

70 From the Michigan Supreme Court

Amendments of Rules 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.204, 7.205, 7.208, 7.209, 7.210, 7.212, and 7.213 of the Michigan Court Rules

To read ADM File No. 2016-32, dated June 21, 2017, visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Extension of Administrative Order No. 2015-1 (Summary Jury Trial Pilot Project) (Dated June 21, 2017)

On order of the Court, effective immediately, Administrative Order No. 2015-1 is extended until March 25, 2020.

Administrative Order No. 2017-1 Adjustment of Discipline Portion of State Bar of Michigan Dues (Dated July 12, 2017)

In light of an attorney discipline system reserve of about \$5 million, the Court lowered the discipline portion of the State Bar of Michigan annual dues from \$120 to \$110 (in 2011) and then to \$90 (in 2014), intending that those reserve funds be used to offset annual operating expenses until the fund was reduced to a more reasonable level. With the reserve now projected to be approximately \$1.86 million by the end of fiscal year 2016–2017, the Court has determined that bar dues should be restored, albeit in a phased-in fashion.

Therefore, on order of the Court, the amount of discipline dues is increased to \$105 in the 2017–2018 fiscal year, and further increased to \$120 in the 2018–2019 fiscal year, unless otherwise ordered by the Court. These changes will be reflected in the dues notices that are communicated to all bar members under Rule 4 of the Rules Concerning the State Bar.

Proposed Amendment of Canon 4 of the Michigan Code of Judicial Conduct

On order of the Court, dated June 21, 2017, this is to advise that the Court is considering an amendment of Canon 4 of the Michigan Code of Judicial Conduct. 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.]

Canon 4 A Judge May Engage in Extrajudicial Activities

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

A judge may engage in the following activities:

(A)–(D) [Unchanged.]

(E) Financial Activities.

(1)–(3) [Unchanged.]

(4) Neither a judge nor a family member residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) A judge may accept a gift or gifts not to exceed a total value of ~~\$100~~\$375, incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice.

(b) [Unchanged.]

(c) A judge or family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and if ~~its~~the aggregate value of gifts received by a judge or family member residing in the judge's household from any source exceeds \$100~~\$375~~, the judge reports it in the same manner as compensation is reported in Canon 6C. For purposes of reporting gifts under this subsection, any gift with a fair market value of \$150 or less need not be aggregated to determine if the \$375 reporting threshold has been met.

(5)–(7) [Unchanged.]

(F)–(I) [Unchanged.]

STAFF COMMENT: The proposed amendment would increase the acceptable value for a gift given incident to a public testimonial, and likewise would increase the threshold amount for disclosure of a gift. This proposed increase would be the first revision since the \$100 value threshold was adopted in 1974.

The threshold amount for reporting gifts is widely variable among the states and federal government. The disclosure threshold for reporting gifts in other states, established by statute or court rule, ranges from \$50 to \$500. Many states do not have a threshold amount at all; instead, such states may prohibit the acceptance of gifts from certain classes of donors, or alternatively allow judges to accept a certain class of gifts without regard to value for specific events, such as a wedding, or 25th or 50th wedding anniversary. In considering whether to publish for comment a proposed change,

the Court also considered the increase in the value of money since the \$100 threshold was adopted. According to the American Institute for Economic Research, the value of \$100 in today's economy is \$495.92.

In settling on a structure for purposes of publication, the Court used the federal disclosure rule and threshold as its model. For federal judges, the gift disclosure amount is \$375, as established by the Judicial Conference. The instructions for submitting the annual disclosure report require a federal judge to:

Report information on gifts aggregating more than \$375 in value received by the filer, spouse and dependent child from any source other than a relative during the reporting period. Any gift with a fair market value of \$150 or less need not be aggregated to determine if the \$375 reporting threshold has been met.

Thus, similar to the federal rule, the proposed amendment would increase the disclosure threshold to \$375, but would require gifts to the judge and his family members from a single source to be aggregated for purposes of reporting. Gifts with value less than \$150 would not need to be included in this aggregate amount. Further, the proposed amendment would not change the restriction that a gift may be accepted under this subsection only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

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 October 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. 2017-04. 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 Rules 8.110 and 8.111 of the Michigan Court Rules

On order of the Court, dated June 21, 2017, this is to advise that the Court is considering an amendment of Rules 8.110 and 8.111 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 8.110 Chief Judge Rule

(A)–(B) [Unchanged.]

