Amendment of Rule 7 of the Rules Concerning the State Bar of Michigan (Dated March 24, 2021)

On order of the Court, 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 7 of the Rules Concerning the State Bar of Michigan is adopted, effective May 1, 2021.

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

Rule 7 Officers

Section 1. President, President-elect, Vice-president, Secretary, and Treasurer.

The officers of the Board of Commissioners of the State Bar of Michigan are the president, the president-elect, the vice-president, the secretary, and the treasurer. The officers serve for the year beginning with the adjournment of the annual meeting following their election and ending with the adjournment of the next annual meeting. A person may serve as president only once.

After the election of board members but before the annual meeting each year, the Board of Commissioners shall elect from among its members, by majority vote of those present and voting, if a quorum is present:

(1)–(3) [Unchanged.]

If a vice-president is not able to assume the duties of president-elect, the Board of Commissioners also shall elect from among its members, by majority vote of those present and voting, if a quorum is present, a president-elect who becomes president on the adjournment of the next succeeding annual meeting.

A commissioner whose term expires at the next annual meeting is not eligible for election as an officer unless the commissioner has been reelected or reappointed for another term as a commissioner. If the remaining term of a commissioner elected treasurer, secretary, vice-president, or president-elect will expire before the commissioner completes a term as president, the term shall be extended for an additional year or years to allow the commissioner to serve consecutive terms in each successive office through the completion of the commissioner's ~~complete the~~ term as president, provided that the commissioner is elected by the Board of Commissioners to serve in each successive office. If the term of an elected commissioner is so extended, the authorized membership of the board is increased by one for that period; a vacancy in the district the treasurer, secretary, vice-president, or president-elect represents exists when the term as a commissioner would normally expire, and an election to choose a successor is to be held in the usual manner.

No person holding judicial office may be elected or appointed an officer of the Board of Commissioners. A judge presently serving as an officer may complete that term but may not thereafter, while holding judicial office, be elected or appointed an officer. A person serving as an officer who, after the effective date of this amendment, is elected or appointed to a judicial office, must resign as an officer of the board on or before the date that person assumes judicial office.

Section 2–Section 4 [Unchanged.]

STAFF COMMENT: The amendment of Rule 7 of the Rules Concerning the State Bar of Michigan ensures that all main officers (president, vice-president, treasurer, and secretary) can move sequentially through the leadership roles of the Board of Commissioners, as long as the extension of terms is approved by the Bar's Board of Commissioners. The proposal was submitted by the State Bar of Michigan.

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.

Amendment of Administrative Order No. 2020-17 Priority Treatment and New Procedure for Landlord/Tenant Cases (Dated March 22, 2021)

Administrative Order No. 2020-17
Priority Treatment and New Procedure for Landlord/Tenant Cases

Since the early days of the pandemic, state and national authorities have imposed restrictions on the filing of many landlord/tenant cases. As those restrictions are lifted and courts return to full capacity and reopen facilities to the public, many will experience a large influx of landlord/tenant case filings. Traditionally, the way most courts processed these types of cases relied heavily on many cases being called at the same time in the same place, resulting in large congregations of individuals in enclosed spaces. That procedure is inconsistent with the restrictions that will be in place in many courts over the coming weeks and months as a way to limit the possibility of transmission of COVID-19. In addition, courts are required to comply with a phased expansion of operations as provided under Administrative Order No. 2020-14, which may also impose limits on the number of individuals that may congregate in public court spaces.

Therefore, the Court adopts this administrative order under 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, directing courts to process landlord/tenant cases using a prioritization approach. This approach will help limit the possibility of further infection while ensuring that landlord/tenant cases are able to be filed and adjudicated efficiently. All courts having jurisdiction over landlord/tenant cases must follow policy guidelines established by the State Court Administrative Office. Courts should be mindful of the limitations imposed by federal law (under the CARES Act) as these cases are filed and processed, and follow the guidance in Administrative Order No. 2020-8 in determining the appropriate timing for beginning to consider these cases.

For courts that are able to begin conducting proceedings, the following provisions apply to landlord/tenant actions.

(1)–(9) [Unchanged.]

(10) In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent, a court must stay further proceedings after the pretrial hearing is conducted and not proceed to judgment if a defendant applies for COVID Emergency Rental Assistance (CERA) and notifies the court of the application. The stay is contingent upon the following events:

a. An eligibility determination is made by the appropriate HARA within 30 days of the pretrial hearing;

b. The defendant is eligible to receive rental assistance for all rent owed; and

c. The plaintiff receives full payment from the CERA program within 45 days of the pretrial hearing.

If any of these events do not occur, excluding delays attributable to the plaintiff, the court must lift the stay and continue with proceedings.

(10)–(13) [Renumbered (11)–(14) but otherwise unchanged.]

The chief judge shall submit a summary of the discussion and proposed recommendations to the regional administrator within two weeks following the meeting.

This order is effective until further order of the Court.

ZAHRA, J. (*dissenting*). In response to the backlog of landlord-tenant cases likely to be caused by the federal Coronavirus Aid, Relief, and Economic Security Act, 15 USC 116 *et seq.* — which imposed a moratorium on evictions from March 27, 2020, when the act was enacted, through July 25, 2020 for certain rental properties whose dwellings are supported by federal programs — and several executive orders imposing a moratorium on evictions for all renters issued by Governor Whitmer (e.g., Executive Order No. 2020-118), this Court on June 9, 2020, issued this administrative order setting forth procedures for courts to follow in actions filed under the summary proceedings act, MCL 600.5701 *et seq.* Further, noting that the Legislature approved 2020 SB 690 (now 2020 PA 123), which earmarked $50 million for direct payments to landlords for rent arrearages and $10 million to support legal services and administration to reduce the number of evictions, this administrative order required a one-week adjournment to allow litigants the opportunity to access any resources that might help defray the rent due or to enter into agreements to resolve the dispute privately. This one-week adjournment was consistent with the one-week adjournment already provided for at the court's discretion under MCR 4.201(F)(4)(c), and arguably did not represent a new, unreasonable delay, even though it is a procedure that is not commonly exercised by the courts.

This administrative order has since been amended four times and extended three times. In amending this order today for a fifth time, this Court *requires* all actions for nonpayment of rent to be stayed for at least 30 days after a pretrial hearing is conducted if the tenant applies for COVID Emergency Rental Assistance (CERA) relief. The stay may be extended an additional 15 days if the tenant becomes eligible for such relief and is awaiting payment, and it may be extended further if any "delays attributable to the [landlord]" occur. I conclude it is an abuse of this Court's authority to exercise general superintending control over all state courts under Const 1963, art 6, § 4 to modify the statutory framework in which a landlord may obtain a judgment against a defaulting tenant. Preliminarily, it should not be lost on anyone that if landlords and tenants wish to delay summary proceedings in actions for nonpayment of rent pending CERA eligibility determinations and payment, they may do so on their own accord; there is no need for a Court mandate to accomplish this. Why must — and on what authority may — this Court strip litigants of their ability to resolve their disputes privately and force these delays in the process where none exist by statute? Indeed, there is no guarantee that every tenant who applies for CERA relief will obtain it. Yet by requiring the stay of all proceedings for at least 30 days, this Court shelters tenants, many of whom ultimately will not qualify for these funds, at the expense of *all* landlords, whose own financial struggles appear to be lost on this Court. Moreover, why does this Court only extend the stay for delays caused by the landlord? Is it not conceivable a tenant may cause delays in the process to extend the life of the stay? Do delays caused by the tenant not warrant an immediate lift of the stay and a continuation of the proceedings?

