

Amendments of Rules 1.109, 2.107, 2.113, 2.114, 3.206, 3.901, 3.931, 3.961, 4.302, 5.113, 5.114, 6.001, 6.101, 8.117, and 8.119 of the Michigan Court Rules

Amendments of Rules 2.625 and 3.101 of the Michigan Court Rules

Amendments of Rules 7.300 *et seq.* of the Michigan Court Rules

To read ADM File No. 2002-37, dated September 20, 2017; ADM File No. 2016-40, dated September 27, 2017; and ADM File No. 2017-06, dated September 27, 2017; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Administrative Order No. 2017-02

Adoption of Concurrent Jurisdiction Plan for the 19th Circuit Court, the 85th District Court, and the Benzie and Manistee County Probate Courts (Dated September 20, 2017)

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of the following concurrent jurisdiction plan effective immediately:

- The 19th Circuit Court, the 85th District Court, and the Benzie and Manistee County Probate Courts.

The plan shall remain on file with the state court administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

Proposed Amendment of Rule 2.602 of the Michigan Court Rules

On order of the Court, dated September 20, 2017, this is to advise that the Court is considering alternative amendments of Rule 2.602 of the Michigan Court Rules. Alternative A was previously published by the Court; Alternative B was developed after the public comment period expired. It is the Court's hope that by publishing both proposals together, the relative merits of each approach will be fully explored.

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.]

ALTERNATIVE A

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 motion 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.]

ALTERNATIVE B

(A)–(B) [Unchanged.]

(C) Conditional Dismissal. The court may enter a consent order for conditional dismissal under the following conditions:

(1) A consent order for conditional dismissal shall be signed and approved by all parties and shall clearly state the terms of the settlement agreement and provide for an order for reinstatement of the case and entry of judgment if defendant defaults on the terms of the settlement agreement.

(2) If the defendant defaults on the terms of the settlement agreement, the plaintiff may seek entry of an order for reinstatement of the case and entry of judgment.

(a) To obtain an order for reinstatement of the case and entry of judgment, the plaintiff shall file with the court an affidavit stating that the defendant defaulted on the terms of the settlement agreement.

(b) Plaintiff shall serve a copy of an affidavit of non-compliance on defendant at defendant's current address listed in the court records and file proof of service with the court.

(c) The affidavit shall be accompanied by a notice to defendant that an order for reinstatement and for entry of judgment is being submitted to the court for entry if no written objections to its accuracy or completeness are filed with the court clerk within 14 days after service of the notice. Unless defendant requests a hearing within 14 days after service of the notice, an order for reinstatement of the case and entry of judgment shall be signed by the court and entered.

(d) A request for hearing must state with specificity the reasons that an order for reinstatement of the case and entry of judgment should not enter.

(e) The court shall set a hearing to determine whether the defendant has complied with the settlement agreement and mail notice of that hearing to all parties.

(3) For the purposes of any statute of limitation, an action conditionally dismissed under this rule is deemed to have been initiated on date the original complaint was properly filed.

(4) All parties to a conditional dismissal bear the affirmative duty to inform the court with jurisdiction over that case of any change of address until the terms of the settlement agreement have been satisfied.

(C)–(D) [Unchanged, but relettered as (D) & (E)]

STAFF COMMENT: The proposed amendments of MCR 2.602(B) would provide procedural rules regarding entry of consent judgments. Alternative A was submitted by the Representative Assembly of the State Bar of Michigan and was previously published for comment. Alternative B was developed by the Michigan District Judges Association and the Michigan Creditors Bar Association as an alternative to the published version.

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, 2018, at P.O. Box 30052, Lansing, MI 48909, or 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.

Amendment of Rule 7.211 of the Michigan Court Rules

On order of the Court, dated September 20, 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 Rule 7.211 of the Michigan Court Rules are adopted, effective January 1, 2018.

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

Rule 7.211 Motions in Court of Appeals

(A)–(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)–(4) [Unchanged.]

(5) Motion to Withdraw. A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.

