

Amendments of Rules 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and 6.933 of the Michigan Court Rules

Amendments of Rules 3.925, 8.119, and 8.302 of the Michigan Court Rules and Adoption of Rule 5.133 of the Michigan Court Rules

To read ADM File No. 2015-12, dated May 25, 2016; and ADM File No. 2016-06, dated May 25, 2016; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Amendments of Administrative Order No. 2013-12

On order of the Court, dated May 25, 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 Administrative Order No. 2013-12 are adopted, effective September 1, 2016.

[The present language is amended as indicated below by underlining for new text.]

Administrative Order No. 2013-12

(A)(1)–(3) [Unchanged.]

(B)(1)–(3) [Unchanged.]

Probate Court Guidelines.

[Paragraphs 1–4. below replace former paragraphs 1.–3.:]

1. Estate Proceedings. 75% of all cases should be adjudicated within 35 days from the date of the initial filing, 90% within 182 days, and 98% within 364 days.
2. Guardianship, Conservatorship, and Protective Order Proceedings. 75% of all matters should be adjudicated within 90 days from the date of the initial filing and 95% within 364 days.
3. Mental Illness Proceedings; Judicial Admission Proceedings. 90% of all petitions should be adjudicated within 14 days from the date of filing and 98% within 28 days.
4. Civil Proceedings and Trusts Proceedings. 70% of all cases should be adjudicated within 364 days from the date of case filing and 95% within 728 days.

District Court Guidelines.

(1)–(3) [Unchanged.]

Circuit Court Guidelines.

(1)–(11) [Unchanged.]

STAFF COMMENT: The revisions of Administrative Order No. 2013-12 adjust the time guidelines in probate courts by applying disposition rates to cases filed in estate, trust, guardianship, and

conservatorship proceedings instead of applying rates to only “contested matters” in those types of proceedings. The revisions also separate the guidelines for guardianship and conservatorship proceedings from other estate matters, and group them with protective order proceedings, and group trust proceedings with civil proceedings instead of the former grouping of trusts with proceedings for estates.

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 Administrative Order No. 2015-4 Continues Authorization to Use the GarnIT System in the 36th, 46th, and 47th District Courts (Dated May 25, 2016)

Authorization for Use of GarnIT of Pilot Program to be Implemented in the 36th, 46th, and 47th District Courts

Automated State Income Tax Garnishment Pilot Project in 36th District Court, 46th District Court, and 47th District Court

~~On~~Until further order of the Court, effective immediately, the 36th, 46th, and 47th District Courts are each authorized to operate ~~a pilot program~~the GarnIT system for processing requests for writs of state income tax garnishment ~~through the enhanced GarnIT system.~~ Participation by plaintiffs in this ~~pilot program~~ is voluntary ~~for 2015.~~

~~The courts and the State Court Administrative Office (SCAO) will track the effectiveness of the pilot programs and report the results to the Supreme Court after January 1, 2016.~~

1. Purpose and Construction.

The purpose of this ~~second pilot project~~ is to expand the use of GarnIT to multiple courts, develop a standard procedure for adding future courts, and enhance some of the features piloted ~~in 2014.~~ order is to authorize continued use of GarnIT in the courts that piloted the system in 2015. The 2015 pilot was successful and it is beneficial to these three courts and the users to continue the GarnIT system while the Michigan Supreme Court determines its long-term strategy for e-filing and its plans for incorporating GarnIT into that strategy. Except for matters related to the transmission of requests and writs for state income tax garnishments through GarnIT ~~during the pilot~~, the Michigan Court Rules govern all other postjudgment proceedings concerning the cases involved in the pilot GarnIT program.

2. Definitions.

(a)–(j) [Unchanged.]

(k) ~~“Pilot” means the court innovation initiative tested in the 36th, 46th, and 47th District Courts and the Michigan Department of Treasury in conjunction with IBM and under the supervision of SCAO. This web-based application facilitates the electronic processing of income tax garnishments in the 36th, 46th, and 47th District Courts. The pilot program is expected to launch August 20, 2015, and will continue until December 31, 2015. If it is successful, the program will be evaluated for statewide use.~~

(k)⊕ “Transaction” means the request and writ for income tax garnishment electronically processed pursuant to the pilot.

3. Participation in GarnIT

Use of GarnIT for submitting requests for income tax garnishments in the 36th, 46th, and 47th District Courts to the courts begins on August 20, 2015, and shall be voluntary during the pilot.

4.–10. [Unchanged.]

11. Official Court Record; Record Retention

(a) ~~For purposes of this pilot program, t~~The electronic data and the electronic equivalent of SCAO-approved form MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit), produced by and through the GarnIT transaction and subsequently maintained in the case management system constitutes the official court record and meets the record retention and public access requirements of the court rules and General Records Retention and Disposal Schedule #16–Michigan Trial Courts.

(b) A request and writ processed by GarnIT can be generated or printed on demand by the clerk. The request and writ maintained by the court will not contain the social security numbers or federal identification numbers of the parties.