(C) Duties and Powers of Chief Judge.

(1)–(3) [Unchanged.]

(4) If a judge does not timely dispose of his or her assigned judicial work, or fails or refuses to comply with an order or directive from the chief judge made under this rule, or otherwise acts in a way that raises questions regarding the propriety of the judge's continued service, the chief judge shall report the facts to the state court administrator who will, under the Supreme Court's discretion, initiate whatever corrective action is necessary, which may include relieving the judge from presiding over some or all of the judge's docket. If the basis for this report is a good faith doubt as to the judge's fitness, the chief judge may, with the approval of the state court administrator, order the judge to submit to an independent medical examination.

(5)–(7) [Unchanged.]

(D) [Unchanged.]

Rule 8.111 Assignment of Cases

(A)–(B) [Unchanged.]

(C) Reassignment.

(1)(a) If a judge is disqualified or for other good cause cannot undertake an assigned case, the chief judge may reassign it to another judge by a written order stating the reason.

(b) If a judge is relieved from presiding over some or all of the judge's docket under MCR 8.110(C)(4), the chief judge shall reassign the judge's caseload to another judge or judges by a written order.

For cases reassigned under this subrule, ~~to~~ the extent feasible, the alternate judge or judges should be selected by lot. The chief judge shall file the order with the trial court clerk and have the clerk notify the attorneys of record. The chief judge may also designate a judge to act temporarily until a case is reassigned or during a temporary absence of a judge to whom a case has been assigned.

(2) [Unchanged.]

(D) [Unchanged.]

STAFF COMMENT: The proposed amendments would explicitly provide that corrective action may be taken by the State Court Administrator, under the Supreme Court's direction, against a judge whose actions raise the question of the propriety of the judge's continued service. Such corrective action may include relieving a judge of the judge's caseload, and reassigning such cases to another judge or judges. The proposed amendments also would provide explicit authority for a chief judge (with approval from the state court administrator) to order a judge to submit to an independent medical examination if there is a good faith doubt as to the judge's fitness that prompted the chief judge's report.

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 October 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. 2015-20. 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.

Amendments of Rules 3.203 and 3.208 of the Michigan Court Rules

On order of the Court, dated June 21, 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 amendments of Rules 3.203 and 3.208 of the Michigan Court Rules are adopted, effective September 1, 2017.

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

MCR 3.203 Service of Notice and Court Papers in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction (1)–(2) [Unchanged.]

(3) Alternative Electronic Service

(a) A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney by any of the following methods:

- (i) e-mail;
- (ii) text message;
- (iii) sending an e-mail or text message alert to log into a secure website to view notices and court papers.

(b) Obligation to Provide and Update Information

- (i) The agreement for service by e-mail or e-mail alert shall set forth the e-mail addresses for service. Attorneys who agree to e-mail service shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have agreed to service by e-mail or e-mail alert under this subsection shall immediately notify the friend of the court if the e-mail address for service changes.
- (ii) The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to

service by text message or text message alert under this subsection shall immediately notify the friend of the court if the phone number for service changes.

(c) The party or attorney shall set forth in the agreement all limitations and conditions concerning e-mail or text message service, including but not limited to:

- (i) the maximum size of the document that may be attached to an e-mail or text message;
- (ii) designation of exhibits as separate documents;
- (iii) the obligation (if any) to furnish paper copies of e-mailed or text message documents; and
- (iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.

(d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.

(e) A paper served by alternative electronic service that the friend of the court or an authorized designee is required to sign may include the actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).

(f) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the case by court, party name, case number, and the title or legal description of the document(s) being sent.

(g) An alternative electronic service transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service under this subrule is treated as service by delivery under MCR 2.107(C)(1).

(h) A party or attorney may withdraw from an agreement for alternative electronic service by notifying the friend of the court in writing at least 28 days in advance of the withdrawal.

(i) Alternative electronic service is complete upon transmission, unless the friend of the court learns that the attempted service did not reach the intended recipient. If an alternative electronic service transmission is undeliverable, the friend of the court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The friend of the court must also retain a notice that the electronic transmission was undeliverable.

(j) The friend of the court shall maintain an archived record of sent items that shall not be purged until a

judgment or final order is entered and all appeals have been completed.

- (k) This rule does not require the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.

(B)–(C) [Unchanged.]

