

Amendments of Rules 2.004, 3.705, 3.708, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.140, 5.404, 5.738a (deleted), 6.006, and 6.901 of the Michigan Court Rules

To read ADM File No. 2013-18, dated September 21, 2016, visit <http://courts.michigan.gov/courts/michigan-supremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

### Extension of Administrative Order No. 2015-9 (MAACS pilot project)

On order of the Court, dated September 21, 2016, the MAACS Regional Pilot Project authorized under Administrative Order No. 2015-9 is extended until December 31, 2017.

### Proposed Amendment of Rule 2.602 of the Michigan Court Rules

On order of the Court, dated September 21, 2016, this is to advise that the Court is considering an amendment of Rule 2.602 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 2.602 Entry of Judgments and Orders

(A) [Unchanged.]

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

(1)–(4) [Unchanged.]

(5) Upon presentation to the court of a proposed judgment that is otherwise lawful, signed, and approved by the parties bound by the judgment or their counsel of record, and if an action is pending between those parties or was pending previously.

(a) If so provided in the proposed judgment, no notice to the opposing party of submission for entry is required, and submission of the judgment to the court for entry shall serve to reopen the prior case if closed.

(b) If the proposed judgment does not provide for entry without prior notice to the debtor, the submitting party must file a motion and give notice to the debtor under MCR 2.107(C) at least 14 days before the date of the mo-

tion hearing. The presenting party shall file and serve a notice of hearing for entry of the proposed judgment. If the debtor does not file and serve specific objections within that time, the court shall enter the judgment.

(c) The proposed judgment must be accompanied by an affidavit of the submitting party or its counsel averring as to the basis for entry of the judgment.

(d) Service of the entered judgment shall be as provided for in the judgment or else in accordance with MCR 2.602(D) and the manner prescribed in MCR 2.105. Within 21 days of service, the judgment debtor may file a motion to challenge the propriety of the entry of the judgment or the calculation of the judgment amount. The motion must be heard within 14 days of filing. The filing of such a motion does not extend the stay of MCR 2.614(A)(1) or prevent the court from enjoining the transfer of assets under MCR 2.621(C). The court may modify or set aside the judgment or enter such other relief as it deems appropriate.

(C)–(D) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 2.602(B) would provide procedural rules regarding entry of consent judgments. This language was submitted by the Representative Assembly of the State Bar of 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 January 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2014-29. 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 7.213 of the Michigan Court Rules

On order of the Court, dated September 21, 2016, the need for immediate action having been found, the notice requirements of MCR 1.201 are dispensed with and the following amendment of Rule 7.213 of the Michigan Court Rules is adopted, effective immediately. However, the issue will be placed on a future administrative public hearing. Comments will be received until January 1, 2017, and may be submitted to the Office of Administrative Counsel in writing or electronically to P.O. Box 30052, Lansing, MI 48909, or [ADMComment@courts.mi.gov](mailto:ADMComment@courts.mi.gov). The amendment will be considered at a future public hearing. The notices and schedules of public hearings are posted on the Supreme Court's website at the following address: Administrative Public Hearings.

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

## Rule 7.213 Calendar Cases

### (A) ~~Pre-Argument Conference~~ Mediation in Calendar Cases.

#### (1) Selection for Mediation.

- (a) At any time during the pendency of an appeal before the Court of Appeals, the chief judge or another designated judge may order an appeal submitted to mediation. When a case is selected for mediation, participation is mandatory; however, the chief judge or another designated judge may remove the case on finding that mediation would be inappropriate.
- (b) To identify cases for mediation, the Court of Appeals will review civil appeals to determine if mediation would be of assistance to the court or the parties. At any time, a party to a pending civil appeal may file a written request that the appeal be submitted to mediation. Such a request may be made without formal motion and shall be confidential.
- (c) A party to a case that has been selected for mediation may file a request to have the case removed from mediation. Such a request may be made without formal motion and shall be confidential. If the request to remove is premised on a desire to avoid the cost of mediation, it is not necessary to demonstrate an inability to pay such costs.
- (d) The submission of an appeal to mediation will not toll any filing deadlines in the appeal unless the court orders otherwise.

