

Proposed Administrative Order to Require Courts to Establish Security Committees

Proposed Amendments of Rules 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and New Rule 3.618 of the Michigan Court Rules

To read ADM File No. 2018-21, dated October 3, 2018; and ADM File No. 2002-37, dated September 27, 2018; 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 2.513 of the Michigan Court Rules

On order of the Court, dated September 27, 2018, this is to advise that the Court is considering an amendment of Rule 2.513 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 2.513 Conduct of Jury Trial

(A) Preliminary Instructions. After the jury is sworn and before evidence is taken, the court shall orally provide the jury with pre-trial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be orally instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall also provide each juror with a written copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions.

(B)–(M) [Unchanged.]

(N) Final Instructions to the Jury.

(1) Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for

jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must orally instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may orally instruct the jury before the parties make closing arguments. After jury deliberations begin, the court may give additional instructions that are appropriate.

(2) Solicit Questions about Final Instructions. As part of the final jury instructions, the court shall advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during deliberations. ~~Upon concluding the final instructions~~ After orally delivering the final jury instructions, the court shall invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate.

(3)–(4) [Unchanged.]

(O)–(P) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 2.513 would explicitly provide that a court must orally recite its preliminary and final jury instructions for the jury (in addition to providing them in writing). The proposed amendment would clarify that even though a juror is entitled to a written set of instructions, the judge must still orally instruct the jury. This proposed amendment would conform the rule to the opinion issued by the Court in *People v Traver*.

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 January 1, 2019 at P.O. Box 30052, Lansing, MI 48909, or ADM comment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-05. 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 7.2 of the Michigan Rules of Professional Conduct

On order of the Court, dated September 27, 2018, this is to advise that the Court is considering an amendment of Rule 7.2 of the Michigan Rules of Professional 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 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 7.2 Advertising

(a)–(c) [Unchanged.]

(d) For purposes of media advertising, services of a lawyer or law firm that are advertised under the heading of a phone number, web address, or trade name shall identify the name and contact information of at least one lawyer responsible for the content of the advertisement.

STAFF COMMENT: The proposed amendment of MRPC 7.2 would require media lawyer advertisements to identify the name and contact information of at least one lawyer providing services. This proposal is being republished in light of the ABA's recent adoption of revisions of the model rules regarding attorney advertising.

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, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-27. 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 Rule 6.502 of the Michigan Court Rules and Rule 3.8 of the Michigan Rules of Professional Conduct

On order of the Court, dated September 24, 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 amendments of Rule 6.502 of the Michigan Court Rules and Rule 3.8 of the Michigan Rules of Professional Conduct are adopted, effective January 1, 2019.

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

MCR 6.502 Motion for Relief from Judgment

(A)–(F) [Unchanged.]

(G) Successive Motions.

(1) [Unchanged.]

(2) A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion. The clerk shall refer a successive motion that asserts that one of these exceptions is applicable to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

The court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime.

(3) For purposes of subrule (G)(2), “new evidence” includes new scientific evidence. This includes, but is not limited to, shifts in science entailing changes:

(a) in a field of scientific knowledge, including shifts in scientific consensus;

(b) in a testifying expert's own scientific knowledge and opinions; or

(c) in a scientific method on which the relevant scientific evidence at trial was based.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a)–(e) [Unchanged.]

(f) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the crime for which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,
(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant is innocent of the crime.

(g) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction is innocent of the crime for which defendant was prosecuted, the prosecutor shall seek to remedy the conviction.

(h) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of section (f) and (g), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Comments: [Unchanged.]

STAFF COMMENT: The amendments make several substantive changes in MCR 6.502 regarding postjudgment relief from judgment motions. First, the new language in MCR 6.502(G)(2) inserts a discretionary “actual innocence” waiver provision similar to that in MCR 6.508(D)(3). Further, MCR 6.502(G)(3) is added to clarify that shifts in science are included in the definition of “new evidence” for purposes of the exemption from the successive motion limitation. Finally, new language is added to MRPC 3.8 to require certain actions by a prosecutor who knows of new, credible, and material evidence creating a reasonable likelihood that defendant is innocent of the crime for which defendant was convicted, or who knows of clear and convincing evidence that shows defendant is innocent of the crime. The additional language of MRPC 3.8 is taken largely from the ABA Model Rules of Professional Conduct 3.8, and includes the “safe harbor” provision as a separate provision of the rule (as opposed to being part of the comments as in the model rule).

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.