(c) If a request is made for a certified copy of a request and writ processed by GarnIT, the clerk shall print the document and certify it in compliance with the Michigan Trial Court Case File Management Standards.

12. [Unchanged.]

13. Expiration

~~Unless otherwise directed by the Michigan Supreme Court, this pilot~~This project will continue until further order of the Court December 31, 2015.

Administrative Order No. 2016-1

Authorizes the 7th Circuit Court to require parties and attorneys to submit pleadings in electronic format in personal injury or other civil cases arising from allegations of lead or other contaminants in Flint water

On order of the Court, dated May 25, 2016, at the request of the 7th Circuit Court, and pursuant to MCR 1.109(C)(1), the 7th Circuit Court is authorized to require parties and attorneys in personal injury or other civil cases arising from allegations of lead or other contaminants in Flint water to submit pleadings in electronic format. The 7th Circuit Court shall submit a local administrative order to the State Court Administrative Office describing the manner in which such pleadings are to be submitted. This order is effective immediately, and shall remain in effect until further order of the Court.

Proposed Amendment of Rule 2.403 of the Michigan Court Rules

On order of the Court, dated May 25, 2016, the proposed amendment of Rule 2.403 of the Michigan Court Rules having been

published for comment at 498 Mich 1208 (Part 4, 2015), and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action.

Amendment of Rule 2.305 of the Michigan Court Rules

On order of the Court, dated May 25, 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 amendment of Rule 2.305 of the Michigan Court Rules is adopted, effective September 1, 2016.

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

Rule 2.305 Subpoena for Taking Deposition

(A) General Provisions.

(1) Subpoenas shall not be issued except in compliance with MCR 2.306(A)(1). After serving the notice provided for in MCR 2.303(A)(2), 2.306(B), or 2.307(A)(2), a party may have a subpoena issued in the manner provided by MCR 2.506 for the person named or described in the notice. Service on a party or a party’s attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer, or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued.

(2)–(5) [Unchanged.]

(B)–(F) [Unchanged.]

STAFF COMMENT: The amendment of MCR 2.305 clarifies that subpoenas requesting the production of documents shall be issued only after defendant has had reasonable time after the complaint is filed and served to obtain an attorney, as described in MCR 2.306(A)(1).

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 2.306 of the Michigan Court Rules

On order of the Court, dated May 25, 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 2.306 of the Michigan Court Rules are adopted, effective September 1, 2016.

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

Rule 2.306 Depositions on Oral Examination

(A)–(B) [Unchanged.]

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections; ~~Conferring~~ Communicating with Deponent.

(1)–(4) [Unchanged.]

(5) ~~Conferring~~ Communicating with Deponent.

(a) A person may instruct a deponent not to answer only when necessary to preserve a privilege or other legal protection, to enforce a limitation ordered by the court, or to present a motion under MCR 2.306(D)(1).

(b) A deponent may not ~~confere~~ communicate with another person while a question is pending, except to decide whether to assert a privilege or other legal protection.

(c) For purposes of this rule, “communicate” includes electronic communication conducted by text message, email, or other transmission using an electronic device.

(D)–(G) [Unchanged.]

STAFF COMMENT: The amendments of MCR 2.306(C)(5) and (C)(5)(b) replace references to the word “conferring” or “confer” with “communicating” or “communicate.” The amendment of MCR 2.306(C)(5)(c) clarifies that the term “communicate” includes electronic transmission by text message, email, or other electronic 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.

Amendment of Rule 3.979 of the Michigan Court Rules

On order of the Court, dated May 25, 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 amendment of Rule 3.979 of the Michigan Court Rules is adopted, effective September 1, 2016.

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

Rule 3.979 Juvenile Guardianships

(A)–(B) [Unchanged.]

(C) Court Jurisdiction; Review Hearings; Lawyer-Guardian ad Litem.

(1) Jurisdiction.

(a) Except as otherwise provided in this rule, ~~the~~ The court’s jurisdiction over a juvenile guardianship shall continue until terminated by court order. The court’s jurisdiction over a juvenile under section 2(b) of the Juvenile Code, MCL 712A.2(b), and the jurisdiction of the MCI under section 3 of 1935 PA 220, MCL 400.203, shall be terminated after the court appoints a juvenile guardian under this section and conducts a review hearing pursuant to MCR 3.975 when parental rights to the child have not been terminated, or a review hearing pursuant to MCR 3.978 when parental rights to the child have

~~been terminated. Upon notice by the Department of Human Services that extended guardianship assistance beyond age 18 will be provided to a youth pursuant to MCL 400.665, the court shall retain jurisdiction over the guardianship until that youth no longer receives extended guardian assistance.~~

(b) Unless terminated by court order, the court’s jurisdiction over a juvenile guardianship ordered under MCL 712A.19a or MCL 712A.19c for a youth 16 years of age or older shall continue until 120 days after the youth’s eighteenth birthday. Upon notice by the Department of Health and Human Services that extended guardianship assistance beyond age 18 will be provided to a youth pursuant to MCL 400.665, the court shall retain jurisdiction over the guardianship until that youth no longer receives extended guardianship assistance.