This raw exercise of judicial power violates a fundamental tenet of our democracy: the separation of powers.[1] The Legislature, not the judiciary, possesses the exclusive power to make laws. "Our task, under the Constitution, is the important, but yet limited, duty to read and interpret what the Legislature has actually made the law."[2] "In accordance with the constitution's separation of powers, this Court cannot revise, amend, deconstruct, or ignore the Legislature's product and still be true to our responsibilities that give our branch only the judicial power."[3] Because I would not abuse this Court's general superintending authority over all state courts to judicially modify the framework governing actions for nonpayment of rent, a framework enacted by this state's sole legislative body, I dissent from this Court's order.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to further administratively suspend the operation of certain laws governing summary landlord-tenant proceedings.[4] Today's amendments impose an automatic stay on all cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent if the tenant has applied for COVID Emergency Rental Assistance (CERA) and notifies the court of the application. The changes, although perhaps well-intentioned, upend the statutory scheme the Legislature created for landlord-tenant proceedings and deprive district court judges of discretion that they have been granted by the Legislature and this Court. I believe that changes to our state's laws should be made by the Legislature, not this Court, and that amendments to the court rules and administrative orders governing the procedural aspects of landlord-tenant proceedings should be made through our regular and public amendment process rather than by emergency orders.

As noted above, this amendment to Administrative Order No. 2020-17 provides for a stay in all cases in which a tenant has applied

for the CERA program and notified the court of the application. The stay is supposedly subject to a number of conditions; it is "contingent upon": (1) an eligibility determination being made by the appropriate agency within 30 days of the pretrial hearing, (2) the tenant being eligible for rental assistance for all rent owed, and (3) the landlord receiving full payment within 45 days of the pretrial hearing. However, there is no mechanism for the district court to determine the tenant's eligibility; rather, the eligibility determination is made by the Housing Assessment and Resource Agency. Thus, although the maximum duration of the stay absent delays attributable to the landlord will be 45 days, it appears as a practical matter that today's amendment will result in an automatic 30-day stay since the stay must be entered even before these determinations by an outside agency are made, and the district court will have no power over how long they take to be made.

The Legislature established a scheme for summary proceedings to recover possession of premises. MCL 600.5701 *et seq.* When a tenant fails to pay rent, a landlord may recover possession of the premises by summary proceedings if the tenant fails to move out or pay the rent due under the lease within seven days of being served with a written demand for possession for nonpayment of rent. MCL 600.5714(1)(a). This seven-day time frame between when notice is given and when summary proceedings can commence is shorter than other notice timeframes that govern landlord-tenant relationships, such as the 30-day notice to quit required when a landlord wishes to evict a holdover tenant. MCL 554.134(1). There are also shorter time frames, such as the 24-hour notice required for tenants involved in illegal drug activity. MCL 554.134(4). Thus, the Legislature established different notice periods in landlord-tenant proceedings depending on why the landlord is seeking to recover possession. The automatic-stay requirement imposed by this Court does not respect these legislative choices. Landlords who wish to exercise their statutory right to recover possession of their premises are now forced to wait until the stay is lifted if a tenant applies for the CERA program.[5]

Today's amendments to the administrative order further strip district court judges of their discretion to adjourn landlord-tenant proceedings, enter a default, or proceed immediately to trial. MCL 600.5732 states, in relevant part, "Pursuant to applicable court rules, a court having jurisdiction over summary proceedings *may*…order adjournments and continuances…." (Emphasis added.) Under MCR 4.201, the district court "*may* adjourn" proceedings for up to seven days if a party fails to appear or up to 56 days if the tenant appears. MCR 4.201(F)(4)(c), (J)(1) (emphasis added). Use of the word "may" indicates that the district court has discretion to adjourn the proceedings. See *People v Grant*, 445 Mich 535, 542 (1994); *Mull v Equitable Life Assurance Society of the US*, 444 Mich 508, 519 (1994). The court also has discretion to enter a default if the tenant does not appear, MCR 4.201(F)(4)(a), or proceed to trial if the tenant appears, MCR 4.201(J)(1). The Court previously divested district court judges of their discretion to enter a default or proceed to trial at the initial court date, requiring that all landlord-tenant proceedings be adjourned for seven days, with a limited number of exceptions. Administrative Order No. 2020-17(8). Today's amendments go even further. Not only must district court judges adjourn all cases for seven days; they must also stay proceedings in all nonpayment of rent cases in which the tenant has applied for CERA.[6] I agree with Justice ZAHRA that this raises yet another significant question about today's order: where does this Court derive its authority to dictate in advance how a trial court must exercise its discretion in a particular case?[7]

We are now over a year into the COVID-19 pandemic, and the Court has made numerous changes to landlord-tenant proceedings without providing stakeholders any opportunity for public comment. We have the power to "establish, modify, amend and simplify the practice and procedure in all courts of this state" through our court rules. Const 1963, art 6, § 5. But we are not permitted to "establish, abrogate, or modify the substantive law." *McDougall v Schanz*, 461 Mich 15, 27 (1999). Additionally, to amend the Michigan Court Rules or other sets of rules, we have established procedures that generally require notice and administrative public hearings unless the Court "determines that there is a need for immediate action or if the proposed amendment would not significantly affect the delivery of justice." MCR 1.201(D). Rather than continue to adopt emergency orders, changes to our landlord-tenant laws should be made by the Legislature and changes to the related court procedures should be made utilizing our normal, transparent amendment processes.

To the extent the Court today is attempting to facilitate voluntary participation by landlords and tenants in the CERA program, our current statutes and court rules already allow them to do so. In cases in which an adjournment is necessary to provide additional time to pursue rental assistance, the parties can request an adjournment and the district court has discretion to grant such requests in appropriate cases. I do not believe that we should circumvent our laws and court rule amendment processes in order to coerce landlords to participate in the program. In my opinion, district court judges are in the best position to decide, on a case-by-case basis, when adjournments in landlord-tenant proceedings are necessary or appropriate.

***

In my view, we should return our trial courts to regular order and stop micromanaging them to coerce participation in governmental programs and directives that are of questionable constitutional validity.

