

Proposed Amendments of Rules 6.310, 6.429, and 6.431 of the Michigan Court Rules

Amendment of Rule 3.208 of the Michigan Court Rules

To read ADM File No. 2016-42, dated December 20, 2017; and ADM File No. 2016-11, dated December 20, 2017; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Proposed Amendment of Rule 15 of the Rules Concerning the State Bar of Michigan

On order of the Court, dated December 20, 2017, this is to advise that the Court is considering an amendment of Rule 15 of the Rules Concerning the State Bar of Michigan. 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 15 Admission to the Bar

Section 1. Character and Fitness Committees.

(1)–(20) [Unchanged.]

(21) Every applicant for admission by examination and any other applicant whose application is submitted to the standing committee on character and fitness for evaluation and recommendation shall pay to the State Bar of Michigan a fee of ~~\$225~~\$375 for the character and fitness investigation authorized by this rule. An additional fee of ~~\$400~~175 shall be required for character and fitness evaluations related to applications for the February examination that are ~~postmarked submitted~~ after November 1, and applications for the July examination that are ~~postmarked submitted~~ after March 1.

Section 2. Foreign Attorney; Temporary Permission. [Unchanged.]

Section 3. Procedure for Admission; Oath of Office. [Unchanged.]

STAFF COMMENT: The proposed amendment of Rule 15 of the Rules Concerning the State Bar of Michigan (submitted by the SBM Representative Assembly) would increase the fee for Character & Fitness investigations to more accurately reflect the costs of performing the investigations and would update the language to reflect the

online application process. According to the Bar, this would be the first increase in these fees in more than 15 years.

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 Supreme Court Clerk in writing or electronically by April 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. 2016-46. 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 Administrative Order No. 2007-3 E-filing Rules for the 6th Circuit Court (Oakland County)

On order of the Court, dated December 20, 2017, the following order amending Administrative Order No. 2007-3 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.]

1–3 [Unchanged.]

4. E-filings Submission, Acceptance, and Time of Service with the Court; Signature

(a)–(b) [Unchanged.]

(c) ~~E-filings may be submitted to the court at any time, but shall only be reviewed and accepted for filing by the Oakland County Clerk's Office during the normal business hours of 8:00 a.m. to 4:30 p.m. E-filings submitted after business hours shall be deemed filed on the business day the e-filing is accepted (usually the next business day).~~ Electronic filing is not restricted by the operating hours of the court and any document submitted at or before 11:59 p.m. of a business day is deemed filed on that business day. Any document submitted on a weekend or court holiday is deemed filed on the next business day. The clerk shall process electronic submissions on a first-in, first-out basis.

(d)–(h) [Unchanged.]

5–15 [Unchanged.]

Proposed Amendments of Rules 5.125 and 5.409 of the Michigan Court Rules

On order of the Court, dated December 20, 2017, this is to advise that the Court is considering amendments of Rules 5.125 and 5.409 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 5.125 Interested Persons Defined

(A)–(B) [Unchanged.]

(C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1)–(21) [Unchanged.]

(22) The persons interested in an application for appointment of a guardian of an incapacitated individual by a guardian appointed in another state or in a petition for appointment of a guardian of an alleged incapacitated individual are

(a)–(d) [Unchanged.]

(e) if no spouse, adult child, or parent is living, the presumptive heirs of the individual,

(f)–(h) [Unchanged.]

(23) The persons interested in receiving a copy of the report of a guardian of a minor, or of a legally incapacitated individual, on the condition of the ward are:

(a) the ward, if 14 years of age or older;

(b) the person who has principal care and custody of the ward, and if other than the guardian;

(c) for an adult guardianship, the spouse and adult children or, if no adult children are living, the presumptive heirs of the individual; and

(d) for a minor guardianship, the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor.

(24)–(33) [Unchanged.]

(D)–(E) [Unchanged.]

Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A)–(B) [Unchanged.]

(C) Accounts.

(1)–(4) [Unchanged.]

(5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement must be presented to the court or a verification of funds on deposit must be filed with the court, either of which must reflect the value of all liquid assets held by a financial institution

on the date of the last day~~dated within 30 days after the~~
end of the accounting period, unless waived by the court
for good cause.