(2)–(3) [Unchanged.]

(D) Court Responsibilities.

(1) Annual Reviews.

(a) Review on Condition of Child. The court shall conduct an annual review of a juvenile guardianship annually as to the condition of the child until the child’s eighteenth birthday. The review shall be commenced within 63 days after the anniversary date of the appointment of the guardian. The court may conduct a review of a juvenile guardianship at any time it deems necessary. If the report ~~of~~ by the juvenile guardian has not been filed as required by subrule (E)(1), the court shall take appropriate action.

(b) Review on Extended Guardianship Assistance. If, under subrule (C)(1)(b), the Department of Health and Human Services has notified the court that extended guardianship assistance has been provided to a youth pursuant to MCL 400.665, the court shall conduct an annual review hearing at least once every 12 months thereafter ~~the youth’s eighteenth birthday~~ to determine that the guardianship meets the criteria under MCL 400.667. The duty to conduct an annual review hearing on extended guardianship assistance shall discontinue when the youth is no longer eligible for extended guardianship assistance. Notice of the hearing under this subrule shall be sent to the guardian and the youth as provided in MCR 3.920(D)(1).

(i) The hearing conducted under this subrule may be adjourned up to 28 days for good cause shown.

(ii) If requested by the court, the guardian must provide proof at the review hearing that the youth is in compliance with the criteria of MCL 400.667.

(iii) Following a review hearing under this subrule, The ~~the~~ court shall issue an order to support its determination and serve the order on the Department of Health and Human Services, the guardian, and the youth.

(c) Termination of Juvenile Guardianship. Upon receipt of notice from the Department of Health and Human Services that it will not continue guardianship assistance, the court shall immediately terminate the juvenile guardianship.

(2)–(4) [Unchanged.]

(E)–(F) [Unchanged.]

STAFF COMMENT: The amendment of MCR 3.979 requires a court to maintain jurisdiction over a juvenile guardianship for 120 days after the juvenile's 18th birthday in cases where the DHHS is making an eligibility determination for extended guardianship assistance. The revisions of MCR 3.979 also reflect recent amendments of the Young Adult Voluntary Foster Care Act (MCL 400.669) and the Juvenile Code (MCL 712A.2a).

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 7.306 of the Michigan Court Rules

On order of the Court, dated May 25, 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 7.306 of the Michigan Court Rules are adopted, effective September 1, 2016.

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

Rule 7.306 Original Proceedings

(A) [Unchanged.]

(B) What to File. To initiate an original proceeding, a plaintiff must file with the clerk

(1)–(2) [Unchanged.]

(3) proof that a copy of the complaint and brief was served on the defendant, and, for a complaint filed against the Attorney Discipline Board or Attorney Grievance Commission, on the respondent in the underlying discipline matter; and

(4) [Unchanged.]

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(C) [Unchanged.]

(D) Brief by Respondent in Action Against Attorney Grievance Commission or Attorney Discipline Board. A respondent in an action against the Attorney Grievance Commission or Attorney Discipline Board may file a response brief with the clerk within 21 days after service of the complaint, and a proof that a copy of the response brief was served on plaintiff and defendant. A response brief filed under this subsection shall conform with MCR 7.212(B) and (D).

(E)–(I) [Former (D)–(H) relettered, but otherwise unchanged.]

STAFF COMMENT: The amendments of MCR 7.306 expressly authorize a respondent attorney to file a brief in actions of superintending control when the complainant objects to a dismissal by the AGC or ADB; the amendments also require the party filing for superintending control to serve copies of the complaint and brief on the respondent and allow 21 days for respondent attorney to submit a brief, with copies to be served on the plaintiff and defendant.

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 of the Rules for the Board of Law Examiners

On order of the Court, dated May 25, 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 amendment of Rule 6 of the Rules for the Board of Law Examiners is adopted, effective August 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 Fees

The fees are: an application for examination, ~~\$400~~^{\$340} and an additional fee for the late filing of an application or transfer of an application for examination, \$100; an application for reexamination, ~~\$300~~^{\$240}; an application for recertification, ~~\$300~~^{\$200}; an application for admission without examination, ~~\$800~~^{\$600} plus the requisite fee for the National Conference of Bar Examiners' character report. Certified checks or money orders must be payable to the State of Michigan. Online bar examination payments for first time exam takers must be paid by credit card.

STAFF COMMENT: The amendment of BLE Rule 6 increases the fees for application for the bar examination from \$340 to \$400, reexamination from \$240 to \$300, application for recertification from \$200 to \$300, and application for admission without examination from \$600 to \$800.

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.

Assignment of Business Court Judge in the 9th Circuit Court (Kalamazoo County)

On order of the Court, dated May 25, 2016, effective August 1, 2016, the Honorable Alexander C. Lipsey is assigned to serve in the role of business court judge in the 9th Circuit Court for the remainder of a six-year term expiring April 1, 2019.