(D) Administrative Change of Address. The friend of the court of-
fice ~~shall~~may change a party's address administratively pursu-
ant to the policy established by the state court administrator
for that purpose when:

- (1) [Unchanged.]
- (2) notices and court papers are returned to the friend of the
court office as undeliverable or the friend of the court de-
termines that a federal automated database has determined
that mail is not deliverable to the party's listed address.

(E)–(H) [Unchanged.]

(I) Notice to Attorneys.

- (1) Copies of notices required to be given to the parties also
must be sent to the attorneys of record.
- (2) The notice requirement of this subrule remains in effect
until 21 days after judgment is entered or until postjudg-
ment matters are concluded, whichever is later.

(J) [Former subrule "(I)" relettered as "(J)," but otherwise
unchanged.]

Rule 3.208 Friend of the Court

(A)–(C) [Unchanged.]

~~(D) Notice to Attorneys~~

- ~~(1) Copies of notices required to be given to the parties also
must be sent to the attorneys of record.~~
- ~~(2) The notice requirement of this subrule remains in effect
until 21 days after judgment is entered or until postjudg-
ment matters are concluded, whichever is later.~~

STAFF COMMENT: The amendments of MCR 3.203 allow the
friend of the court to use automated databases such as the United
States Postal Services' National Change of Address database to iden-
tify outdated addresses and update them to correct addresses. The
amendments allow a party or a party's attorney to agree to receive
notices and other court papers from the friend of the court elec-
tronically. The amendments move the requirement to provide no-
tices to attorneys of record from MCR 3.208.

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.

Adoption of Rule 8.115 of the Local Court Rules of the Third Judicial Circuit Court (Dated June 21, 2017)

On order of the Court, notice of the proposed changes and an
opportunity for comment having been provided, the following
Rule 8.115 of the Local Court Rules of the Third Judicial Circuit
Court is adopted, effective July 1, 2017.

Rule 8.115 Courthouse Decorum

- (A) This court rule applies to the conduct and dress of those who
attend court or engage in business in the court offices, including
attorneys, litigants, witnesses, jurors, and interested persons.
- (B) Court proceedings shall be conducted in a manner that pro-
tects the dignity and seriousness of the proceedings. Conduct
by any person that may interfere with the decorum of the court
is prohibited and may result in removal of that person from the
court and/or a finding of contempt of court.
- (C) Attorneys shall wear proper business attire while attending
court, unless excused from doing so by the court.
- (D) Jurors, parties, witnesses, and interested persons should wear
appropriate attire while attending court, unless excused from
doing so by the court.
- (E) The jury clerk shall assist the court in ensuring compliance
with this rule and may require a juror whose clothing does not
comply with subsection (D) to obtain appropriate attire or to
report for service on a later date. A juror who fails to return to
court as directed may be found in contempt of court and is
subject to the penalties permitted by statute and court rule.
- (F) Persons attending court are required to abide by the following
guidelines, which are representative rather than all inclusive.
 - (1) Smoking or the use of electronic smoking devices, eating,
drinking beverages other than water, and gum chewing are
not allowed in any courtroom at any time, whether during
sessions of the court or during a recess.
 - (2) Taking photographs or making other audio or video record-
ings is not allowed in the courtroom without the express
permission of the court.
 - (3) All conversations and reading of non-case-related materials
like books, newspapers, and periodicals, except as neces-
sary for the matter before the court, are prohibited in the
courtroom during sessions of the court.
 - (4) Cellular telephones, beepers, and electronic communication
devices that have the capacity to disrupt court proceedings
must be turned off or set for silent notification during ses-
sions of the court. Individuals shall not answer or send mes-
sages from telephones, beepers, or other electronic com-
munication devices while the court is in session. Failure to
comply with this section may result in the seizure of the
device, a fine, incarceration, or both for contempt of court.
- (G) Each business office of the court may set a policy regarding
the use of cellular telephones, beepers, and other electronic
communication devices in that office.
- (H) It is within the discretion of the judge to have an individual
removed from the courtroom if the individual's conduct or
dress does not comport with this rule.

STAFF COMMENT: These local court rule provisions of the Third
Judicial Circuit Court have been adopted to reinforce the solemnity
and importance of court proceedings, clearly enunciate to all court
users the conduct expected or prohibited in court facilities, and
establish a single standard.

The staff comment is not an authoritative construction by
the Court.