ENDNOTES

1. Const 1963, art 3, § 2 ("The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.").
2. *Lansing Mayor v Pub Serv Comm*, 470 Mich 154, 161 (2004).
3. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 98 (2008) (quotation marks, citation, and brackets omitted).

4. To the extent that this administrative order continues to rely on the eviction moratorium order issued by the Centers for Disease Control and Prevention (CDC), I continue to object for the reasons I have stated previously. Administrative Order No. 2020-17, 506 Mich ___ (October 22, 2020) (VIVIANO, J., dissenting) (questioning the constitutionality of the CDC's order and criticizing the Court's reliance on it as a basis to suspend the operation of certain laws governing summary landlord-tenant proceedings), citing CDC, *Temporary Halt in Residential Evictions*, 85 Fed Reg 55,292 (September 4, 2020); Amendment of Administrative Order 2020-17, ___ Mich ___ (January 30, 2021) (VIVIANO, J., dissenting) (same), citing CDC, *Temporary Halt in Residential Evictions*, 86 Fed Reg 8,020 (February 3, 2021).
5. The Court's continued interference with the statutes and rules governing summary proceedings appears to be based on the assumption that landlords and tenants alike will enthusiastically embrace the CERA program because both parties will immediately benefit from the large influx of federal aid. However, as with most government programs, not every potential recipient is interested in accepting federal dollars with all the inevitable strings attached. See Parker, *Why Some Landlords Don't Want Any of the $50 Billion in Rent Assistance*, Wall Street Journal (March 19, 2021) <https://www.wsj.com/articles/why-some-landlords-dont-want-any-of-the-50-billion-in-rent-assistance-11616155203> [https://perma.cc/YA3X-DZZ9] (noting that Congress has appropriated $50 billion for rental assistance, "[b]ut thousands of building owners across the country are rejecting the government offer…[because] the aid often has too many strings attached").
6. Under MCR 4.201(H)(2) and (J)(1), the trial court may order the defendant to pay rent into escrow if the trial is adjourned more than seven days. Although not mentioned in the administrative order, the conditional-stay provision would presumably prevent such an escrow order from being enforced — effectively divesting district court judges of another act of discretion provided for in the court rules.
7. The Court's order claims the power to require adjournments and stays as part of our "general superintending control over all courts" established in Const 1963, art 6, § 4. But if the Court has the power to broadly stay an entire class of cases for at least 30 days, what is the extent of this power? Does the Court have the power to indefinitely stay all landlord-tenant cases?

Amendment of Administrative Order No. 2020-17 Priority Treatment and New Procedure for Landlord/Tenant Cases (Dated April 9, 2021)

Administrative Order No. 2020-17 —
Priority Treatment and New Procedure for Landlord/Tenant Cases

Since the early days of the pandemic, state and national authorities have imposed restrictions on the filing of many landlord/tenant cases. As those restrictions are lifted and courts return to full capacity and reopen facilities to the public, many will experience a large influx of landlord/tenant case filings. Traditionally, the way most courts processed these types of cases relied heavily on many cases being called at the same time in the same place, resulting in large congregations of individuals in enclosed spaces. That procedure is inconsistent with the restrictions that will be in place in many courts over the coming weeks and months as a way to limit the possibility of transmission of COVID-19. In addition, courts are required to comply with a phased expansion of operations as provided under Administrative Order No. 2020-14, which may also impose limits on the number of individuals that may congregate in public court spaces.

Therefore, the Court adopts this administrative order under 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, directing courts to process landlord/tenant cases using a prioritization approach. This approach will help limit the possibility of further infection while ensuring that landlord/tenant cases are able to be filed and adjudicated efficiently. All courts having jurisdiction over landlord/tenant cases must follow policy guidelines established by the State Court Administrative Office. Courts should be mindful of the limitations imposed by federal law (under the CARES Act) as these cases are filed and processed, and follow the guidance in Administrative Order No. 2020-8 in determining the appropriate timing for beginning to consider these cases.

For courts that are able to begin conducting proceedings, the following provisions apply to landlord/tenant actions.

(1)–(11) [Unchanged.]

(12) A court shall discontinue prioritization of cases when it has proceeded through all priority phases and no longer has any landlord/tenant filings that allege a breach of contract for the time period between March 20, 2020, and July 15, 2020 (the period in which there was a statewide moratorium on evictions). At that point, the court may notify the regional administrator of its completion of the prioritization process and will not be required to return to the procedure even if a subsequent case is filed that alleges rent owing during the period of the eviction moratorium. A court must continue compliance with all other aspects of this order while the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 — issued by the Centers for Disease Control and Prevention and published at 85 FR 55292, and extended by order dated March 28 ~~January 29~~, 2021 — is in effect.

(13)–(14) [Unchanged.]

The chief judge shall submit a summary of the discussion and proposed recommendations to the regional administrator within two weeks following the meeting.

This order is effective until further order of the Court.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to quietly extend our previous order administratively suspending our state's laws governing landlord-tenant proceedings. The Court has no authority to dispense with duly enacted laws by administrative veto. That we are doing so, at least in part, to enforce a constitutionally suspect eviction moratorium order issued by the Centers for Disease Control and Prevention (CDC) only makes matters worse.[1] And that we continue to issue such directives — this is our seventh order on this topic in the last 12 months — without utilizing our normal and transparent court rule amendment process only serves to further undermine the public's confidence in the institutions of our government.

I have discussed my objections to the Court's staggering assertion of power to suspend duly enacted laws at some length in my prior dissenting statements. I incorporate those objections here for the sake of brevity.[2] Suffice it to say that I continue to find it alarming that a Court whose job is to interpret our state's laws and apply them faithfully to the cases that come before it can so easily switch gears and become a Court that dispenses with laws on the basis of administrative convenience. That power is not available (or should not be) to the judiciary in a system of separated powers.

One would think that recent legal developments might give the Court pause. Several lower federal courts, including the United States Court of Appeals for the Sixth Circuit, have now weighed in on the constitutionality of the CDC's eviction moratorium. A federal eviction moratorium has now been in effect, in one form or another, for most of the time since March 27, 2020 — meaning that, during that time, landlords have not been able to recover possession of their property for nonpayment of rent by tenants who have met the various moratorium requirements.[3] A number of federal district court judges have recently held that the CDC's eviction moratorium is unconstitutional on various grounds.[4] The first federal circuit court to opine on the merits of the matter has rejected the CDC's defenses of the order, recognizing that the statute does not appear to give such sweeping power and that, if it did, the statute would be vulnerable on separation-of-powers grounds. See *Tiger Lily, LLC v US Dep't of Housing & Urban Dev*, order of the United States Court of Appeals for the Sixth Circuit, entered March 29, 2021 (Case No. 21-5256), p 7 (denying the government's motion for a stay pending appeal of the district court's declaratory judgment that the CDC's eviction moratorium is unenforceable on the ground that "the government is unlikely to succeed on the merits"). As the court noted, the CDC's interpretation of its statutory authority could be used to justify "any number of regulatory actions…." *Id.* at 6.

