Proposed Amendments of Rules 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901 of the Michigan Court Rules

Amendments of Rules 2.403, 2.614, 3.002, 3.101, 3.210, 3.913, 3.920, 3.965, 3.972, 5.404, 6.610, 7.118, 7.205, 8.126, 9.118, and 9.224 of the Michigan Court Rules and Amendment of Canon 3 of the Code of Judicial Conduct

To read ADM File No. 2013-18, dated March 23, 2016; and ADM File No. 2014-20, dated March 9, 2016; visit **http://courts.michigan.gov/courts/michigansupremecourt** and click "Administrative Matters & Court Rules" and "Proposed & Recently Adopted Orders on Admin Matters."

Proposed Administrative Order No. 2016-XX Proposed Rescission of Administrative Order No. 1996-11 and Proposed Adoption of Administrative Order No. 2016-XX

On order of the Court, dated March 23, 2016, this is to advise that the Court is considering the rescission of Administrative Order No. 1996-11 and the adoption of Administrative Order No. 2016-XX. 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.

Administrative Order No. 2016-XX
Antinepotism Order

1. Policy. All courts in Michigan are committed to make all business decisions—including decisions regarding employment, contracting with vendors, and selecting interns—on the basis of qualifications and merit, and to avoid circumstances in which the appearance or possibility of favoritism or conflicts of interest exist. Based on this policy, the following situations are prohibited:
   a) A superior-subordinate relationship existing at or developing after the time of employment between any related employees; and
   b) A related chief judge and a court administrator in the same court, regardless of whether the chief judge was elected, appointed, or named chief, and regardless of whether there is a superior-subordinate relationship.

Alternative Additional Provision [would include the language in "c)"—along with paragraphs "a)" and "b)" above]

   c) A relative of a judge or justice employed within the same court.

[**Note**: The Court is considering whether an antinepotism policy should prohibit the employment of relatives in a subordinate/superior relationship and prohibit a chief judge and court administrator from being related as reflected in paragraphs "a)" and "b)"; in addition, the Court is considering—whether such a policy should also prohibit any relative of a judge or justice from being employed in the same court, as reflected in proposed paragraph "c)".]

   All other relatives of court personnel who meet established requirements for job vacancies, court contract, or internship opportunities based on their qualifications and performance are eligible for judiciary employment, contracts, or internships in the same court. But advocacy of one relative on behalf of the other is prohibited in all circumstances.

2. Definitions. For purposes of this order, the following definitions apply:
   a) "Relative" includes spouse, child, parent, brother, sister, grandparent, grandchild, first cousin, uncle, aunt, niece, nephew, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, and father-in-law, whether natural, adopted, step or foster. The term also includes same-sex or different-sex individuals who have a relationship of a romantic, intimate, committed, or dating nature, which relationship arises after the effective date of this policy. The definition of relative does not include two related judges who are elected to or appointed to serve in the same court.
   b) "Court Administrator" includes the highest level of administrator, clerk or director of the court who functions under the general direction of the chief justice or chief judge, such as state court administrator, circuit court administrator, friend of the court, probate court administrator, juvenile court administrator, probate register and district court administrator/clerk.
   c) A "superior-subordinate relationship" is one in which one employee is the direct supervisor of the other employee.
3. Application. This policy applies to all applicants for employment, as well as all full-time and part-time employees, temporary employees, contractual employees, including independent contractors, interns, vendors, and personal service contracts. For purposes of this provision, an intern is a student or trainee who works for the court, with or without pay, to gain work experience. Further, a vendor is an individual or someone appearing on behalf of a corporation or other entity that offers to provide or provides goods or services to the court.
4. Affected Employees. No person shall be transferred, promoted, or rehired following separation in a position that would create a nepotic relationship in violation of this policy.
5. Collective Bargaining Agreements. After the effective date of this order, chief judges and court administrators are prohibited from

entering into collective bargaining agreements inconsistent with this policy.

