

Administrative Order No. 2015-4
Authorization of Pilot Program to be Implemented
in the 36th, 46th, and 47th District Courts

Amendments of Rules 3.963, 3.966, and 3.974
of the Michigan Court Rules

Amendments of Subchapter 7.300
of the Michigan Court Rules

To read ADM File No. 2014-10, dated May 27, 2015; ADM File No. 2014-37, dated May 27, 2015; and ADM File No. 2013-36, dated May 27, 2015; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Proposed Amendment of Rule 3.101
of the Michigan Court Rules

On order of the Court, dated May 27, 2015, this is to advise that the Court is considering an amendment of Rule 3.101 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 3.101 Garnishment After Judgment

(A) [Unchanged.]

(B) Postjudgment Garnishments.

(1) Periodic garnishments are garnishments of periodic payments, as provided in this rule.

(a) Unless otherwise ordered by the court, a writ of periodic garnishment served on a garnishee who is obligated to make periodic payments to the defendant is effective until the first to occur of the following events:

- (i) the amount withheld pursuant to the writ equals the amount of the unpaid judgment, interest, and costs stated in the verified statement in support of the writ; or
- (ii) ~~the expiration of 182 days after the date the writ was issued;~~

(iii) the plaintiff files and serves on the defendant and the garnishee a notice that the amount withheld exceeds the remaining unpaid judgment, interest, and costs, or that the judgment has otherwise been satisfied.

(b) The plaintiff may not obtain the issuance of a second writ of garnishment on a garnishee who is obligated to make periodic payments to the defendant while a prior writ served on that garnishee remains in effect relating to the same judgment. ~~The plaintiff may seek a second writ after the first writ expires under subrule (B)(1)(a).~~

(c) [Unchanged.]

(2) [Unchanged.]

(C)–(D) [Unchanged.]

(E) Writ of Garnishment.

(1)–(4) [Unchanged.]

(5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant or as otherwise provided under MCL 600.4012,

(a) without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff’s judgment, and

(b) periodic payments due to the defendant may be withheld until the expiration of the writ judgment is satisfied and in the discretion of the court paid directly to the plaintiff.

(6) [Unchanged.]

(F)–(T) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 3.101 would eliminate subrule (B)(1)(a)(ii) and make other coordinating changes to reflect statutory revisions in 2015 PA 14 and 15.

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 September 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. 2015-07. 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.

Retention of the Amendments of Rules 6.006, 6.104, 6.110, and 6.111 of the Michigan Court Rules and Retention of Adopted New Rule 6.108 of the Michigan Court Rules; Adoption of Revisions of Rules 6.108 and 6.110 of the Michigan Court Rules (Dated May 27, 2015)

By order dated December 22, 2014, the Court adopted an order amending Rules 6.006, 6.104, 6.110, and 6.111 of the Michigan Court

Rules and adopted new Rule 6.108 of the Michigan Court Rules, effective January 1, 2015. Notice and an opportunity for public comment having been provided, the amendments of these rules and new Rule 6.108 are retained.

On further order of the Court, effective immediately, the Court adopted additional amendments of Rules 6.108 and Rule 6.110 of the Michigan Court Rules.

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

Rule 6.108 The Probable Cause Conference

- (A) [Unchanged.]
- (B) A district court magistrate may conduct probable cause conferences when authorized to do so by the chief district judge and may conduct all matters allowed at the probable cause conference, except taking ~~felony~~ pleas and ~~felony~~ ~~sentencings~~ imposing sentences unless permitted by statute to take pleas or impose sentences.
- (C) [Unchanged.]
- (D) The district court judge must be available during the probable cause conference to take ~~felony~~ pleas, ~~and~~ consider requests for modification of bond, and if requested by the prosecutor, take the testimony of a victim.
- (E) [Unchanged.]

Rule 6.110 The Preliminary Examination

- (A) Right to Preliminary Examination. Where a preliminary examination is permitted by law, the people and the defendant are entitled to a prompt preliminary examination. ~~If the court permits the defendant to waive the preliminary examination, it must bind the defendant over for trial on the charge set forth in the complaint or any amended complaint.~~ The defendant may waive the preliminary examination with the consent of the prosecuting attorney. Upon waiver of the preliminary examination, the court must bind the defendant over for trial on the charge set forth in the complaint or any amended complaint. The preliminary examination for codefendants shall be consolidated and only one joint preliminary examination shall be held unless the prosecuting attorney consents to the severance, a defendant seeks severance by motion and it is granted, or one of the defendants is unavailable and does not appear at the hearing.
- (B) Time of Examination; Remedy.
- (1) [Unchanged.]
- (2) Upon the request of the prosecuting attorney, the preliminary examination shall commence immediately at the date and time set for the probable cause conference for the sole purpose of taking and preserving the testimony of the victim, if the victim is present, as long as the defendant is either present in the courtroom or has waived the right to be present. If victim testimony is taken as provided under this rule,

the preliminary examination ~~may proceed~~ will be continued at the date originally set for that event.

- (C) Conduct of Examination. A verbatim record must be made of the preliminary examination. Each party may subpoena witnesses, offer proofs, and examine and cross-examine witnesses at the preliminary examination. The court must conduct the examination in accordance with the Michigan Rules of Evidence.
- (D)–(I) [Unchanged.]

STAFF COMMENT: The Court retained the amendments that became effective January 1, 2015, and adopted additional amendments of MCR 6.108 and MCR 6.110 to provide further clarification as suggested in comment letters received by the Court.

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.

Amendment of Rule 7.211 of the Michigan Court Rules

On order of the Court, dated May 27, 2015, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.211 of the Michigan Court Rules is adopted, effective September 1, 2015.

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

Rule 7.211 Motions in Court of Appeals

- (A)–(B) [Unchanged.]
- (C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.
- (1) Motion to Remand.
- (a)–(b) [Unchanged.]
- (c) In a case tried without a jury, the appellant need not file a motion for remand or a motion for a new trial to challenge the great weight of the evidence in order to preserve the issue for appeal.
- (d) [Unchanged.]
- (2)–(9) [Unchanged.]
- (D)–(E) [Unchanged.]

STAFF COMMENT: The amendment of MCR 7.211(C)(1)(c) clarifies that an appellant, in a case tried without a jury, is not required to file a motion for remand or a motion for a new trial to challenge the great weight of the evidence to preserve the issue for appeal.

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.