

Court of Appeals Reaffirms Trial Courts' Discretion to Empanel a Jury Absent Attorney Compliance with MCR 2.508's Requirements

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The facts of *Nickgrace Inc v Gurgul*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket No. 376127), 2026 WL 2034951, decided July 14, 2026, are all too familiar. The Plaintiff filed a Complaint and within the Complaint demanded a jury trial. *Nickgrace*, slip op. 1. In response, the Defendants relied on Plaintiff's jury demand, demanding a jury trial even if Plaintiff were to withdraw its request. *Id.* The parties litigated the case over several years, proceeding as though the matter were poised to be tried before a jury. *Id.* After two years of litigation, Plaintiff realized it had failed to pay the jury fee required by MCR 2.508 and motioned the court to proceed to trial without a jury. The defense opposed Plaintiff's motion and paid the jury demand fee. *Id.*, slip op. 2. The trial court—Washtenaw County Circuit Court—granted Plaintiff's motion finding that it “lacked discretion to empanel a jury.” *Id.* Defendants appealed arguing the trial court erred in allowing the case to proceed without a jury trial. *Id.*

On appeal, the defense made three arguments, each of which the Court of Appeals disagreed with. First, was that the trial court's decision improperly allowed Plaintiff to unilaterally withdraw its jury demand. *Nickgrace*, slip op. 2. But the panel stated “[i]t is ... axiomatic that, in order for a party to withdraw a demand for a jury trial, *it must have first made a demand* for a jury.” *Id.* In this case, Plaintiff's demand only satisfied one requirement of MCR 2.508—that the request be in writing—but failed to satisfy the second and third requirements that it be made in a separate document and paying the fee. *Id.*, slip op. 3. The panel determined that “because plaintiff never made an appropriate demand for a jury trial [...] there is no demand that plaintiff could attempt to unilaterally withdraw[.]” *Id.*

The Defendants next argued that their reliance on Plaintiff's jury demand adequately preserved this right. *Id.* But, because Plaintiff's demand failed to meet MCR 2.508's requirements, the Court of Appeals found that “there was no demand that defendants could rely upon to preserve their right to a jury trial.” *Id.*

SECRET WARDLE NOTES

A jury demand is one of the most important aspects of litigation. Indeed, it is a fundamental aspect of our judicial system. Yet, in civil litigation, litigants too often fail to satisfy the requirements of MCR 2.508 when requesting a jury trial. Three simple things must be done to properly demand a jury trial: (1) file the demand in writing within 28 days of the answer, (2) file the demand as a separate document, and (3) pay the jury fee. MCR 2.508(B). A recent published decision from the Court of Appeals *Nickgrace v Gurgul* shows that when these requirements are not followed, the trial court still retains discretion to empanel a jury. But that discretion is subject to considerations such as the ease of which the defect can be discovered, whether simply inquiry with the clerk would have uncovered the defect, which party the defects were most apparent to, and party culpability. *Id.*, slip op. 5. Although the Court saved the litigant's desire for a jury trial for determination on remand, this decision is as a stark reminder to comply with MCR 2.508's requirements, and to make an early inquiry with the court clerk to confirm the jury fee has been paid. If the fee has not been paid, pay it before it's too late.

The defense finally argued that their own jury demand filing otherwise preserved their right to a jury trial. But the Court of Appeals determined that Defendants' demand failed to satisfy all three requirements of MCR 2.508, due to their failure to pay the jury fee at the time of this filing, and that Defendants waived their right to a jury trial. *Id.*

The Court of Appeals' opinion largely focused on whether the trial court still had discretion to empanel a jury despite the parties' lack of strict compliance with MCR 2.508. *Id.*, slip op. 3-5. The panel recognized that "[i]t is well-established that a trial court has discretion to empanel a jury even in cases where the parties did not demand it" consistent with MCR 2.508's requirements. *Id.*, slip op. 4 (citing *Basmajian v City of Detroit*, 256 Mich 539, 541 (1932), *Bachor v City of Detroit*, 49 Mich App 507, 512 (1973), *Jamison v Lloyd*, 51 Mich App 570, 573-74 (1974), and *Yon v All American Transport Co, Inc*, 104 Mich App 97, 98-99 (1981)). The focus here fell on *Yon*, where the trial court relied on that decision to support its ruling that it lacked discretion to empanel a jury. *Nickgrace*, slip op. 4. Thus, the Court of Appeals addressed whether the ruling in *Yon* "strips a trial court of its inherent discretion to empanel a jury[.]" *Id.*

The facts in *Yon*, however, were slightly different. There, the defendant demanded a jury trial but failed to pay the jury fee. *Id.* This defect was discovered one hour before trial, so the plaintiff offered to pay the fee. The trial court rejected the offer and allowed the defendant to pay the fee, which it didn't because it no longer wanted a jury trial. *Id.* But in *Yon*, the plaintiff had—at some point—inquired with the court clerk if the jury fee was paid. The Court of Appeals held that "the nondemanding party *has an obligation* to check with the clerk of the court to ascertain if the jury fee has been paid." *Yon*, 104 Mich App at 101. The Court of Appeals in *Nickgrace* found that such pronouncement lacked legal support and clarified that "the fact that an inquiry is or is not made is a *circumstance* that may be considered by the [trial] court when it is weighing whether to exercise its discretion to empanel a jury" when the parties have not complied with MCR 2.508. *Nickgrace*, slip op. 4-5. To that extent, *Nickgrace* overruled *Yon* and the requirement that a litigant must check with the clerk to confirm payment of the jury fee, now making that *part* of the court's consideration on whether the exercise discretion to empanel a jury. But this is still an important part of a court's decision to empanel a jury.

The Court of Appeals in *Nickgrace* then distilled considerations for trial courts to consider when deciding whether to utilize its discretion in empaneling a jury in the absence of party compliance with MCR 2.508. Among these considerations are: the ease by which the defects in a party's jury demand can be discovered; whether the party could have contacted the court clerk determine if the jury fee has been paid; whether the defects are more apparent to one party or the other; whether the party has complied with MCR 2.508(B) by making its demand in a separate document, amongst other unlisted factors. *Nickgrace*, slip op. 5. Although the decision in *Nickgrace* illustrates the trial court's discretion to empanel a jury where the parties have failed to comply with MCR 2.508's requirements, it underscores the importance of making sure a jury demand complies with court rules, that the fee is paid, and that any party relying on another's jury demand quickly check with the court clerk to confirm payment of the fee. Curing these defects sooner rather than later appears to suggest that a trial court would be more inclined to exercise its discretion by empaneling a jury despite a lack of strict compliance with MCR 2.508.

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