(a) [Unchanged.]

(b) If the appeal is available only by leave of the court, the motion shall be filed within 56 days after the transcript is filed or within the deadline for filing a late application for leave to appeal, whichever comes first. The filing of such a motion, with the accompanying brief required by MCR 7.211(C)(5)(a)(ii), shall be treated as the filing of an application for leave to appeal on behalf of the appellant.

~~(b)(c)~~ [Relettered but otherwise unchanged.]

~~(e)(d)~~ If the court finds that the appeal is wholly frivolous, it may grant the motion and affirm the conviction or trial court judgment in appeals by right or deny leave to appeal in appeals by leave. If the court ~~grants the motion to withdraw~~ affirms the conviction or trial court judgment or denies leave to appeal, the appellant's attorney shall mail to the appellant a copy of the transcript within 14 days after the order affirming is certified and file proof of that service. If the court finds any legal point arguable on its merits, it ~~will~~ may deny the motion and order the court appointed attorney must file an appellant's brief to proceed in support of the appeal or grant the motion and order the appointment of substitute appellate counsel to proceed in support of the appeal.

STAFF COMMENT: The amendments of MCR 7.211 allow motions to withdraw for frivolous appeal in cases that proceed by leave to be heard in the Court of Appeals. This alternative to the proposal published for comment was recommended to the Court by the Michigan Appellate Assigned Counsel System, and supported by the Court of Appeals.

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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Addition of Rule 6.008
of the Michigan Court Rules

On order of the Court, dated September 20, 2017, notice of the proposed court rule and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Rule 6.008 of the Michigan Court Rules is adopted, effective January 1, 2018.

Rule 6.008 Criminal Jurisdiction

- (A) District Court. The district court has jurisdiction over all misdemeanors and all felonies through the preliminary examination and until the entry of an order to bind the defendant over to the circuit court.
- (B) Circuit Court. The circuit court has jurisdiction over all felonies from the bindover from the district court unless otherwise provided by law. The failure of the court to properly document the bindover 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, or before trial.
- (C) Pleas and Verdicts in Circuit Court. The circuit court retains jurisdiction over any case in which a plea is entered or a verdict rendered to a charge that would normally be cognizable in the district court.
- (D) Sentencing Misdemeanors in Circuit Court. The circuit court shall sentence all defendants bound over to circuit court on a felony that 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 addition of Rule 6.008 establishes 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. 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 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 Rules 1.0, 1.2, 4.2 and 4.3 of the
Michigan Rules of Professional Conduct and
Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules

On order of the Court, dated September 20, 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 1.0, 1.2, 4.2 and 4.3 of the Michigan Rules of Professional Conduct, and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules are adopted, effective January 1, 2018.

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

Rule 1.0 Scope and Applicability of Rules and Commentary

(a)–(c) [Unchanged.]

Preamble: A Lawyers Responsibilities [Unchanged until section entitled “Terminology.”]

Terminology.

“Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing confirming an oral informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. [To be inserted after term “Belief” and before term “Consult.”]

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. [To be inserted after term “Fraud” and before term “Knowingly.”]

Rule 1.2 Scope of Representation

(a) [Unchanged.]

(b) A lawyer licensed to practice in the State of Michigan may limit the objectives scope of the a representation, file a limited appearance in a civil action, and act as counsel of record for the limited purpose identified in that appearance, if the client consents after consultation ~~limitation~~ is reasonable under the circumstances and the client gives informed consent, preferably confirmed in writing.

(1) A lawyer licensed to practice in the State of Michigan may draft or partially draft pleadings, briefs, and other papers to be filed with the court. Such assistance does not require the signature or identification of the lawyer, but does require the following statement on the document: “This document was drafted or partially drafted with the assistance of a lawyer licensed to practice in the State of Michigan, pursuant to Michigan Rule of Professional Conduct 1.2(b).”

(2) The filing of such documents is not and shall not be deemed an appearance by the lawyer in the case. Any filing prepared pursuant to this rule shall be signed by the party designated as “self-represented” and shall not be signed by the lawyer who provided drafting preparation assistance.