#### (2) Mediation Procedure.

- (a) Mediation shall be conducted by a mediator selected by stipulation of the parties or designated by the court. A mediator designated by the court shall be an attorney, licensed in Michigan, who has met the qualifications of mediators provided in MCR 2.411(F).
- (b) Mediation shall consider the possibility of settlement, the simplification of the issues, and any other matters that the mediator determines may aid in the handling or disposition of the appeal.
- (c) The order referring the case to mediation shall specify the time within which the mediation is to be completed. Within 7 days after the time stated in the order, the mediator shall file a notice with the clerk stating only the date of completion of mediation, who participated in the mediation, whether settlement was reached, and whether any further mediation is warranted.
- (d) If mediation results in full or partial settlement of the case, the parties shall file, within 21 days after the filing of the notice by the mediator, a stipulation to dismiss (in full or in part) pursuant to MCR 7.218(B).
- (e) The mediator may charge a reasonable fee, which shall be divided between and borne equally by the parties unless otherwise agreed and paid by the parties directly to the mediator. If a party does not agree upon the fee

requested by the mediator, upon motion of the party, the chief judge or another designated judge shall set a reasonable fee. In all other respects, mediator fees shall be governed by MCR 2.411(D).

- (f) The statements and comments made during mediation are confidential as provided in MCR 2.412 and may not be disclosed in the notice filed by the mediator under (A)(2)(c) of this rule or by the participants in briefs or in argument.
  - (g) Upon failure by a party or attorney to comply with a provision of this rule or the order submitting the case to mediation, the chief judge or another designated judge may assess reasonable expenses, including attorney's fees, caused by the failure, may assess all or a portion of appellate costs, or may dismiss the appeal.
- #### (3) Selection of Mediator.
- (a) Except as otherwise provided in this rule, the selection of a mediator shall be governed by MCR 2.411(B).
  - (b) Within the time provided in the order referring a case to mediation, the parties may stipulate to the selection of a mediator. Such stipulation shall be filed with the clerk of the court. If the parties do not file a stipulation agreeing to a mediator within the time provided, the court shall appoint a mediator from the roster of approved mediators maintained by the circuit court in which the case originated.
- (1) ~~At any time before submission of a case, the Court of Appeals may direct the attorneys for the parties and client representatives with information and authority adequate for responsible and effective participation in settlement discussions to appear in person or by telephone for a pre-argument conference. The conference will be conducted by the court, or by a judge, retired judge or attorney designated by the court, known as a mediator. The conference shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator determines may aid in the handling of or the disposition of the appeal. The mediator shall make an order that recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and that limits the issues to those not disposed of by the admissions or agreements of counsel. Such order, when entered, controls the subsequent proceedings, unless modified to prevent manifest injustice.~~
  - (2) ~~All civil cases will be examined to determine if a pre-argument conference would be of assistance to the court or the parties. An attorney or a party may request a pre-argument conference in any case. Such a request shall be confidential. The pre-argument conference shall be conducted by~~
    - (a) ~~the court, or by a judge, retired judge or attorney designated by the court;~~
    - (b) ~~if the parties unanimously agree, a special mediator designated by the court or selected by unanimous agreement of the parties. The special mediator shall be an~~

~~attorney, licensed in Michigan, who possesses either mediation-type experience or expertise in the subject matter of the case. The special mediator may charge a reasonable fee, which shall be divided and borne equally by the parties unless agreed otherwise and paid by the parties directly to the mediator. If a party does not agree upon the fee requested by the mediator, upon motion of the party, the Court of Appeals shall set a reasonable fee.~~