6. Conflicts. The chief judge of a court shall resolve any employment situations that conflict with or would conflict with this policy, unless the conflict involves a relative of the chief judge. In such a situation, the State Court Administrator shall resolve the issue.
7. Chief Judge Appointments. Nothing in this policy prohibits the Supreme Court from selecting any judge as a chief judge of a court. If such selection occurs, and such selection creates a nepotic relationship, the putative chief judge shall provide to the Court, and the Court shall approve, an alternative means by which the relative of the chief judge shall be supervised.
8. Grandfather Clause. This policy shall not apply to any person who is an employee of a court on [insert effective date of order]. However, from the effective date of this order, no person may be transferred, promoted, or enter into a nepotic relationship in violation of this policy.

STAFF COMMENT: The proposed new administrative order would provide a clearer and simplified version of the antinepotism policy to be used by courts in Michigan.

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 July 1, 2016, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-03. 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.

Amendment of Administrative Order No. 2011-1 Revision of Administrative Order No. 2011-1 Expands E-Filing in the 3rd Circuit Court (Wayne County)

On order of the Court, dated March 23, 2016, Administrative Order No. 2011-1 is amended as follows, effective immediately.

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

E-filing Project in the 3rd Circuit Court (Wayne County)

On order of the Court, the 3rd Circuit Court is authorized to continue its e-filing project during a transition period while the State Court Administrative Office prepares and implements a statewide e-filing system. The 3rd Circuit Court is aware that rules regarding electronic filing have been published for comment by this Court. If this Court adopts electronic-filing rules during the pendency of the 3rd Circuit Court Electronic Document Filing Project, the 3rd Circuit Court will, within 60 days of the effective date of the rules, comply with the requirements of those rules. In addition, it is anticipated that the 3rd Circuit Court, along with other courts that participated as e-filing pilot project locations, will be among the first group of courts that will connect with any statewide system for purposes of testing and early integration. Any expenses that arise from integration of the 3rd Circuit's e-filing system with the statewide system will be the sole responsibility of the 3rd Circuit Court.

The 3rd Circuit Court will report to and provide information as requested by the State Court Administrative Office.

1.–2. [Unchanged.]

3. Participation in the Program

(a) Participation in the project shall be mandatory in all pending "C" type cases (i.e., CB, CC, CD, CE, CF, CH, CK, CL, CP, CR, CZ); as well as all pending ND, NF, NI, and PZ case types. All judges in the 3rd Circuit Court's Civil Division shall participate. Expansion into the other Civil Division case types will occur as follows: upon the effective date of this order, the court may (except for good cause as stated in the paragraph below) include the following case-type codes in the e-filing project: all ~~cases~~ case types for appeals (case types AA, AE, AP, AR, and AV) ~~except for the AR case type~~, all cases for administrative review, superintending control and extraordinary writs (case types AH, AL, AS, and AW), all remaining civil damage suits (NH, NI, NM, NO, NP [including asbestos cases], NS, and NZ); all criminal cases (AX, FC, FH, and FJ) and all remaining case types regarding other civil matters (PC, PD, PR, and PS).

(b) This is a mandatory e-filing project. It is presumed that all documents will be filed electronically. However, the Court recognizes that circumstances may arise that will prevent one from e-filing. To ensure that all parties retain access to the courts, parties that demonstrate good cause will be permitted to file their documents with the clerk, who will then file the documents electronically. Among the factors that the 3rd Circuit Court will consider in determining whether good cause exists to excuse a party from mandatory e-filing is a party's access to the Internet and indigency. A self-represented party is not excused from the project merely because the individual does not have counsel.

4.–15. [Unchanged.]

Proposed Amendment of Rule 6.112 of the Michigan Court Rules

On order of the Court, dated March 23, 2016, this is to advise that the Court is considering an amendment of Rule 6.112 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 6.112 The Information or Indictment

(A)–(F) [Unchanged.]

(G) Harmless Error. Absent a timely objection and a showing of prejudice, a court may not dismiss an information or reverse a conviction because of an untimely filing or because of an incorrectly cited statute or a variance between the information and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense. This provision does not apply to the untimely filing of ~~a~~an original notice of intent to seek an enhanced sentence, but may apply when the notice has been amended in accordance with subrule (H) and there is no showing that the amendment would result in unfair surprise or prejudice to the defendant.

(H) Amendment of Information or Notice of Intent to Seek Enhanced Sentence. The court before, during, or after trial may permit the prosecutor to amend the information or the notice of intent to seek enhanced sentence unless the proposed amendment would unfairly surprise or prejudice the defendant. On motion, the court must strike unnecessary allegations from the information.

