

Proposed Amendments of Rules 3.201, 3.210, and 3.211, and Proposed Addition of Rules 3.222 and 3.223 of the Michigan Court Rules

Amendments of Rules 2.614, 2.622, 3.203, 3.211, 3.214, 3.301, 3.302, 3.305, 3.602, 3.616, 3.617, 3.706, 3.707, 3.708, 3.982, 5.144, 6.110, 7.107, 7.108, 7.201, 7.204, 7.205, 7.209, 7.215, 7.305, 7.306, 9.207, 9.223, 9.224 of the Michigan Court Rules and Rule 2.119 of the Court of Claims Local Rules

To read ADM File No. 2018-03, dated March 14, 2018; and ADM File No. 2017-03, dated March 21, 2018; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Admin Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Proposed Administrative Order to Require Circuit Judges and County Clerks to Enter into an Agreement on the Assignment and Performance of Ministerial Duties

On order of the Court, dated February 28, 2018, this is to advise that the Court is considering the adoption of an Administrative Order regarding ministerial duties to be performed by the county clerk. 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 Admin 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.

Administrative Order No. 2018-XX

The Michigan Constitution of 1963, Article VI, § 14, and MCL 600.571(a) designate the county clerk as the clerk of the circuit court for that county. As such, the county clerk in their role as clerk of the circuit court, performs functions in the judicial branch of government and is therefore subject to the direction of the circuit court in all matters of court administration that are reserved exclusively for the judiciary under the Michigan constitution, article 3, §2, article 6, §1, and article 6, §5. In addition, MCL 600.571(b) requires the county clerk to attend all circuit court hearings, MCL 600.571(c) provides for the assignment of any deputy clerk to be approved by the chief judge, and MCL 600.571(f) provides for the county clerk to “have the care and custody of all the records, seals, books and papers pertaining to the office of the clerk of such court, and filed or deposited therein, and shall provide such books for entering the proceedings in said court, as the judge thereof shall direct.”

In *Lapeer County Clerk v Lapeer Circuit Court*, 469 Mich 146 (2003), the Michigan Supreme Court stated:

Beyond having the care and custody of the court’s records, the circuit court clerk is also to perform noncustodial ministerial duties as directed by the court. The determination of the precise noncustodial ministerial duties that are to be performed by the clerk, including their existence, scope, and form, is a matter of court administration and is therefore reserved exclusively for the judiciary under Const 1963, art 3, § 2, Const 1963, art 61, and Const 1963, art 6, § 5. This judicial authority includes the discretion to create, abrogate, and divide between the clerk and other staff, noncustodial ministerial functions concerning court administration.

On order of the Court, in order to promote the efficient administration of justice and to clarify the extent of the responsibilities of the clerk of the circuit court that are not addressed in statute or court rule, the Michigan Supreme Court adopts this administrative order.

Each chief circuit judge shall consult with and enter into an agreement with each county clerk in their jurisdiction and submit a plan to the Supreme Court for approval that identifies the following, as applicable:

1. The case processing staff employed by the county clerk that are responsible for managing the court’s records.
2. The courtroom clerks employed or deputized by the county clerk to attend court sessions.
3. The method by which the chief circuit judge and county clerk approve of the appointment of deputy clerks or employees of the court deputized by the county clerk before hiring.
4. The ministerial court duties, not subject to MCR 8.119, which are assigned to staff of the county clerk in their role as clerk of the circuit court.
5. The method by which performance issues involving county clerk staff assigned to circuit court or court staff deputized by the county clerk are addressed.

The State Court Administrative Office shall develop guidelines for the proposed plan and directions regarding the submission of the plan for approval by the Court. The chief judge and county clerk must meet before XXX, XX, 2018 and submit their plan by XXX, XX, 2018. If a circuit court and county clerk have an agreement in place on the effective date of this order, and that agreement includes the provisions required to be included in this order, that agreement may be submitted to the Supreme Court for approval. If the agreement does not include all the provisions listed herein, it shall be revised before submission to the Court.

STAFF COMMENT: This administrative order would direct circuit courts in collaboration with county clerks to establish an agreed upon plan that outlines those duties not codified in statute or court rule that must be performed within the scope of the county clerk’s role as clerk of the circuit court. The plan would be required to be approved by the Supreme 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.

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 June 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. 2017-14. 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. 2010-4 E-filing Rules for the 13th Circuit Court

On order of the Court, dated February 28, 2018, the following order amending Administrative Order No. 2010-4 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 clerk's office during the normal business hours of 8:00 a.m. to 5:00 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.]

Amendment of Administrative Order No. 2010-6 E-filing Rules for the 16th Circuit Court (Macomb County)

On order of the Court, dated February 28, 2018, the following order amending Administrative Order No. 2010-6 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)-(c) [Unchanged.]

(d) ~~E-filings may be submitted to the Court at any time (with the exception of periodic maintenance), but shall only be reviewed and accepted for filing by the Macomb County Clerk's Office during normal business hours. E-filings submitted after the close of normal business hours shall be deemed filed on~~

~~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. Although the system may be used on a 24-hour basis, technical support will generally only be available during regular business hours.

(e)-(i) [Unchanged.]

5-15 [Unchanged.]

Amendment of Administrative Order No. 2011-1 E-filing Rules for the 3rd Circuit Court (Wayne County)

On order of the Court, dated February 28, 2018, the following order amending Administrative Order No. 2011-1 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) [Unchanged.]

(b) ~~E-filings may be submitted to the court at any time, but shall only be reviewed and accepted for filing by the clerk's office during the normal business hours of 8:30 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.

(c)-(g) [Unchanged.]

5-15 [Unchanged.]

