

Amendments of Rule 2.403 of the Michigan Court Rules

On order of the Court, dated September 23, 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 amendments of MCR 2.403 are adopted, effective January 1, 2016.

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

Rule 2.403 Case Evaluation

(A)–(N) [Unchanged.]

(O) Rejecting Party's Liability for Costs.

(1)–(5) [Unchanged.]

(6) For purposes of this rule, actual costs are

- (a) those costs taxable in any civil action, and
- (b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation, which may include legal services provided by attorneys representing themselves or the entity for whom they work, including the time and labor of any legal assistant as defined by MCR 2.626.

For the purpose of determining taxable costs under this subrule and under MCR 2.625, the party entitled to recover actual costs under this rule shall be considered the prevailing party.

(7)–(11) [Unchanged.]

STAFF COMMENT: The amendments of MCR 2.403(O) allow a reasonable attorney fee to be included in a request for costs by attorneys who represent themselves or who are employed by a party to the case for services provided after case evaluation is rejected.

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 2.506 of the Michigan Court Rules

On order of the Court, dated September 23, 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 MCR 2.506 is adopted, effective January 1, 2016.

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

Rule 2.506 Subpoena; Order to Attend

(A)–(F) [Unchanged.]

(G) Service of Subpoena and Order to Attend; Fees.

(1)–(2) [Unchanged.]

(3) A subpoena or order to attend directed to the Michigan Department of Corrections, Michigan Department of Health and Human Services, Michigan State Police Forensic Laboratory, other accredited forensic laboratory, law enforce-

ment, or other governmental agency may be served by electronic transmission, including by facsimile or over a computer network, provided there is a memorandum of understanding between the parties indicating the contact person, the method of transmission, and the e-mail or facsimile number where the subpoena or order to attend should be sent. A confirmation correspondence must be received from the recipient within 2 business days after email or facsimile service is complete, and the confirmation correspondence shall be filed with the court. If no confirmation correspondence is provided within 2 business days after email or facsimile transmission, the subpoena must be served in the manner provided in subrule (G)(1).

(4) [Former subrule “(3)” renumbered as “(4),” but otherwise unchanged.]

(H)–(I) [Unchanged.]

STAFF COMMENT: The amendment of MCR 2.506(G)(3) allows electronic or facsimile transmission of subpoenas to attend when the subpoenas are directed to specific identified departments or agencies and when there is a memorandum of understanding between the parties as described by the amendment; the revision also would require a confirmation to be received within two business days after email or facsimile transmission of the subpoena. If no confirmation is provided, the subpoena must be served in the traditional manner.

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.

Amendments of Rule 3.101 of the Michigan Court Rules

On order of the Court, dated September 23, 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 amendments of MCR 3.101 are adopted, effective October 1, 2015.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

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)–(M) [Unchanged.]
- (N) Orders for Installment Payments
 - (1) [Unchanged.]
 - (2) If an order terminating the installment payment order is entered and served on the garnishee, the writ again becomes effective and retains its priority and remains in force ~~until it would have expired as if the installment payment order had never been entered.~~
- (O)–(R) [Unchanged.]
- (S) Failure to Disclose or to Do Other Acts; Default; Contempt.
 - (1) For garnishments filed under MCR 3.101(B)(2) (nonperiodic):
 - ~~(1)(a)~~ (a) If the garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee may not exceed the amount of the garnishee's liability as provided in subrule (G)(2).
 - (2)(b) If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court.
 - (2) For garnishments filed under MCR 3.101(B)(1) (periodic): MCL 600.4012(6)–(10) governs default, default judgments, and motions to set aside default judgments for periodic garnishments.
 - (3) ~~In addition to other actions permitted by law or these rules,~~ The court may impose costs on a garnishee whose default or contempt results in expense to other parties.

Costs imposed shall include reasonable attorney fees and shall not be less than \$100.

- (4) This rule shall not apply to nonperiodic garnishments filed for an income tax refund or credit.

(T) [Unchanged.]

STAFF COMMENT: The amendments of MCR 3.101 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.

Amendment of Rule 3.613 of the Michigan Court Rules

On order of the Court, dated September 23, 2015, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of MCR 3.613 is adopted, effective January 1, 2016.

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

Rule 3.613 Change of Name

(A) [Unchanged.]

(B) Minor's Signature. A petition for a change of name by a minor need not be signed in the presence of a judge. However, the separate written consent that must be signed by a minor 14 years of age or older shall be signed in the presence of the judge.

(C)–(E) [Unchanged.]