Unfazed by these federal court rulings, our Court presses forward with its administrative suspension of statutory law. And it does so outside the normal procedures for promulgating rules, thus shielding the order from any public input. See Administrative Order No. 2020-17, ___ Mich ___ (March 22, 2021) (VIVIANO, J., dissenting). At an earlier stage of the COVID-19 pandemic, I wondered whether the rule of law would itself become yet another casualty of this dreadful disease. See *Dep't of Health & Human Servs v Manke*, 505 Mich 1110 (2020) (VIVIANO, J., concurring). Some courts have stood firm. See *South Bay United Pentecostal Church v Newsom*, 592 US ___, ___; 141 S Ct 716, 718 (2021) (statement of Gorsuch, J.) ("Even in times of crisis — perhaps *especially* in times of crisis — we have a duty to hold governments to the Constitution."). Unfortunately, this Court continues to choose a different path.

For these reasons, I dissent.

ENDNOTES

1. See CDC, *Temporary Halt in Residential Evictions*, 85 Fed Reg 55,292 (September 4, 2020); CDC, *Temporary Halt in Residential Evictions*, 86 Fed Reg 16,731 (March 31, 2021).
2. See Administrative Order No. 2020-17, 506 Mich ___ (October 22, 2020) (VIVIANO, J., dissenting); Administrative Order No. 2020-17, ___ Mich ___ (January 30, 2021) (VIVIANO, J., dissenting); Administrative Order No. 2020-17, ___ Mich ___ (March 22, 2021) (VIVIANO, J., dissenting).
3. Less than half of the period of the moratorium has been authorized by Congress. See Coronavirus Aid, Relief, and Economic Security Act, 15 USC 9058(b) (establishing a 120-day moratorium from March 27 to July 24, 2020); Consolidated Appropriations Act, 2021, PL 116-260, Title V, § 502 (extending the CDC's unilateral moratorium order from December 31, 2020 to January 31, 2021).

   As I noted in a previous concurring statement, when the eviction moratorium was authorized by Congress, I believed our administrative order was justified and that any challenges to it could be resolved in the normal course of litigation. Administrative Order No. 2020-17, 506 Mich ___ (December 29, 2020) (VIVIANO, J., concurring). It is one thing to defer in this manner to a law duly enacted by the Congress and signed by the President. However, it is quite another to continue blind adherence to an administrative agency's directive that (1) on its face, raises serious questions about its constitutional validity; (2) has been subject to numerous court challenges; and (3) has been ruled unconstitutional by numerous courts, including a well-reasoned finding by a federal appellate court that the government is unlikely to succeed on the merits of its appeal because of these constitutional infirmities.
4. See *Tiger Lily, LLC v US Dep't of Housing & Urban Dev*, ___ F Supp 3d ___, ___ (WD Tenn, 2021) (Case No. 2:20-cv-02692) (concluding that the CDC's eviction moratorium "exceeds the statutory authority of the Public Health Act, 42 USC § 264" and is "unenforceable"); *Skyworks, LTD v Ctrs for Disease Control & Prevention*, opinion and order of the United States District Court for the Northern District of Ohio, issued March 10, 2021 (Case No. 5:20-cv-2407) (determining that the CDC's orders establishing and extending the eviction moratorium "exceed the agency's statutory authority provided in Section 361 of the Public Health Service Act, 42 USC § 264(a), and the regulation at 42 CFR § 70.2 promulgated pursuant to the statute, and are, therefore, invalid"); *Terkel v Ctrs for Disease Control & Prevention*, ___ F Supp 3d ___, ___ (ED Tex, 2021) (Case No. 6:20-cv-00564) (determining that the CDC's eviction moratorium "exceeds the power granted to the federal government to 'regulate Commerce…among the several States' and to 'make all Laws which shall be necessary and proper for carrying into Execution' that power" and holding that it is "unlawful as 'contrary to constitutional…power'"), quoting US Const, art I, § 8, and 5 USC 706(2)(B). But see *Chambless Enterprises, LLC v Redfield*, ___ F Supp 3d ___ (ED La, 2020) (Case No. 3:20-cv-01455) (denying the landlord-plaintiffs' motion for a preliminary injunction after finding that the plaintiffs had not satisfied any of the four prerequisites for a preliminary injunction, including substantial likelihood of success on the merits); *Brown v Azar*, ___ F Supp 3d ___ (ND Ga, 2020) (Case No. 1:20-cv-03702) (same).

Amendment of Administrative Order No. 2020-21 Order Allowing Notice of Filing to Extend Filing Period in Michigan Supreme Court and Michigan Court of Appeals

(Dated March 29, 2021)

On order of the Court, the following amendment of Administrative Order No. 2020-21 is adopted, effective immediately.

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

As of November 20, 2020, nearly half of Michigan's prisons are considered outbreak sites of the COVID-19 virus. As a result, many prison facilities have restricted access to or closed the prison libraries, where self-represented inmates primarily work on pursuing their legal claims. And due to the prevalence of remote sentencing proceedings, some defendants face difficulty and delay in obtaining and submitting forms to request appellate counsel. These restrictions are impeding the ability of incarcerated individuals to complete the necessary legal pleadings to proceed with a criminal appeal.

Therefore, on order of the Court, pursuant to 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, the Court adopts the following alternative procedure for inmates who seek to file appeals with the Michigan Supreme Court and Michigan Court of Appeals in criminal cases only:

1–3 [Unchanged].

4. The tolling period established by this order shall expire on ~~April 1~~ May 3, 2021, unless it is extended by further order of the Court.

Proposed Amendment of Rule 3.945 and Proposed Addition of Rule 3.947 of the Michigan Court Rules (Dated April 1, 2021)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.945 and a proposed addition of Rule 3.947 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 will also be considered at a public hearing. The notices and agendas for public hearing 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 3.945 Dispositional Review

(A) Dispositional Review Hearings

(1) Generally. The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a dispositional review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law; and shall permit the court to approve or disapprove of the child's initial or continued placement in a qualified residential treatment. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Required Review Hearings.

(a)–(b) [Unchanged.]

(c) At a review hearing held under this section, the court shall approve or disapprove of a child's initial placement or continued placement in a qualified residential treatment program.

(B)–(D) [Unchanged.]

[NEW] Rule 3.947 Other Placement Review Proceedings

(A) Review of Juvenile's Placement in A Qualified Residential Treatment Program.

(1) Ex Parte Petition for Review. Within 45 days of the juvenile's initial placement in a qualified residential treatment program, the Agency shall file an ex parte petition requesting the court approve or disapprove the placement.

(a) Supporting Documents. The petition shall be accompanied by the assessment, determination, and documentation made by the qualified individual.