(6) [Unchanged.]

(D)–(F) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 5.125(C)(22) is intended to ensure that minor children of an alleged legally incapacitated person receive notice of a petition as presumptive heirs. The proposed amendments of MCR 5.125(C)(23) were submitted by the Representative Assembly of the State Bar of Michigan, and are intended to clarify the definition of persons interested in receiving a copy of a guardianship report for a minor, as referenced by MCL 700.5215. The proposed amendment of MCR 5.409 is intended to ensure that the financial institution statements and verification of funds reflect assets on hand as of the last day of the accounting period, not some time beyond that date.

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 April 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. 2016-19/2016-28. 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 6.610 of the Michigan Court Rules

On order of the Court, dated December 13, 2017, this is to advise that the Court is considering an amendment of Rule 6.610 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
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Rule 6.610 Criminal Procedure Generally

(A)–(D) [Unchanged.]

(E) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1)–(3) [Unchanged.]

(4) A defendant or defendants may be informed of the trial rights listed in subrule (3)(b) as follows:

- (a) on the record,
- (b) in a writing made part of the file, or
- (c) in a writing referred to on the record.

Except as provided in subrule (E)(7), if the court uses a writing pursuant to subrule (E)(4)(b) or (c), the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(5)–(6) [Unchanged.]

(7) A plea of guilty or nolo contendere in writing is permissible without a personal appearance of the defendant and without support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading if

- (a)–(c) [Unchanged.]

A “writing” includes digital communications, transmitted through electronic means, which are capable of being stored and printed.

(8)–(9) [Unchanged.]

(F)–(H) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 6.610 would eliminate an arguable conflict between MCR 6.610(E)(4) and MCR 6.610(E)(7).

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 April 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. 2016-08. 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 9.112 and 9.131 of the Michigan Court Rules

On order of the Court, dated December 13, 2017, this is to advise that the Court is considering amendments of Rule 9.112 and Rule 9.131 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 9.112 Requests for Investigation

(A)–(B) [Unchanged.]

(C) Handling by Administrator.

(1)–(2) [Unchanged.]

(3) Request for Investigation of Member or Employee of Commission or Board, or the Spouse of Member or Employee of Commission. Except as modified by MCR 9.131, MCR 9.104–9.130 apply to a request for investigation of an attorney who is a member of or is employed by the board or the commission, or who is a spouse of a member or employee of the board or commission.

(D) [Unchanged.]

Rule 9.131

Investigation of Member or Employee of Board or Commission, or Spouse of Member or Employee of Board or Commission; Investigation of Attorney Representing Respondent or Witness; Representation by Member or Employee of Board or Commission.

(A) Investigation of Commission Member or Employee, or Spouse of Member or Employee of Commission. If the request is for investigation of an attorney who is a member or employee of the commission, or a spouse of a member or employee of the commission, the following provisions apply:

(1)–(6) [Unchanged.]

(B) Investigation of Board Member or Employee or Spouse of Board Member or Employee. Before the filing of a formal complaint, the procedures regarding a request for investigation of a member or employee of the board or spouse of a member or employee of the board, are the same as in other cases. Thereafter, the following provisions apply:

(1)–(4) [Unchanged.]

(C)–(D) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 9.112 and MCR 9.131 would provide that spouses of AGC or ADB members or employees would be subject to the same procedure for review of allegations of misconduct as the Board or Commission member or employee. This change would comport with recent Supreme Court practice. These proposed amendments are intended to address any perceived conflict of interest that may exist if the procedures in MCR 9.112 were to be used to review a request for investigation of the spouse of a member or employee of the Attorney Grievance Commission or Attorney Discipline Board.

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 April 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. 2016-30. 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 9.122 of the Michigan Court Rules

On order of the Court, dated December 13, 2017, this is to advise that the Court is considering an amendment of Rule 9.122 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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Rule 9.122 Review by Supreme Court

(A) Kinds Available; Time for Filing.

(1) [Unchanged.]

(2) If a request for investigation has been dismissed under MCR 9.112(C)(1)(a) or 9.114(A), a party aggrieved by the dismissal may file a complaint in the Supreme Court under MCR 7.306 within 56 days after the date of the letter notifying the party of the dismissal.

