

Proposed Amendment of Rule 2.506 of the Michigan Court Rules

To read ADM File No. 2014-40, dated April 29, 2015, visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Administrative Order No. 2015-2 Adoption of Concurrent Jurisdiction Plan for the 52nd Circuit Court, the 73B District Court, and the Huron County Probate Court (Dated April 29, 2015)

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of the following concurrent jurisdiction plan effective immediately:

- The 52nd Circuit Court, the 73B District Court, and the Huron County Probate Court.

The plan shall remain on file with the state court administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

Administrative Order No. 2015-3

On order of the Court, dated April 29, 2015, the following administrative order is entered, and is effective immediately.

Administrative Order No. 2015-3

Establishment of Michigan Trial Court Standards and Guidelines for Websites and Social Media

In order to guide trial courts that are considering the use of trial court websites and social media sites to improve their service to the public, other agencies, and the judiciary, and to meet the public’s growing expectation that courts communicate directly with the public, while preserving fairness and judicial impartiality, it is ORDERED that the State Court Administrator establish Michigan Trial Court Standards and Guidelines for Websites and Social Media and that trial courts conform to the standards. The State Court Administrative Office shall enforce the standards and assist courts in adopting practices to conform to those standards.

Proposed Adoption of Rule 3.617 of the Michigan Court Rules

On order of the Court, dated April 29, 2015, this is to advise that the Court is considering adoption of Rule 3.617 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.

[The proposed language below is a new rule.]

Rule 3.617 Delayed Registration of Foreign Birth

The entire record for delayed registration of foreign birth pursuant to MCL 333.2830 is confidential.

STAFF COMMENT: This new rule, MCR 3.617, would require adoption files of foreign-born children who are adopted by a parent who is a resident of this state to be retained as confidential records (as are the adoption records that are governed by MCL 710.67 and MCL 710.68).

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this 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 Office of Administrative Counsel in writing or electronically by August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-31. 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.

Proposed Amendment of Rule 5.402 of the Michigan Court Rules

On order of the Court, dated April 29, 2015, this is to advise that the Court is considering an amendment of Rule 5.402 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.

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

Rule 5.402 Common Provisions

(A)–(D) [Unchanged.]

(E) Indian Child; Definitions, Jurisdiction, Notice, Transfer, Intervention.

- (1)–(4) [Unchanged.]
- (5) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall do all of the following:
- (a) schedule a hearing to be conducted in accordance with MCR 5.404(C) and MCR 5.404(F).
- (b) enter an order for an investigation in accordance with MCR 5.404(A)(2). The order shall be on a form approved by the State Court Administrative Office and shall require the guardian to cooperate in the investigation. The court shall mail a copy of the order to the persons prescribed in MCR 5.125(A)(8), (C)(19), and (C)(25) by first-class mail.
- (c) provide notice of the guardianship and the hearing scheduled in subrule (5)(a) and the potential applicability of the Indian Child Welfare Act and the Michigan Indian Family Preservation Act on a form approved by the State Court Administrative Office to the persons prescribed in MCR 5.125(A)(8), (C)(19), and (C)(25) in accordance with MCR 5.109(1). A copy of the notice shall be mailed to the guardian by first-class mail.

STAFF COMMENT: The proposed amendments of MCR 5.402(E)(5)(a) would require a court that discovers a child of an ordered guardianship may be an Indian child to schedule a hearing in accordance with MCR 5.404(C) and MCR 5.404(F); also the amendment of MCR 5.402(E)(5)(b) would require the court to enter an order for investigation in accordance with MCR 5.404(A)(2), and the amendment of MCR 5.402(E)(5)(c) would require notice of the hearing scheduled in subrule (5)(a) to be provided to the persons prescribed.

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 Office of Administrative Counsel in writing or electronically by August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-02. 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.