(b) Service. The Agency shall serve the ex parte petition and accompanying documentation on all parties.

(2) Judicial Determination. Within 14 days of filing, the court, or an administrative body appointed or approved by the court independently, shall review the petition, and any supporting documentation filed pursuant to this subrule, and issue an order approving or disapproving of the placement. The order shall include individualized findings by the court or administrative body as to whether:

(a) the needs of the juvenile can be met in a foster family home, and if not,

(b) whether placement of the juvenile provides the most effective and appropriate level of care for the juvenile in the least restrictive environment, and

(c) whether that placement is consistent with the goals in the permanency plan for the juvenile.

The court shall serve the order on parties. The court is not required to hold a hearing on the ex parte petition under this subrule.

STAFF COMMENT: The proposed amendment of MCR 3.945 and the proposed addition of MCR 3.947 would make procedural changes involving the placement of foster care children in a qualified residential treatment program as required by newly-enacted 2021 PA 5.

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 August 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-36. 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 Amendments of Rule 6.302 and Rule 6.610 of the Michigan Court Rules (Dated March 25, 2021)

The Court, having given an opportunity for comment in writing and at a public hearing, again seeks public comment regarding proposed amendments of Rule 6.302 and Rule 6.610 of the Michigan

Court Rules to eliminate the ability for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to the offense to which defendant is pleading guilty or nolo contendere. During the initial comment period, the Court received comments opposed to the proposal, generally noting that the current procedure moves cases along and promotes efficiency for all concerned. But the Court is interested in comment that also addresses the propriety and effectiveness of such a system. Some commentators have characterized a plea in which a defendant provides a factual basis to a crime other than the one to which he or she ultimately pleads guilty or nolo contendere as a "fictional plea" and have raised concerns about courts accepting such pleas. See, e.g., Johnson, *Fictional Pleas*, 94 Ind LJ 855 (2019). In particular, the Court is interested in receiving additional comments addressing the impacts, if any, of so-called fictional pleas on (1) the truth-seeking process; (2) sentencing goals, including rehabilitation and crime deterrence; (3) the scoring of sentencing guidelines, making of restitution awards, and determining habitual offender status or parole eligibility; (4) determining collateral consequences of the conviction, including whether a defendant is subject to deportation or must register as a sex offender; (5) compilation of crime statistics; and (6) the constitutional separation of powers, i.e., whether fictional pleas violate the separation of powers by allowing the parties and the trial court to disregard the penalties prescribed by the Legislature for a particular crime.

On order of the Court, this is to advise that the Court is again considering amendments of Rule 6.302 and 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 may 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 6.302 Pleas of Guilty and Nolo Contendere

(A)–(C) [Unchanged.]

(D) An Accurate Plea.

(1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of ~~the offense charged or~~ the offense to which the defendant is pleading.

(2) If the defendant pleads nolo contendere, the court may not question the defendant about participation in the crime. The court must:

(a) [Unchanged.]

(b) hold a hearing, unless there has been one, that establishes support for a finding that the defendant is guilty of ~~the offense charged or~~ the offense to which the defendant is pleading.

(E)–(F) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)–(E) [Unchanged.]

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

(1) The court shall determine that the plea is understanding, voluntary, and accurate. In determining the accuracy of the plea,

(a) if the defendant pleads guilty, the court, by questioning the defendant, shall establish support for a finding that defendant is guilty of ~~the offense charged or~~ the offense to which the defendant is pleading, or

(b) [Unchanged.]

(2)–(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.]

(G)–(I) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the ability for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the "sentencing offense alone," not the charged offense. Further, an "offense to which defendant is pleading" would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the "charged offense" clause may well be unnecessary.

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, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-29. 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 1.109 of the Michigan Court Rules
(Dated March 24, 2021)

On order of the Court, 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 MCR 1.109 of the Michigan Court Rules is adopted, effective May 1, 2021.

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

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

(A)–(D) [Unchanged.]

(E) Signatures.

(1) [Unchanged.]

(2) Requirement. ~~Every document filed shall be signed by the person filing it or by at least one attorney of record.~~ Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document. In probate proceedings the following also applies:

(a)–(b) [Unchanged.]

(3)–(7) [Unchanged.]

(F)–(G) [Unchanged.]

STAFF COMMENT: The amendment of MCR 1.109 requires a signature from an attorney of record on documents filed by represented parties. This language was inadvertently eliminated when MCR 2.114(C) was relocated to MCR 1.109 as part of the eFiling rule changes.

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.

Amendment of Rule 2.105 of the Michigan Court Rules
(Dated March 24, 2021)

On order of the Court, 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 2.105 of the Michigan Court Rules is adopted, effective May 1, 2021.

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

Rule 2.105 Process; Manner of Service

(A)–(G) [Unchanged.]

(H) Limited Liability Company. Service of process on a limited liability company may be made by:

(1) serving a summons and a copy of the complaint on the managing member, the non-member manager, or the resident agent;

(2) serving a summons and a copy of the complaint on a member or other person in charge of an office or business establishment of the limited liability company and sending a summons and a copy of the complaint by registered mail, addressed to the registered office of the limited liability company.

(3) If a limited liability company fails to appoint or maintain an agent for service of process, or service under subsections (1) and (2) cannot be accomplished through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the administrator (pursuant to MCL 450.4102[2][a]) a summons and copy of the complaint.

(H)–(K) [Relettered (I)–(L) but otherwise unchanged.]

STAFF COMMENT: The amendment of MCR 2.105 establishes the manner of service on limited liability companies.

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.

Amendments of Rules 2.223, 2.305, 2.314, 2.403, 2.506, 3.206, 3.211, 3.229, 3.606, 3.618, 3.903, 3.920, 3.922, 3.936, 3.943, 3.972, 3.973, 6.001, 6.425, 6.430, 6.445, 6.610, 7.118, 7.202, 7.210, 7.303, 8.120, 9.116, and 9.118 of the Michigan Court Rules, Rescission of Administrative Order No. 1999-3, Amendment of Administrative Order No. 2020-20, and Amendment of Rule 1.4 of the Michigan Rules of Professional Conduct (Dated March 25, 2021)

On order of the Court, the following amendments are adopted, effective March 24, 2021.

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

Rule 2.223 Change of Venue; Venue Improper

(A) [Unchanged.]

(B) Order for Change of Venue; Case Records.

(1)–(2) [Unchanged.]

(3) The receiving court must~~shall~~ temporarily suspend payment of the filing fee and open a case pending payment of the filing fee and costs as ordered by the transferring court. The receiving court must notify the plaintiff of the new case number in the receiving court, the amount due, and the due date.

(C) [Unchanged.]