STAFF COMMENT: The proposed amendments of MCR 6.112 would provide clarification to the procedure for amending a notice of intent to seek an enhanced sentence.

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 July 1, 2016, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-39. 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 9.106 and Rule 9.128 of the Michigan Court Rules

On order of the Court, dated March 9, 2016, the Attorney Grievance Commission's proposed amendments of Rule 9.106 and Rule 9.128 of the Michigan Court Rules were published for comment at 495 Mich 1224 (2014), and an opportunity was provided for comment in writing and at a public hearing on September 24, 2014. The Attorney Grievance Commission having subsequently withdrawn its proposal, this administrative file is closed without further action.

Amendments of Rule 2.119, Rule 7.212, and Rule 7.215 of the Michigan Court Rules

On order of the Court, dated March 23, 2016, 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 Rule 2.119, Rule 7.212, and Rule 7.215 of the Michigan Court Rules are adopted, effective May 1, 2016.

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

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) [Unchanged.]

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions. Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(3)–(4) [Unchanged.]

(B)–(G) [Unchanged.]

Rule 7.212 Briefs

(A)–(B) [Unchanged.]

(C) Appellant's Brief; Contents. The appellant's brief must contain, in the following order:

(1)–(6) [Unchanged.]

(7) The arguments, each portion of which must be prefaced by the principal point stated in capital letters or boldface type. As to each issue, the argument must include a statement of the applicable standard or standards of review and supporting authorities, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions. Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court. Page references to the transcript, the pleadings, or other document or paper filed with the trial court must also be given to show whether the issue was preserved for appeal by appropriate objection or by other means. If determination of the issues presented

requires the study of a constitution, statute, ordinance, administrative rule, court rule, rule of evidence, judgment, order, written instrument, or document, or relevant part thereof, this material must be reproduced in the brief or in an addendum to the brief. If an argument is presented concerning the sentence imposed in a criminal case, the appellant's attorney must send a copy of the presentence report to the court at the time the brief is filed;

(8)–(9) [Unchanged.]

(D)–(I) [Unchanged.]

Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals

(A) Opinions of Court. An opinion must be written and bear the writer's name or the label "per curiam" or "memorandum" opinion. An opinion of the court that bears the writer's name shall be published by the Supreme Court reporter of decisions. A memorandum opinion shall not be published. A per curiam opinion shall not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk. A copy of an opinion to be published must be delivered to the reporter no later than when it is filed with the clerk. The reporter is responsible for having those opinions published as are opinions of the Supreme Court, but in separate volumes containing opinions of the Court of Appeals only, in a form and under a contract approved by the Supreme Court. An opinion not designated for publication shall be deemed "unpublished."

(B) Standards for Publication. A court opinion must be published if it:

(1) establishes a new rule of law;

(2) construes as a matter of first impression a provision of a constitution, statute, regulation, ordinance, or court rule;

(3) alters, ~~or~~ modifies, or reverses an existing rule of law ~~or extends it to a new factual context~~;

(4) reaffirms a principle of law or construction of a constitution, statute, regulation, ordinance, or court rule not applied in a ~~recently~~ reported decision since November 1, 1990;

(5) involves a legal issue of significant~~continuing~~ public interest;

(6) criticizes existing law; or

(7) ~~creates or~~ resolves a ~~an apparent~~ conflict among unpublished Court of Appeals opinions brought to the Court's attention~~of authority, whether or not the earlier opinion was reported~~; or

(8) [Unchanged.]

(C) Precedent of Opinions.

(1) An unpublished opinion is not precedentially binding under the rule of stare decisis. Unpublished opinions should not be cited for propositions of law for which there is published authority. If a party cites an unpublished opinion, the party shall explain the reason for citing it and how it is relevant to the issues presented. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.

(2) [Unchanged.]

(D)–(J) [Unchanged.]

STAFF COMMENT: An unpublished opinion may be cited, for example, if there is no published authority on a given legal proposition or if it is necessary to demonstrate a conflict in interpretation of the law. The changes in MCR 2.119 and MCR 7.212 provide cross-references to MCR 7.215(C).

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.

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