Proposed Amendments of Rule 6.106 of the Michigan Court Rules

On order of the Court, dated April 8, 2015, this is to advise that the Court is considering amendments of Rule 6.106 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 6.106 Pretrial Release

- (A) [Unchanged.]
- (B) Pretrial Release/Custody Order Under Const 1963, art 1, § 15.
- (1)–(4) [Unchanged.]
- (5) The court may, in its custody order, limit or prohibit defendant's contact with any other named person or persons if the court determines the limitation or prohibition is necessary to maintain the integrity of the judicial proceedings. If an order under this paragraph is in conflict with another court order, the most restrictive provisions of the orders shall take precedence until the conflict is resolved.
- (6) Nothing in this rule limits the ability of a jail to impose restrictions on detainee contact as an appropriate means of furthering penological goals.
- (C) [Unchanged.]
- (D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate including
- (1) [Unchanged.]
- (2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to
- (a)–(l) [Unchanged.]
- (m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order the orders shall take precedence over the other court order until the conflict is resolved. The court may make this condition effective immediately on entry of a pretrial release order of defendant and while defendant remains in custody if the court determines it necessary to maintain the integrity of the judicial proceedings.
- (n)–(o) [Unchanged.]
- (E)–(I) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 6.106(B) and (D) would provide clarification that courts are permitted to exercise their inherent power to order conditions that limit or prohibit a pretrial defendant's contact with any named person to be effective immediately, even while defendant remains in custody. These conditions are allowed in a custody order when the protective

limitation or prohibition is necessary to maintain the integrity of the judicial proceedings.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this 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 Office of Administrative Counsel in writing or electronically by August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-15. 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.

McCORMACK, J. (*concurring*). I write to encourage comment on a number of questions raised by this proposed amendment.

- (1) Is this amendment necessary, or do judicial officers already possess the inherent authority to impose conditions on pretrial detainees?
- (2) Does a court rule providing courts explicit authorization to limit a pretrial detainee's contact with others then require us to similarly specifically authorize other conditions that courts commonly impose on pretrial detainees (for example, that a pretrial detainee may not be considered for eligibility in a jail's work-release program, may be permitted to receive medical treatment off the jail premises, may be permitted to go to a funeral home or attend a funeral, or be required to attend substance abuse therapy meetings while in custody)?
- (3) Will a rule explicitly authorizing courts to impose a specific list of conditions on pretrial detainees inadvertently dissuade judicial officers from ordering conditions that are not identified in the rule but might be merited given the unique facts of a particular situation?
- (4) Is it a reasonable assumption that at the time of arraignment, when a judicial officer is considering what conditions to impose, the judicial officer will know whether a defendant will immediately post any bond, will be released on bond at a future date, or will remain in custody for the duration of the trial processes? If not, does this practical hurdle matter?

I encourage public comment on these and any other considerations raised by the proposed amendment.

Proposed Amendments of Rule 7.209 of the Michigan Court Rules

On order of the Court, dated April 29, 2015, this is to advise that the Court is considering alternative proposed amendments of Rule 7.209 of the Michigan Court Rules. Before determining whether either of the alternative proposals 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.]

Alternative A: Would Require a Court to Enter an Order Staying Enforcement on Appeal

Rule 7.209 Bond; Stay of Proceedings

(A)–(G) [Unchanged.]

(H) Stay of Execution.

- (1) If a court enters an order staying the effect or enforcement of a judgment or order during appeal and the stay order requires a bond to be filed with the court under subsection (E)(1), and if the bond is filed before execution issues, and notice is given to the officer having authority to issue execution, execution is stayed. If the bond is filed after the issuance but before execution, and notice is given to the officer holding it, execution is suspended.

(2)–(4) [Unchanged.]

(I) [Unchanged.]

Alternative B: Would Amend the Rule to Allow a Party to Stay Proceedings Merely by Filing a Bond and Would Provide an Opportunity for Objection by the Opposing Party

Rule 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

- (1) Except for an automatic stay pursuant to MCR 2.614, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2)–(3) [Unchanged.]

(B) Responsibility for Setting Amount of Bond in Trial Court.

- (1) Civil Actions. Unless determined by law, or except as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action must be set by the trial court in an amount adequate to protect the opposite party.

(2) [Unchanged.]

(C)–(D) [Unchanged.]

(E) Stay of Proceedings by Trial Court.

- (1) ~~Except as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires.~~ Unless otherwise provided by rule, statute, or court order, an execution may not issue and proceedings may not be taken to enforce an order or judgment until expiration of the time for taking an appeal of right.