(B)–(E) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 9.122 would establish a 56-day time period within which a grievant may file a complaint in the Supreme Court after the Attorney Grievance Commission (AGC) has dismissed a request for investigation.

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 April 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. 2016-45. 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 1.16 of the Michigan Rules of Professional Conduct

On order of the Court, dated December 13, 2017, this is to advise that the Court is considering alternative amendments of Rule 1.16 of the Michigan Rules of Professional Conduct. Before determining whether either of the alternative proposals 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.

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Alternative A

Rule 1.16. Declining or Terminating Representation

(a) [Unchanged.]

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if: (1)–(6) [Unchanged.]

If a lawyer informs a client in a criminal case that, pursuant to subsection (3), he or she will withdraw from representing the client if the client does not accept a previously offered plea bargain, then the lawyer must also inform the client that the lawyer cannot withdraw without the permission of the trial court.

(c) [Unchanged.]

(d) [Unchanged.]

Alternative B

Rule 1.16. Declining or Terminating Representation

(a) [Unchanged.]

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if: (1)–(6) [Unchanged.]

If a lawyer informs a client in a criminal case that, pursuant to subsection (3), he or she will withdraw from representing the client if the client insists on pursuing an objective that the lawyer considers repugnant or imprudent, then the lawyer must

also inform the client that the lawyer cannot withdraw without the permission of the trial court.

(c) [Unchanged.]

(d) [Unchanged.]

STAFF COMMENT: These alternative proposed amendments of MRPC 1.16(b) are intended to address the possibility of an involuntary plea as the result of an attorney's threat to withdraw as counsel for a criminal client if that client does not accept a previously offered plea (under Alternative A) or more broadly if a lawyer seeks to withdraw because the lawyer considers the client's objective repugnant or imprudent. Under the proposed amendments, the attorney would be required to advise the client that the attorney may not withdraw without permission of the court. Under Alternative A, the requirement would apply only where the client refuses to accept a previously-offered plea agreement; under Alternative B, the requirement would apply in any criminal case in which the lawyer intends to withdraw under MRPC 1.16(b)(3). These proposed amendments arose during the Court's consideration of *People v Townsend*, docket 153153.

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 April 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. 2016-31. 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 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
(Dated December 20, 2017)

On September 20, 2017, for purposes of proceeding with creation and implementation of a statewide electronic filing system, this Court ordered that various rule amendments take effect January 1, 2018, with the understanding that comments submitted during the comment period and at the public hearing might result in revisions of these amendments. Because it appears that some significant changes will be considered on final review of these amendments in January 2018, the effective date of amendments adopted by order dated September 20, 2017, is deferred until further order of the Court.

Supreme Court Appointments to the Committee on Model Civil Jury Instructions

On order of the Court, dated December 13, 2017, pursuant to Administrative Order No. 2001-6, the following persons are reappointed to the Committee on Model Civil Jury Instructions for terms beginning January 1, 2018, and ending December 31, 2020:

Hon. Mark T. Boonstra
Hon. Michael L. Jaconette
Gary N. Felty Jr.
James F. Hewson
Thomas Van Dusen
Thomas W. Waun

In addition, Hon. James N. Erhart is appointed for a new term beginning January 1, 2018, and ending December 31, 2020.

Supreme Court Appointments to the Committee on Model Criminal Jury Instructions

On order of the Court, dated December 13, 2017, pursuant to Administrative Order No. 2013-13, the following persons are reappointed to the Committee on Model Criminal Jury Instructions for terms beginning January 1, 2018, and ending December 31, 2020:

Hon. Kathleen M. Brickley
Michael G. Frezza
John R. Minock
Melissa A. Powell
Stephen T. Rabaut

In addition, the following persons are appointed for a new term beginning January 1, 2018, and ending December 31, 2020:

Michael A. Tesner
Imran J. Syed
Stephanie E. Farkas

Supreme Court Appointments to the Foreign Language Board of Review

On order of the Court, dated December 13, 2017, pursuant to MCR 8.127, the following persons are reappointed to the Foreign Language Board of Review for terms beginning January 1, 2018, and ending December 31, 2020:

Hon. Suzanne Hoseth
Rafael C. Villarruel
Mary F. Rubio