~~When a case has been selected for participation in a pre-argument conference, participation in the conference is mandatory; however, the Court of Appeals may except the case from participation on motion for good cause shown if it finds that a pre-argument conference in that case would be inappropriate.~~

~~(3) Any judge who participates in a pre-argument conference or becomes involved in settlement discussions under this rule may not thereafter consider any aspect of the merits of the case, except that participation in a pre-argument conference shall not preclude the judge from considering the case pursuant to MCR 7.215(J).~~

~~(4) Statements and comments made during the pre-argument conference are confidential, except to the extent disclosed by the pre-argument conference order, and shall not be disclosed by the mediator or by the participants in briefs or in argument.~~

~~(5) To facilitate the pre-argument conference, unless one has already been filed, an appellant must file the docketing statement required by MCR 7.204(H).~~

~~(6) Upon failure by a party or attorney to comply with a provision of this rule or the pre-argument conference order, the Court of Appeals may assess reasonable expenses caused by the failure, including attorney's fees, may assess all or a portion of appellate costs, or may dismiss the appeal.~~

~~(B)–(E) [Unchanged.]~~

STAFF COMMENT: This proposal, submitted by the Michigan Court of Appeals, would make permanent the mediation pilot project that has been operating under authority of Administrative Order No. 2015-8 since October 2015. The proposed amendments have been adopted with immediate effect to enable the mediation program to continue during the comment period.

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 January 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or ADMComment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2015-02. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed and Recently Adopted Orders on Admin Matters page.

## Proposed Amendment of Rule 9.115 of the Michigan Court Rules

On order of the Court, dated September 21, 2016, this is to advise that the Court is considering an amendment of Rule 9.115 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 9.115 Hearing Panel Procedure

(A)–(E) [Unchanged.]

(F) Prehearing Procedure.

(1)–(4) [Unchanged.]

(5) Discipline by Consent.

(a) In exchange for a stated form of discipline and on the condition that the plea or admission is accepted by the commission and the hearing panel, ~~a~~<sup>A</sup> respondent may offer to

(i) plead no contest or to admit all essential or some of the facts and misconduct alleged contained in the complaint or any of its allegations otherwise agreed to by the parties or

(ii) stipulate to facts and misconduct in a proceeding filed under subchapter 9.100 not initiated by a formal complaint.

~~in exchange for a stated form of discipline and on the condition that the plea or admission and discipline agreed on is accepted by the commission and the hearing panel.~~ The respondent's offer shall first be submitted to the commission. ~~If the offer is accepted by an agreement is reached with~~ the commission, the administrator and the respondent shall ~~prepare file with the board and the hearing panel~~ prepare file with the board and the hearing panel a stipulation for a consent order of discipline ~~that includes all prior discipline, admonishments, and contractual probations, if any, and file the stipulation with the hearing panel.~~ At the time of filing, the administrator shall serve a copy of the stipulation upon the complainant.

(b) The stipulation shall include:

(i) admissions, which may be contained in an answer to the complaint, or a plea of no contest to facts sufficient to enable the hearing panel to determine the nature of the misconduct and conclude that the discipline proposed is appropriate in light of the identified misconduct;

- (ii) citation to the applicable American Bar Association Standards for Imposing Lawyer Sanctions; and
- (iii) disclosure of prior discipline.

If the stipulation contains any nonpublic information, it shall be filed in camera. Admonishments and contractual probations shall be filed separately and kept confidential until the hearing panel accepts the stipulation under this rule. At the time of the filing, the administrator shall serve a copy of the proposed stipulation upon the complainant. If the hearing panel approves the stipulation, it shall enter a final order of discipline. If not approved, the offer is deemed withdrawn and statements or stipulations made in connection with the offer are inadmissible in disciplinary proceedings against the respondent and not binding on the respondent or the administrator. If the stipulation is not approved, the matter must then be referred for hearing to a hearing panel other than the one that passed on the proposed discipline.