(2) An appeal does not stay execution unless:

(a) ~~When the stay is sought before an appeal is filed and a bond is required, the party seeking the stay shall file a bond, with the party in whose favor the judgment or order was entered as the obligee, by which the party promises to~~

- (i) perform and satisfy the judgment or order stayed if it is not set aside or reversed; and
- (ii) prosecute to completion any appeal subsequently taken from the judgment or order stayed and perform and satisfy the judgment or order entered by the Court of Appeals or Supreme Court, or

(b) ~~If a stay is sought after an appeal is filed, any bond must meet the requirements set forth in subrule 7.209(F). The trial court grants a stay with or without bond as justice requires.~~

(c) When the bond in subsection (E)(2)(a) is filed, the judgment or order shall automatically be stayed pending entry of a final order under subsection (G).

(2)–(4) [Renumbered as (3)–(5), but otherwise unchanged.]

(F) Conditions of Appeal Stay Bond.

(1)–(2) [Unchanged.]

(G) Sureties and Filing of Bond; Notice of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court ~~which that~~ entered the order or judgment to be stayed.

(1) Civil Actions. ~~A bond in a civil action need not be approved by a court or clerk before filing but is subject to the objection procedure provided in MCR 3.604.~~

(a) A copy of a bond and any accompanying power of attorney or affidavit must be promptly served on all parties in the manner prescribed in MCR 2.107. At the same time, the party seeking the stay shall file a proposed stay order pursuant to MCR 2.602(B)(3). Proof of service must be filed promptly with the trial court in which the bond has been filed.

(b) Objections shall be filed and served within 7 days after service of the notice of bond. Objections to the amount of the bond are governed by MCR 2.602(B)(3). Objections to the surety are governed by MCR 3.604(E).

(c) If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter the order staying enforcement of the judgment or order pending all appeals. Unless otherwise ordered, the stay shall continue until jurisdiction is again vested in the trial court or until further order of an appellate court.

(d) Any stay order must be promptly served on all parties in the manner prescribed in MCR 2.107. Proof of service must be filed promptly with the trial court.

(e) All hearings under this rule may be held by telephone conference as provided in MCR 2.402.

(f) For good cause shown, the trial court may set the amount of the bond in a greater or lesser amount adequate to protect the interests of the parties.

(g) A bond may be secured under MCL 600.2631.

(2) [Unchanged.]

(H)–(I) [Unchanged.]

STAFF COMMENT: These alternative proposed amendments relate to stay bonds. MCR 7.209 is ambiguous whether filing a stay bond automatically stays enforcement proceedings, or whether a stay of proceedings is wholly within the discretion of the trial court and Court of Appeals. In this administrative file, the Court is publishing for comment two alternative proposals. Alternative A would clarify the rule so that it is clear that only a trial court judge or the Court of Appeals may order a stay of proceedings. Alternative B, modeled loosely on the recent revisions of the circuit court appeals rule (specifically MCR 7.108), would amend the rule to establish the principle that, like appeals to circuit court, filing a bond automatically stays further proceedings in a case, including enforcement of a judgment or order.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this 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 Office of Administrative Counsel in writing or electronically by August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-26. 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.

Appointment of Chief Judge of the 16th Circuit Court, the 42nd District Court, and Macomb County Probate Court

On order of the Court, dated May 7, 2015, effective immediately, the Honorable James M. Biernat Jr. is appointed chief judge of the 16th Circuit, the 42nd District, and Macomb County Probate Courts for a term ending December 31, 2015.

Assignment of Judges to the Court of Claims and Reappointment of Chief Judge (Dated April 22, 2015)

On order of the Court, effective May 1, 2015, the following Court of Appeals judges are assigned to sit as judges of the Court of Claims for terms expiring May 1, 2017:

Hon. Michael J. Talbot (Court of Appeals District 1, reappointed)

Hon. Cynthia D. Stephens (Court of Appeals District 1) (assigned all cases currently assigned to Hon. Deborah A. Servitto)

Hon. Mark T. Boonstra (Court of Appeals District 3) (assigned all cases currently assigned to Hon. Amy Ronayne Krause)

Hon. Stephen L. Borrello (Court of Appeals District 4) (assigned all cases currently assigned to Hon. Pat M. Donofrio)

Upon further order of the Court, the Honorable Michael J. Talbot is reappointed as chief judge of the Court of Claims for a term ending May 1, 2017.