Rule 2.305 Discovery Subpoena to a Non-Party

(A) General Provisions

(1) A represented party may issue a subpoena to a non-party for a deposition, production or inspection of documents, inspection of tangible things, or entry to land upon court order or after all parties have had a reasonable opportunity to obtain an attorney, as determined under MCR 2.306(A). An unrepresented party may move the court for issuance of non-party discovery subpoenas. MCR 2.306(B)(1)–(2) and (C)–(G) apply to a subpoena under this rule. This rule governs discovery from a non-party under MCR 2.303(A)(4), 2.307, 2.310(B~~D~~)(2) or 2.315. MCR 2.506(A)(2) and (3) apply to any request for production of ESI. A subpoena for hospital records is governed by MCR 2.506(I).

(2)–(7) [Unchanged.]

(B)–(E) [Unchanged.]

Rule 2.314 Discovery of Medical Information Concerning Party

(A)–(C) [Unchanged.]

(D) Release of Medical Information by Custodian.

(1)–(5) [Unchanged.]

(6) If a custodian does not respond within the time permitted by subrule (D)(1) to a party's authorized request for medical information, a subpoena may be issued under MCR 2.305(A)(1~~2~~), directing that the custodian present the information for examination and copying at the time and place stated in the subpoena.

(E) [Unchanged.]

Rule 2.403 Case Evaluation

(A)–(N) [Unchanged.]

(O) Rejecting Party's Liability for Costs

(1)–(8) [Unchanged.]

(9) In an action under MCL 436.1801, if the plaintiff rejects the award against the minor or alleged intoxicated person, or is deemed to have rejected such an award under subrule (L)(3)(c), the court shall not award costs against the plaintiff in favor of the minor or alleged intoxicated person unless it finds that the rejection was not motivated by the need to comply with MCL 436.1801(4~~5~~).

(10)–(11) [Unchanged.]

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1)–(4) [Unchanged.]

(5) A subpoena may be issued only in accordance with this rule or MCR 2.305, 2.621(C), 9.112(D), 9.115(I)(1), or 9.22~~1~~12 and 9.234.

(B)–(I) [Unchanged.]

Rule 3.206 Initiating a Case

(A)–(B) [Unchanged.]

(C) Verified Statement and Verified Financial Information Form.

(1)–(5) [Unchanged.]

(6) When the action is to establish paternity or child support and the pleadings are generated from Michigan's automated child support enforcement system, the party is not required to comply with subrule (C)(1), ~~or~~ (C)(2), or MCR 3.211(F)(2). However, the party may comply with subrule (C)(1), ~~and~~ (C)(2), or MCR 3.211(F)(2) to provide the other party an opportunity to supply any omissions or correct any inaccuracies.

(D) [Unchanged.]

Rule 3.211 Judgments and Orders

(A)–(E) [Unchanged.]

(F) Entry of Judgment or Order

(1)–(4) [Unchanged.]

(5) Except as otherwise provided in MCR 3.206(C), t~~T~~he Domestic Relations Judgment Information form must be submitted to the friend of the court in addition to the verified statement that is required by MCR 3.206(C).

(G)–(H) [Unchanged.]

Rule 3.229 Filing Confidential Materials

(A) If a party or interested party files any of the following items with the court, the party shall identify the document as a confidential document and the items shall be served on the other parties in the case and maintained in a nonpublic file in accordance with subrule (B):

(1) verified statements and disclosure forms under MCR 3.206(C~~B~~);

(2)–(8) [Unchanged.]

(B) [Unchanged.]

Rule 3.606 Contempts Outside Immediate Presence of Court

(A)–(E) [Unchanged.]

(F) The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(DE)(3). Proceedings to which the Child Support and Parenting Time Enforcement Act, MCL 552.602 *et seq.*, applies are subject to the requirements of that act.

Rule 3.618 Emancipation of Minor

(A)–(G) [Unchanged.]

(H) A minor's birth certificate filed with the court as required by MCL 722.4a must be maintained confidentially.

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)–(25) [Unchanged.]

(26) "Register of actions" means the case history of all cases, as defined in subrule (A)(1), maintained in accordance with Michigan Supreme Court Records~~Case File~~ Management Standards. See MCR 8.119(D)(1)(a).

(27) [Unchanged.]

(B)–(F) [Unchanged.]

Rule 3.920 Service of Process

(A) [Unchanged.]

(B) Summons.

(1)–(2) [Unchanged.]

(3) Content. The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:

(a)–(c) [Unchanged.]

(d) have a copy of the petition attached. The confidential case inventory required by MCR 3.931(A) and MCR 3.961(A) shall not be served on any party.

(4)–(5) [Unchanged.]

(C)–(I) [Unchanged.]

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) [Unchanged.]

(B) Discovery and Disclosure in Delinquency Matters.

(1)–(2) [Unchanged.]

(3) In delinquency matters, if a respondent demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the court shall conduct an in camera inspection of the records.

(a)–(d) [Unchanged.]

(e) Records disclosed under this subrule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

(f) [Unchanged.]

(4)–(5) [Unchanged.]

(C)–(E) [Unchanged.]

(F) Notice of Intent.

(1)–(2) [Unchanged.]

(3) The court may shorten the time periods provided in this subrule ~~(E)~~ if good cause is shown.

Rule 3.936 Biometric Data

(A) [Unchanged.]

(B) Order for Biometric Data. At the time that the court authorizes the filing of a petition alleging a juvenile offense and before the court enters an order of disposition on a juvenile offense or places the case on the consent calendar, the court shall examine the confidential files and verify that the juvenile has had biometric data collected. If it appears to the court that the juvenile has not had biometric data collected, the court must:

(1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so biometric data may be collected~~taken~~; or

(2) issue an order to the sheriff's department to apprehend the juvenile and to collect~~take~~ the biometric data of the juvenile.

(C) Notice of Disposition. The court shall notify the Department of State Police in writing:

(1) of any juvenile who had ~~had~~ biometric data collected for a juvenile offense and who was found not to be within the jurisdiction of the court under MCL 712A.2(a)(1); or

(2) [Unchanged.]

(D) Order for Destruction of Biometric Data. The court, on motion filed pursuant to MCL 28.243(108), shall issue an order directing the Department of State Police, or other official holding the information, to destroy the biometric data and arrest card of the juvenile pertaining to the offense, other than an offense as listed in MCL 28.243(142), when a juvenile has had biometric data collected for a juvenile offense and no petition on the offense is submitted to the court, the court does not authorize the petition, or the court has neither placed the case on the consent calendar nor taken jurisdiction of the juvenile under MCL 712A.2(a)(1).

Rule 3.943 Dispositional Hearing

(A)–(D) [Unchanged.]

(E) Dispositions.

(1)–(3) [Unchanged.]

(4) The court shall not enter an order of disposition for a juvenile offense until the court verifies that the juvenile has had biometric data collected. If the juvenile has not had biometric data collected~~been fingerprinted~~, the court shall proceed as provided by MCR 3.936.

(5)–(7) [Unchanged.]

Rule 3.972 Trial

(A)–(B) [Unchanged.]