Further, the lawyer providing document preparation assistance without entering a general appearance may rely on the client's representation of the facts, unless the lawyer has reason to believe that such representation is false, seeks objectives that are inconsistent with the lawyer's obligation under the Rules of Professional Conduct, or asserts claims or defenses pursuant to pleadings or papers that would, if signed by the lawyer, violate MCR 2.114, or which are materially insufficient.

(c)–(d) [Unchanged.]

Comment: [To be added following the paragraph entitled “Services Limited in Objectives or Means,” and before the paragraph entitled “Illegal, Fraudulent and Prohibited Transactions.”]

Reasonable under the Circumstances. Factors to weigh in deciding whether the limitation is reasonable under the circumstances according to the facts communicated to the attorney include the apparent capacity of the person to proceed effectively with the limited scope assistance given the complexity and type of matter and other self-help resources available. For example, some self-represented persons may seek objectives that are inconsistent with an attorney's obligation under the Rules of Professional Conduct, or assert claims or defenses pursuant to pleadings or motions that would, if signed by an attorney, violate MCR 2.114 [Signatures of Attorneys and Parties; Verification; Effect: Sanctions]. Attorneys must be reasonably diligent to ensure a limited scope representation does not advance improper objectives, and the commentary should help inform lawyers of these considerations.

Rule 4.2 Communication with a Person Represented by Counsel

- (a) In representing a client, a lawyer shall not communicate about the subject of the representation with a ~~party~~ person whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (b) An otherwise self-represented person receiving limited representation in accordance with Rule 1.2(b) is considered to be self-represented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of limited appearance comporting with MCR 2.117(B)(2)(c) or other written communication advising of the limited scope representation. Oral communication shall be made first to the limited scope representation lawyer, who may, after consultation with the client, authorize oral communications directly with the client as agreed.
- (c) Until a notice of termination of limited scope representation comporting with MCR 2.117(B)(2)(c) is filed, or other written communication terminating the limited scope representation is provided, all written communication, both court filings and otherwise, shall be served upon both the client and the limited scope representation attorney.

Rule 4.3 Dealing with an ~~Un~~ Self-Represented Person

- (a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the

lawyer is disinterested. When the lawyer knows or reasonably should know that the ~~un~~self-represented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

- (b) Clients receiving representation under a notice of limited appearance comporting with MCR 2.117(B)(2)(c) or other written communication advising of the limited scope representation are not self-represented persons for matters within the scope of the limited appearance, until a notice of termination of limited appearance representation comporting with MCR 2.117(B)(2)(c) is filed or other written communication terminating the limited scope representation is in effect. See Rule 4.2.

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A) [Unchanged.]

(B) Service on Attorney or Party.

- (1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a)–(c) [Unchanged.]

(d) The court may order service on the party.;

(e) If an attorney files a notice of limited appearance under MCR 2.117 on behalf of a self-represented party, service of every paper later filed in the action must continue to be made on the party, and must also be made on the limited scope attorney for the duration of the limited appearance. At the request of the limited scope attorney, and if circumstances warrant, the court may order service to be made only on the party.

(2)–(3) [Unchanged.]

(C)–(G) [Unchanged.]

Rule 2.117 Appearances

(A) [Unchanged.]

(B) Appearance by Attorney.

(1) [Unchanged.]

(2) Notice of Appearance.

(a)–(b) [Unchanged.]

(c) Pursuant to MRPC 1.2(b), a party to a civil action may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

- (i) The attorney files and serves a notice of limited appearance with the court before or during the relevant action or proceeding, and all parties of record are served with the limited entry of appearance; and
- (ii) The notice of limited appearance identifies the limitation of the scope by date, time period, and/or subject matter.

(d) An attorney who has filed a notice of limited appearance must restrict activities in accordance with the notice or any amended limited appearance. Should an attorney's representation exceed the scope of the limited appearance, opposing counsel (by motion), or the court (by

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order to show cause), may set a hearing to establish the actual scope of the representation.