- (c) Upon the filing of a stipulation for a consent order of discipline, the hearing panel may:

- (i) approve the stipulation and file a report and enter a final order of discipline; or
- (ii) communicate with the administrator and the respondent about any concerns it may have regarding the stipulation. Before rejecting a stipulation, a hearing panel shall advise the parties that it is considering rejecting a stipulation and the basis for the rejection. The hearing panel shall provide an opportunity, at a status conference or comparable proceeding, for the parties to offer additional information in support of the stipulation.

- (d) If a hearing panel rejects a stipulation, the hearing panel shall advise the parties in writing of its reason or reasons for rejecting the stipulation and allow the parties an opportunity to submit an amended stipulation.

- (e) If a hearing panel rejects an amended stipulation, or if no amended stipulation is filed within 21 days after rejection of the initial stipulation, the matter shall be reassigned to a different hearing panel. Upon reassignment to a different hearing panel,

- (i) the stipulation and any amended stipulation shall be deemed withdrawn,
- (ii) statements and stipulations made in connection with the stipulation and any amended stipulation shall be inadmissible in disciplinary proceedings against the respondent and not binding on either party, and
- (iii) the newly assigned hearing panel shall conduct a hearing.

(G)–(M) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 9.115(F)(5) would clarify that a hearing panel shall be authorized to allow parties to submit an amended stipulation. If a hearing panel rejects an amended stipulation, the matter would be referred to a different hearing panel to conduct a hearing. This proposed language was

submitted jointly by the Attorney Grievance Commission and Attorney Discipline Board.

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 January 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-24. 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 Rule 6.112 of the Michigan Court Rules

On order of the Court, dated September 21, 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 6.112 of the Michigan Court Rules are adopted, effective January 1, 2017.

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

#### 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 notice of intent to seek an enhanced sentence.

(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 amendments of MCR 6.112 clarify the procedure for amending a notice of intent to seek an enhanced sentence by requiring such amendment to be approved by the court, and eliminate the provision that makes the harmless-error standard inapplicable when a notice of intent to seek an enhanced sentence is not filed timely.

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.



## 74 From the Michigan Supreme Court

**Supreme Court Appointments to the  
Attorney Discipline Board (Dated September 28, 2016)**

On order of the Court, pursuant to MCR 9.110, Michael Murray is reappointed as an attorney member of the Attorney Discipline Board for a term ending October 1, 2019. Michael B. Rizik Jr. is appointed as an attorney member of the board and Karen D. O'Donoghue is appointed as a layperson member of the board for terms ending October 1, 2019.

Louann Van Der Wiele is reappointed chairperson of the board and Michael Murray is appointed vice chairperson of the board for terms ending October 1, 2017.

**Supreme Court Appointments to the  
Attorney Grievance Commission (Dated September 21, 2016)**

On order of the Court, pursuant to MCR 9.108, Victor A. Fitz is reappointed as attorney member of the Attorney Grievance Commission for a term ending October 1, 2019. Megan K. Cavanagh is appointed as an attorney member of the commission and Jeffrey J. Sakwa is appointed as a layperson member of the commission for terms ending October 1, 2019.

Charles S. Kennedy is appointed chairperson of the commission and Victor A. Fitz is appointed vice chairperson for terms ending October 1, 2017.

**Supreme Court Appointment of  
Commissioner-at-Large to the  
State Bar of Michigan (Dated September 21, 2016)**

On order of the Court, pursuant to State Bar Rule 5, Section 2, Andrew F. Fink III is appointed commissioner-at-large to the State Bar of Michigan Board of Commissioners for a three-year term commencing on adjournment of the meeting of the outgoing Board of Commissioners held at the 2016 annual meeting of the bar.

**Assignment of Business Court Judge  
in the 14th Circuit Court (Muskegon County)  
(Dated September 21, 2016)**

On order of the Court, effective January 1, 2017, the Honorable Timothy G. Hicks is assigned to serve in the role of business court judge in the 14th Circuit Court for the remainder of a six-year term expiring April 1, 2019.

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