(C) Evidentiary Matters.

(1) [Unchanged.]

(2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(265) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622 (g), (k), (z), or (aa), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a)–(c) [Unchanged.]

(D)–(G) [Unchanged.]

Rule 3.973 Dispositional Hearing

(A)–(I) [Unchanged.]

(J) Allegations of Additional Abuse or Neglect.

(1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(gf) and (kj), of a child who is under the jurisdiction of the court are governed by MCR 3.977.

(2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(gf) and (kj), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

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

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001–6.004, 6.005(B) and (C), 6.006, 6.101, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.202, 6.425(DE)(3), 6.427, 6.430, 6.435, 6.440, 6.445(A)–(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)–(E) [Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)–(C) [Unchanged.]

(D) Sentencing Procedure

(1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:

(a) [Unchanged.]

(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in subrule (DE)(2),

(c)–(f) [Unchanged.]

(2)–(3) [Unchanged.]

(E)–(G) [Unchanged.]

Rule 6.430 Postjudgment Motion to Amend Restitution

(A) The court may amend an order of restitution entered under the Crime Victim's Right's Act~~this section~~ on a motion filed by the prosecuting attorney, the victim, or the defendant based upon new or updated information related to the injury, damages, or loss for which the restitution was ordered.

(B)–(F) [Unchanged.]

Rule 6.445 Probation Revocation

(A)–(F) [Unchanged.]

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and may not sentence the probationer to prison or jail (including for failing to pay fines, costs, restitution, and other financial obligations imposed by the court) without having complied with the provisions set forth in MCR 6.425(B) and (DE).

(H) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)–(E) [Unchanged.]

(F) 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)–(c) [Unchanged.]

Except as provided in subrule (FE)(7), if the court uses a writing pursuant to subrule (FE)(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)–(9) [Unchanged.]

(G) Sentencing.

(1) [Unchanged.]

(2) The court shall not sentence a defendant to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(DE)(3).

(3)–(4) [Unchanged.]

(H)–(I) [Unchanged.]

Rule 7.118 Appeals from the Michigan Parole Board

(A)–(D) [Unchanged.]

(E) Late Application. A late application for leave to appeal may be filed under MCR 7.105(GF).

(F)–(G) [Unchanged.]

(H) Procedure After Leave to Appeal Granted. If leave to appeal is granted, MCR 7.105(ED)(4) applies along with the following:

(1)–(4) [Unchanged.]

(I) Subsequent Appeal to the Court of Appeals. An appeal of a circuit court decision is by motion for immediate consideration in~~emergency application for leave to appeal to~~ the Court of Appeals under MCR 7.205(F), and the Court of Appeals shall expedite the matter.

(J) [Unchanged.]

Rule 7.202 Definitions

For purposes of this subchapter:

(1)–(5) [Unchanged.]

(6) "final judgment" or "final order" means:

(a) In a civil case,

(i) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order;

(ii) [Unchanged.]

(iii) in a domestic relations action, a postjudgment order that, as to a minor, grants or denies a motion to change legal custody, physical custody, or domicile;~~,~~

(iv) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule; or~~,~~

(v) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity.~~;~~

(b) [Unchanged.]

Rule 7.210 Record on Appeal

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

(1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, an adult or minor guardianship proceeding under the Estates and Protected Individuals Code, or a proceeding under the Mental Health Ceode, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2)–(4) [Unchanged.]

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 3.99377(EJ)~~(3)~~ or MCR 6.425(G), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.

(b)–(e) [Unchanged.]

(2)–(3) [Unchanged.]

(C)–(I) [Unchanged.]

Rule 7.303 Jurisdiction of the Supreme Court

(A) Mandatory Review. The Supreme Court shall review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.25023 to 9.25326).

(B) [Unchanged.]

Rule 8.120 Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, and Legal Training Programs

(A) [Unchanged.]

(B) Legal Training Programs. Law students and recent law graduates may participate in legal training programs organized in the offices of county prosecuting attorneys, county corporation counsel, city attorneys, municipal/township attorneys, the Attorney Grievance Commission, and the Attorney General.

(C)–(D) [Unchanged.]

Rule 9.116 Judges; Former Judges

(A) Judges. The administrator or commission may not take action against an incumbent judge, except that this rule does not prohibit an action by the administrator or commission against:

(1) [Unchanged.]

(2) a visiting judge as provided in MCR 9.21103(E). If the Judicial Tenure Commission receives a request for investigation of a magistrate or referee or visiting judge arising from the practice of law, the Judicial Tenure Commission shall refer the matter to the administrator or commission for investigation in the first instance. If the administrator or the commission dismisses the request for investigation referred by the Judicial Tenure Commission, or a request for investigation of a magistrate, referee or visiting judge submitted directly to the commission by a complainant, the administrator or commission shall notify the Judicial Tenure Commission, which may take action as it deems appropriate.

(B) Former Judges. The administrator or commission may take action against a former judge for conduct resulting in removal as a judge, and for any conduct which was not the subject of a disposition by the Judicial Tenure Commission or by the Court. The administrator or commission may not take action against a former judge for conduct where the court imposed a sanction less than removal or the Judicial Tenure Commission has taken any action under MCR 9.22307(AB)(1)–(5).

(C) [Unchanged.]

Rule 9.118 Review of Order of Hearing Panel

(A) Review of Order; Time.

(1)–(2) [Unchanged.]

(3) A delayed petition for review may be considered by the board chairperson under the guidelines of MCR 7.205(AG)(4). If a petition for review is filed more than 12 months after the order of the hearing panel is entered, the petition may not be granted.

(B)–(F) [Unchanged.]

Rescission of Administrative Order No. 1999-3—
Discovery in Misdemeanor Cases

On order of the Court, Administrative Order No. 1999-3 is rescinded, effective immediately.

Amendment of Administrative Order No. 2020-20—
Election Related Litigation Procedures

(1) [Unchanged.]

(2) Upon the filing of a complaint regarding an election matter, the following persons must be notified of the lawsuit as soon as practicable:

(a) Supreme Court Clerk

(b) State Director of Elections

(c) Attorney General Civil Litigation, Employment, & Elections Division (if the complaint is against the state or one of its subdivisions).

(d) The Governor's Chief Legal Counsel (on behalf of the Governor)

The State Court Administrator will circulate a memo before each election that identifies the names and contact information for the individuals and offices listed above.

(2)–(4) [Unchanged.]

MRPC 1.4: Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, case~~mediation~~ evaluations, and proposed plea bargains.

(b) [Unchanged.]

STAFF COMMENT: These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

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.

Retention of Amendment of Rule 6.110 of the Michigan Court Rules (Dated March 24, 2021)

On order of the Court, notice and an opportunity for comment having been provided, the November 18, 2020 amendment of Rule 6.110 of the Michigan Court Rules is retained.