Amendment of Administrative Order No. 2011-4 E-filing Rules for the 20th Circuit Court, the Ottawa County Probate Court and the 58th District Court

On order of the Court, dated February 28, 2018, the following order amending Administrative Order No. 2011-4 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 participating courts at any time, but shall only be reviewed and accepted for filing by the~~

clerk's office during the normal business hours of 8:00 a.m. to 5:00 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.]

Administrative Order No. 2018-1

Adoption of Concurrent Jurisdiction Plan for the 34th Circuit Court, the 82nd District Court, the Ogemaw and Roscommon County Probate Courts (Dated March 14, 2018)

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 34th Circuit Court, the 82nd District Court, and the Ogemaw County and Roscommon 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 Amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct

On order of the Court, dated March 14, 2018, this is to advise that the Court is considering amendments of Canon 3 and Canon 7 of the 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 will also be considered at a public hearing. The notices and agendas for public hearings are posted at Admin 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 3. A Judge Should Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1)–(5) [Unchanged.]

(6) A judge should abstain from public comment about a pending or impending proceeding any court, and should require a similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court or the judge's holdings or actions. A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(7) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(8) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (6) and (7).

(9) Notwithstanding the restrictions in paragraph (6), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(10) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

(7)–(10) [Unchanged, but renumbered (11)–(14)].

B.–D. [Unchanged.]

Canon 7. A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office

A. [Unchanged.]

B. Campaign Conduct:

(1) A candidate, including an incumbent judge, for a judicial office:

(a)–(b) [Unchanged.]

(c) ~~should~~ shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, or promises, or commitments of conduct in office ~~other than the faithful and~~ that are inconsistent with the impartial performance of the adjudicative duties of the judicial office.

(d) [Unchanged.]

(2)–(3) [Unchanged.]

C. [Unchanged.]

STAFF COMMENT: The proposed amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct would incorporate the ABA Model Code of Judicial Conduct 2.10 language and clarify its application to public comments made by judges.

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 July 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. 2017-26. 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 Canon 4 of the Michigan Code of Judicial Conduct

On order of the Court, dated February 28, 2018, 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 amendment of Canon 4 of the Michigan Code of Judicial Conduct is adopted, effective immediately.

[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 ~~\$400~~\$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 the aggregate value of gifts received by a judge or family member residing in the judge's household from any source exceeds ~~\$400~~\$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: This amendment increases the acceptable value for a gift given incident to a public testimonial, and likewise increases the threshold amount for disclosure of a gift. This increase is 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. 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.

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 amendment increases the disclosure threshold to \$375, but requires 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 amendment does 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.

Proposed Addition of Rule 2.228 of the Michigan Court Rules

On order of the Court, dated February 28, 2018, this is to advise that the Court is considering an addition of Rule 2.228 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 Admin 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 2.228 Transfer to Court of Claims

A notice of transfer to the Court of Claims must be provided before or at the time the defendant files an answer. After that time, the defendant may seek a transfer to the Court of Claims by motion under MCR 2.221.

STAFF COMMENT: MCL 600.6404(3) allows defendant to transfer a case to the Court of Claims. This proposed rule would require such a transfer to be made at or before the time the defendant files an answer, which is the same period mandated for change of venue under MCR 2.221. This proposal arose from the Court's consideration of *Baynesan v Wayne State University* (Docket No. 154435), in which defendant waited until just a month before trial before transferring a case he could have transferred nearly a year sooner.

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 June 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. 2017-12. 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 2.602 of the Michigan Court Rules

On order of the Court, dated February 28, 2018, 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 amendment of Rule 2.602 of the Michigan Court Rules is adopted, effective May 1, 2018.

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

Rule 2.602 Entry of Judgments and Orders

(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 for reinstatement of the case and entry of judgment.
- (2) If the breaching party defaults on the terms of the settlement agreement as provided for in the conditional dismissal order, the non-defaulting party 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 non-defaulting party shall file with the court an affidavit stating that the breaching party defaulted on the terms of the settlement agreement.
 - (b) The non-defaulting party shall serve a copy of an affidavit of non-compliance on the breaching party at its current address listed in the court records and file proof of service with the court.

(c) If the order for conditional dismissal states that judgment may be entered without notice or further process, the court shall enter the proposed judgment upon determining the conditions for entry of judgment in the conditional dismissal order are satisfied.

(d) If the order for conditional dismissal does not provide for immediate entry of judgment, the affidavit shall be accompanied by a notice to the breaching party 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 an objection is filed 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.

(i) An objection must be verified and state with specificity the reasons that an order for reinstatement of the case and entry of judgment should not enter.

(ii) If an objection is filed, the court shall set a hearing and serve notice of that hearing to all parties.

(iii) This 14-day notice provision may be waived in cases filed pursuant to MCR 4.201 if such waiver is acknowledged in writing.

(3) For the purposes of any statute of limitation, an action conditionally dismissed under this rule is deemed to have been initiated on the 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 amendment of MCR 2.602 provides procedural rules regarding entry of consent orders for conditional dismissal.

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.

Appointment of Chief Judge of the 95B District Court for Dickinson County

On order of the Court, dated March 14, 2018, effective immediately, the Honorable Julie A. LaCost is appointed chief judge of the 95B District Court in Dickinson County for the remainder of a term ending December 31, 2019.

Supreme Court Appointments to the Court Reporting and Recording Board of Review

On order of the Court, dated March 14, 2018, pursuant to MCR 8.108(G)(2)(a), the following appointment is made to the Court Reporting and Recording Board of Review, effective April 1, 2018:

The Honorable Christina Elmore (district court judge) is appointed for a first four-year term that will expire on March 31, 2022.