

Proposed Amendment of Rules 2.116 and 2.119 of the Michigan Court Rules

On order of the Court, dated January 25, 2017, this is to advise that the Court is considering an amendment of Rules 2.116 and 2.119 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 2.116 Summary Disposition

(A)–(F) [Unchanged.]

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i)–(ii) [Unchanged.]

(iii) the moving party or parties may file a reply brief in support of the motion. Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties' response brief and must be limited to 5 pages. The reply brief must be filed and served at least 3 days before the hearing.

(iv) no additional or supplemental briefs may be filed without leave of the court.

(b) If the court sets a different time for filing and serving a motion, ~~or~~ a response, or a reply brief, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion, or response (including brief and any affidavits), or reply 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.

(2)–(6) [Unchanged.]

(H)–(J) [Unchanged.]

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citing the authority on which it is based, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions.

(a) 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.

(b) Except as permitted by the court or as otherwise provided in these rules, no reply briefs, additional briefs, or supplemental briefs may be filed.

(c) 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.

(d) 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.]

STAFF COMMENT: The proposed amendments would amend the rules regarding motions for summary disposition to allow for the filing of reply briefs only in summary disposition proceedings. The State Bar of Michigan Representative Assembly had submitted a proposal that would have extended the summary disposition time frame an additional 7 days to accommodate filing of a reply brief and make the practice uniform in trial courts. Under current local practices, some judges allow reply briefs and others do not. Although the Court was not persuaded at this time that the overall time period for setting a hearing for motions for summary disposition should be extended, it did agree to publish for comment proposed amendments that would explicitly allow the moving party to file a reply brief at least 3 days before the scheduled hearing, and limit the reply brief to no more than 5 pages in length.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 Supreme Court Clerk in writing or electronically by May 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. 2015-24. 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.

Proposed Addition of Rule 6.007 of the Michigan Court Rules

On order of the Court, dated January 25, 2017, this is to advise that the Court is considering an addition of Rule 6.007 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.

Rule 6.007 Criminal Jurisdiction

- (A) District Court. The district court has jurisdiction over all misdemeanor cases and all felony cases through the preliminary examination and until the entry of an order binding the defendant over to the circuit court.
- (B) Circuit Court. The circuit court acquires jurisdiction over all felony cases upon entry of an order by the district court binding the defendant over to circuit court. The circuit court also acquires jurisdiction over all misdemeanors arising out of the same transaction that are charged in the felony information. The failure of the district court to properly document the bind-over decision shall not deprive the circuit court of jurisdiction. A party challenging a bindover decision must do so before any plea of guilty or no contest is entered, or before trial is commenced. The circuit court may remand a criminal case to the district court only as provided by law.
- (C) Pleas and Verdicts in Circuit Court. Once the circuit court acquires jurisdiction over a criminal case, it retains jurisdiction even if a plea is entered or a verdict is rendered on a charge that would normally be cognizable in the district court.
- (D) Sentencing Misdemeanors in Circuit Court. The circuit court shall sentence all defendants who are bound over to circuit court, including defendants who either plead guilty to, or are found guilty of, a misdemeanor.
- (E) Concurrent Jurisdiction. As part of a concurrent jurisdiction plan, the circuit court and district court may enter into an agreement for district court probation officers to prepare the presentence investigation report and supervise on probation defendants who either plead guilty to, or are found guilty of, a misdemeanor in circuit court. The case remains under the jurisdiction of the circuit court.

STAFF COMMENT: The proposed addition of Rule 6.007 would establish procedures for a circuit court to follow if a defendant bound over to circuit court on a felony either pleads guilty to, or is convicted of, a misdemeanor in circuit court, and would eliminate the practice of circuit courts remanding cases to district court except where otherwise provided by law. Remand to district court would remain a possibility in certain limited circumstances, including where the evidence is insufficient to support the bindover, *People v Miklovich*, 375 Mich 536, 539; 134 NW2d 720 (1965); *People v Salazar*, 124 Mich App 249, 251–252; 333 NW2d 567 (1983), or where there was a defect in the waiver of the right to a preliminary examination, *People v Reedy*, 151 Mich App 143, 147; 390 NW2d 215 (1986); *People v Skowronek*, 57 Mich App 110, 113; 226 NW2d 74 (1975), or where the prosecutor adds a new charge on which the defendant did not have a preliminary examination, *People v Bercheny*, 387 Mich 431, 434; 196 NW2d 767 (1972), adopting the opinion in *People v Davis*, 29 Mich App 443, 463; 185 NW2d 609 (1971), aff'd *People v Bercheny*, 387 Mich 431 (1972). See also MCR 6.110(H). The proposal is intended to promote greater uniformity and address a practice that varies among courts.

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 May 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. 2016-35. 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 and Additional Revision of the Amendments of Rule 7.213 of the Michigan Court Rules

(Dated January 25, 2017)

By order dated September 21, 2016, this Court amended Rule 7.213 of the Michigan Court Rules, effective immediately. 500 Mich ___ (2016). Notice and an opportunity for comment at a public hearing having been provided, the amendments are retained, and are further amended as indicated below.

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

Rule 7.213 Calendar Cases

(A) 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. Appeals of domestic relations actions and protection matters are excluded from mediation under this rule.

(b)–(d) [Unchanged.]

(2)–(3) [Unchanged.]

(B)–(E) [Unchanged.]

STAFF COMMENT: The Court retained the amendments previously adopted in this file, and included a new clarifying provision at the suggestion of several commenters that domestic relations actions and protection matters are excluded from the mediation program.

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 9.115 of the Michigan Court Rules

On order of the Court, dated January 25, 2017, 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 Rule 9.115 of the Michigan Court Rules is adopted, effective immediately.

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

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~~ 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 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 amendment of MCR 9.115(F)(5) clarifies that a hearing panel may 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 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.

Supreme Court Appointment to the Attorney Grievance Commission (Dated January 25, 2017)

On order of the Court, pursuant to MCR 9.108, Latoya M. Willis is appointed as an attorney member of the Attorney Grievance Commission to complete a term ending October 1, 2018, effective immediately.

Assignment of Business Court Judge in the 17th Circuit Court (Kent County) (Dated February 1, 2017)

On order of the Court, effective immediately, the Honorable J. Joseph Rossi is assigned to serve in the role of business court judge in the 17th Circuit Court.