Amendment of Rule 6.502 of the Michigan Court Rules (Dated March 24, 2021)

On order of the Court, 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 6.502 of the Michigan Court Rules is adopted, effective May 1, 2021.

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

Rule 6.502 Motion for Relief from Judgment

(A)–(C) [Unchanged.]

(D) Return of Insufficient Motion. If a motion is not submitted on a form approved by the State Court Administrative Office, or does not substantially comply with the requirements of these rules, the court shall either direct that it be returned to the defendant with a statement of the reasons for its return, along with the appropriate form, or adjudicate the motion under the provisions of these rules. When a *pro se* defendant files his or her first motion effectively seeking to set aside or modify the judgment but styles the motion as something other than a motion for relief from judgment, the court shall promptly notify the defendant of its intention to recharacterize the pleading as a motion for relief from judgment; inform the defendant of any effects this might have on subsequent motions for relief, see MCR 6.502(B), (G); and provide the defendant 90 days to withdraw or amend his or her motion before the court recharacterizes the motion. If the court fails to provide this notice and opportunity for withdrawal or amendment, or the defendant establishes that notice was not actually received, the defendant's motion cannot be considered a motion for relief from judgment for purposes of MCR 6.502(B), (G). The clerk of the court shall retain a copy of the motion.

(E)–(G) [Unchanged.]

STAFF COMMENT: The amendment of MCR 6.502 addresses the issue of a court's recharacterization of a defendant's motion for relief from judgment that is styled as something other than a motion for relief from judgment. The court is required to notify the defendant of its intent to recharacterize the motion and allow the defendant an opportunity to withdraw or amend the motion.

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.

Amendment of Rule 6.502 of the Michigan Court Rules (Dated April 1, 2021)

On order of the Court, 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 MCR 6.502 of the Michigan Court Rules is adopted, effective May 1, 2021.

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

Rule 6.502 Motion for Relief from Judgment

(A)–(F) [Unchanged.]

(G) Successive Motions.

(1) Except as provided in subrule (G)(2), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, one and only one motion

for relief from judgment may be filed with regard to a conviction. ~~The court shall return without filing any successive motions for relief from judgment. A defendant may not appeal the denial or rejection of a successive motion.~~

(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 was filed or a claim of new evidence that was not discovered before the first such motion was filed. 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. For motions filed under both (G)(1) and (G)(2), the court shall enter an appropriate order disposing of the motion.

(3) [Unchanged.]

STAFF COMMENT: The amendment of MCR 6.502 eliminates the requirement to return successive motions to the filer and eliminates the prohibition on appeal of a decision made on a motion for relief from judgment. Further, it requires all such motions to be submitted to the assigned judge, and requires a trial court to issue an order when it rejects or denies relief.

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.

Addition of Rule 8.128 of the Michigan Court Rules

(Dated April 14, 2021)

On order of the Court, this is to advise that the addition of Rule 8.128 of the Michigan Court Rules is adopted, effective immediately. Concurrently, individuals are invited to comment on the form or the merits of the amendment during the usual public comment period. 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.

[NEW] Rule 8.128 Michigan Judicial Council

(A) Duties. There shall be a Judicial Council to plan strategically for the Michigan judicial branch, to enhance the work of the courts, and to make recommendations to the Supreme Court on matters pertinent to the administration of justice.

(B) Diversity and Inclusion. The Judicial Council shall be representative of Michigan's diverse population and regions, ensuring and advancing diversity, equity, and inclusion.

(C) Membership

(1) The membership of the Judicial Council shall consist of 29 members as follows:

(a) The Chief Justice of the Michigan Supreme Court, who shall preside over the council as chairperson;

(b) A Justice of the Michigan Supreme Court, nominated by the Chief Justice;

(c) The State Court Administrator;

(d) The Chief Judge of the Court of Appeals or designee;

(e) Two judges nominated by the Michigan Judges Association;

(f) Two judges nominated by the Michigan Probate Judges Association;

(g) Two judges nominated the Michigan District Judges Association;

(h) Two judges nominated by the Association of Black Judges of Michigan;

(i) A judge nominated by the Michigan Tribal State Federal Judicial Forum;

(j) Four at-large judges;

(k) Four trial court administrators, probate or juvenile registers;

(l) Two county clerks;

(m) Three attorneys licensed to practice law in the State of Michigan;

(n) A member of the Michigan Justice for All Commission;

(o) Two members of the public who are not attorneys.

(2) All members shall be appointed by the Supreme Court. Members serving on the Judicial Council by nature of their positions designated in subparagraphs (C)(1)(a), (c) and (d) shall serve on the Judicial Council so long as they hold that position. Of the remaining members appointed by the Supreme Court, one-third shall initially be appointed to a two-year term, one-third appointed to a three-year term and one-third appointed to a four-year term. All members appointed or reappointed following these inaugural terms shall serve three-year terms. Terms commence January 1st of each calendar year. No member may serve more than two consecutive terms.

(D) Other Committees, Task Forces, and Work Groups. The Judicial Council will establish such other committees, task forces, and work groups as are necessary to further the work of the Judicial Council.

(E) Meetings of Council. The Judicial Council shall meet regularly as needed to accomplish its work, but at least quarterly, at a place and on a date designated by the Chief Justice.

(F) Administration. The State Court Administrative Office shall staff the Judicial Council.

(G) Deliberations. In all of their deliberations and decisions, members of the Judicial Council shall place the welfare of the public and the judicial branch as a whole above the individual interests of a judicial district, court organization, or class of judge or employee.

(H) Vacancies. In the event of a vacancy on the Judicial Council, a replacement member shall be appointed by the Supreme Court for the remainder of the term of the former incumbent. After serving the remainder of the term, the new member may be reappointed to two full consecutive terms.

(I) Annual Report. The Judicial Council shall prepare an annual report on the status of judicial administration in the courts and the work of the Judicial Council.

(J) Compensation. Judicial Council members shall serve without compensation.

(K) Removal of a Member. The Supreme Court has authority to remove a Judicial Council member. The vacancy created when a member is removed shall be filled in accordance with subrule (H).

STAFF COMMENT: The addition of MCR 8.128 establishes the Michigan Judicial Council to strategically plan for Michigan's Judiciary.

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 August 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-15. 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.

Appointment of Chief Judge of the 26th Circuit Court, the 88th District Court, the Alpena County Probate Court, and the Montmorency County Probate Court

(Dated March 24, 2021)

On order of the Court, effective April 1, 2021, the Honorable Keith Edward Black is appointed chief judge of the 26th Circuit Court, the 88th District Court, the Alpena County Probate Court, and the Montmorency County Probate Court for the remainder of a term ending December 31, 2021.

Assignment of Business Court Judge in the 3rd Circuit Court (Wayne County) (Dated March 18, 2021)

On order of the Court, effective immediately, the Honorable David A. Groner is assigned to serve as a business court judge in the 3rd Circuit Court for a term expiring April 1, 2025.