(3) Appearance by Law Firm.

- (a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) [Unchanged.]

(C) Duration of Appearance by Attorney.

- (1) [Unchanged.]
- (2) Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.
- (3) An attorney who has filed a notice of limited appearance pursuant to MCR 2.117(B)(2)(c) and MRPC 1.2(b) may withdraw by filing a notice of withdrawal from limited appearance with the court, served on all parties of record, stating that the attorney's limited representation has concluded and the attorney has taken all actions necessitated by the limited representation, and providing to the court a current service address and telephone number for the self-represented litigant. If the notice of withdrawal from limited appearance is signed by the client, it shall be effective immediately upon filing and service. If it is not signed by the client, it shall become effective 14 days after filing and service, unless the self-represented client files and serves a written objection to the withdrawal on the grounds that the attorney did not complete the agreed upon services.

(D) Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other papers without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a paper.

Rule 6.001 Scope; Applicability of Civil Rules;
Superseded Rules and Statutes

(A)–(C) [Unchanged.]

(D) Civil Rules Applicable. The provisions of the rules of civil procedure apply to cases governed by this chapter, except

- (1) as otherwise provided by rule or statute,
- (2) when it clearly appears that they apply to civil actions only, or
- (3) when a statute or court rule provides a like or different procedure, or
- (4) with regard to limited appearances and notices of limited appearance.

Depositions and other discovery proceedings under subchapter 2.300 may not be taken for the purposes of discovery in cases governed by this chapter. The provisions of MCR 2.501(C)

regarding the length of notice of trial assignment do not apply in cases governed by this chapter.

(E) [Unchanged.]

STAFF COMMENT: The amendments of Rules 1.0, 1.2, 4.2, and 4.3 of the Michigan Rules of Professional Conduct and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules were submitted to the Court by the State Bar of Michigan Representative Assembly. The rules are intended to provide guidance for attorneys and clients who would prefer to engage in a limited scope representation. The rules allow for such an agreement "preferably in writing," and enable an attorney to file a notice of LSR with the court when the representation is undertaken as well as a termination notice when the representation has ended. The rules also explicitly allow attorneys to provide document preparation services for a self-represented litigant without having to file an appearance with the court.

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 Appointments to the Attorney Discipline Board

On order of the Court, dated September 20, 2017, pursuant to MCR 9.110, James A. Fink and John W. Inhulsen are reappointed as attorney members of the Attorney Discipline Board for terms ending October 1, 2020. Dr. Linda Hotchkiss is appointed as a layperson member of the board for a term ending October 1, 2020.

Louann Van Der Wiele is reappointed chairperson of the board and Michael Murray is reappointed vice chairperson of the board for terms ending October 1, 2018.

Supreme Court Appointments to the Attorney Grievance Commission

On order of the Court, dated September 20, 2017, pursuant to MCR 9.108, Cheryl A. Bush and Thomas G. Kienbaum are appointed as attorney members of the Attorney Grievance Commission with terms ending October 1, 2020. James Webb is appointed as a layperson member of the Attorney Grievance Commission with a term ending October 1, 2020.

Victor Fitz is appointed as chairperson of the board and Valerie White is appointed vice chairperson of the board for terms ending October 1, 2018.

Appointment of Chief Judge of the 7th Probate District Court (Charlevoix and Emmet Counties)

On order of the Court, dated September 20, 2017, effective immediately, the Honorable Valerie K. Snyder is appointed chief judge of the 7th Probate District Court (Charlevoix and Emmet counties) for a term ending December 31, 2017.

Supreme Court Appointment of Commissioner-at-Large to the State Bar of Michigan Board of Commissioners

On order of the Court, dated September 20, 2017, pursuant to State Bar Rule 5, Section 2, Joseph J. Baumann is appointed commissioner-at-large of the State Bar of Michigan Board of Commissioners to serve a three-year term commencing on adjournment of the 2017 annual meeting of the outgoing board of commissioners.