STAFF COMMENT: The amendments of MCR 3.613 provide clarification that distinguish a written consent from a petition for a name change, and reflect the statutory requirement that the written consent be signed by the minor in the presence of the judge.

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 the Court.

Adoption of Rule 3.617 of the Michigan Court Rules

On order of the Court, dated September 23, 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 new MCR 3.617 is adopted, effective immediately.

[The following rule is new.]

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, requires 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

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(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.

Amendments of Rule 5.402 of the Michigan Court Rules

On order of the Court, dated September 23, 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 revisions of MCR 5.402 are adopted, effective immediately.

[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 amendment of MCR 5.402(E)(5)(a) requires 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), the amendment of MCR 5.402(E)(5)(b) requires 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) requires 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. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

Amendment of Rule 6.106 of the Michigan Court Rules

On order of the Court, dated September 23, 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 MCR 6.106 is adopted, effective January 1, 2016.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 6.106 Pretrial Release.

(A) In General. At the defendant's ~~first appearance before a court~~ arraignment on the complaint and/or warrant, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be

(1) held in custody as provided in subrule (B);

(2) released on personal recognizance or an unsecured appearance bond; or

(3) released conditionally, with or without money bail (ten percent, cash or surety).

(B)–(I) [Unchanged.]

STAFF COMMENT: The amendment of MCR 6.106 clarifies that a court would determine issues concerning defendant's pretrial release, if any, at the time of defendant's arraignment on the complaint and/or warrant.

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.

Amendments of Rule 6.106 of the Michigan Court Rules

On order of the Court, dated September 23, 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 amendments of MCR 6.106 are adopted, effective January 1, 2016.

[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, place conditions on the defendant, including but not limited to restricting or prohibiting defendant's contact with any other named person or persons, if the court determines the conditions are reasonably necessary to maintain the integrity of the judicial proceedings or are reasonably necessary for the protection of one or more named persons. 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 and while defendant remains in custody if the court determines it is reasonably necessary to maintain the integrity of the judicial proceedings or it is reasonably necessary for the protection of one or more named persons.

(n)–(o) [Unchanged.]

(E)–(I) [Unchanged.]

STAFF COMMENT: The amendments of MCR 6.106(B) and (D) clarify that courts are permitted to exercise their inherent power to order conditions, including but not limited to those conditions that restrict 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 restriction or prohibition is reasonably necessary to maintain the integrity of the judicial proceedings or is reasonably necessary for the protection of one or more named persons.

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.

Retention of Amendments of Rules 3.903, 3.920, 3.961, and 3.965 and Additional Amendment of Rule 3.961 of the Michigan Court Rules (Dated September 23, 2015)

By order dated March 25, 2015, the Court adopted an order amending MCR 3.903, 3.920, 3.961, and 3.965, effective March 25,

2015. Notice and an opportunity for public comment having been provided, the amendments of these rules are retained.

On further order of the Court, effective immediately, the Court adopts an additional amendment of MCR 3.961(C)(3), as indicated in underlining below.

Rule 3.961 Initiating Child Protective Proceedings

(A)–(B) [Unchanged.]

(C) Amended and Supplemental Petitions.

(1)–(2) [Unchanged.]

(3) If either an amended or supplemental petition is not accompanied by a request for placement of the child or the child is not in protective or temporary custody, the court shall conduct a preliminary inquiry to determine the appropriate action to be taken on a petition. If either the amended or supplemental petition contains a request for removal, the court shall conduct a preliminary hearing to determine the appropriate action to be taken on the petition consistent with MCR 3.965(B). If either the amended or supplemental petition is authorized, the court shall proceed against each respondent parent in accordance with MCR 3.971 or MCR 3.972.

STAFF COMMENT: The Court retained the amendments of MCR 3.903, 3.920, 3.961, and 3.965 that became effective on March 25, 2015, and were prompted by the Michigan Supreme Court's decision in *In re Sanders*, 495 Mich 394 (2014), to provide clarification and procedural provisions with regard to a nonrespondent parent and adjudication that is consistent with the Court's holding. The Court further amended MCR 3.961(C)(3), effective immediately, to require the court to proceed against each respondent parent in accordance with MCR 3.971 or MCR 3.972 if *either* the amended *or* supplemental petition is authorized.

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.

Retention of the Amendment of Rule 1.15 of the Michigan Rules of Professional Conduct (Dated September 23, 2015)

By order dated February 4, 2015, the Court adopted an amendment of MRPC 1.15, effective immediately, but pending a public comment period and a public hearing. Notice and an opportunity for comment at a public hearing having been provided, the amendment of MRPC 1.15 is retained.