davis & Acho, P.L.C., counsel for Defendants-Appellees; and Mark Edward Tobias Foley, Plaintiff-Appellant, In Pro Per.

I declare that the statements in this proof of service are true to the best of my information, knowledge, and belief.

Dated: September 11, 2026

/s/ Rita Williams