

## 66 From the Michigan Supreme Court

**Proposed Amendment of Rule 19 of the Rules Concerning the State Bar of Michigan (Dated September 15, 2021)**

On order of the Court, this is to advise that the Court is considering an amendment of Rule 19 of the Rules Concerning the State Bar of Michigan. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings 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 19 Confidentiality of State Bar Records

## Sec. 1. [Unchanged.]

Sec. 2. Records and information obtained in the course of reviewing and evaluating candidates for judicial vacancies may not be used for any other purpose or otherwise disclosed without the consent of the applicant, Governor's Office, or by Order of the Supreme Court. Records and information include, but are not limited to, applicants' name, application, background, qualifications, and interview; communications concerning applicants; and information about the judicial qualification review process.

Sec. 32. Records and information of the Client Protection Fund, Ethics Program, Lawyers and Judges Assistance Program, Practice Management Resource Center Program, and Unauthorized Practice of Law Program that contain identifying information about a person who uses, is a participant in, is subject to, or who inquires about participation in, any of these programs, are confidential and are not subject to disclosure, discovery, or production, except as provided in section (43) and (54).

Sec. 43. Records and information made confidential under section (1) or (32) shall be disclosed: (a) pursuant to a court order; (b) to a law enforcement agency in response to a lawfully issued subpoena or search warrant; or (c) to the attorney grievance commission or attorney discipline board in connection with an investigation or hearing conducted by the commission or board, or sanction imposed by the board.

Sec. 54. Records and information made confidential under section (1) or (32) may be disclosed: (a) upon request of the State Bar and approval by the Michigan Supreme Court where the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance; or (b) at the discretion of the State Bar, upon written permission of all persons who would be identified by the requested information.

STAFF COMMENT: The proposed amendment of Rule 19 of the Rules Concerning the State Bar of Michigan would create an explicit provision regarding confidentiality of information.

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 submitted by January 1, 2022, by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing to P.O. Box 30052, Lansing, MI 48909 or via email to ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-25. Your comments and the comments of others will be posted under the chapter affected by this proposal.

**Proposed Amendment of Administrative Order No. 1997-10 (Dated September 15, 2021)**

On order of the Court, this is to advise that the Court is considering an amendment of Administrative Order No. 1997-10. 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 hearing are posted on the Public Administrative Hearings page.

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Administrative Order No. 1997-10 —  
Access to Judicial Branch Administrative Information

## (A) [Unchanged.]

## (B) Access to Information Regarding Supreme Court Administrative, Financial, and Employee Records.

## (1)–(9) [Unchanged.]

(10) Employee records are not open to public access, except for a list of employees that includes the position title, salary, and general benefits information. The list must not include a name, initials, electronic mail address, Social Security number, phone number, residential address, or other information that could be used to identify an employee or an employee's beneficiary. This information shall be available on the Court's website at no cost.~~the following information:~~

(a) ~~The full name of the employee.~~

(b) ~~The date of employment.~~

(c) ~~The current and previous job titles and descriptions within the judicial branch, and effective dates of employment for previous employment within the judicial branch.~~

(d) ~~The name, location, and telephone number of the court or agency of the employee.~~

(e) ~~The name of the employee's current supervisor.~~

(f) ~~Any information authorized by the employee to be released to the public or to a named individual, unless otherwise prohibited by law.~~

~~(g) The current salary of the employee. A request for salary information pursuant to this order must be in writing. The individual who provides the information must immediately notify the employee that a request for salary information has been made, and that the information has been provided.~~

(11) [Unchanged.]

STAFF COMMENT: The proposed amendment of Administrative Order No. 1997-10 would clarify which information about jobs within the judiciary would be available to the public and the manner in which they will be made available.

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 submitted by January 1, 2022, by clicking on the “Comment on this Proposal” link under this proposal on the Court’s Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing to P.O. Box 30052, Lansing, MI 48909 or via email to ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-33. Your comments and the comments of others will be posted under the chapter affected by this proposal.

### Administrative Order No. 2021-5 Adoption of Administrative Order Providing for Individualized Case Management Orders in Cases Involving the Independent Citizens Redistricting Commission (Dated September 18, 2021)

By order dated September 18, 2021, in the case *Davis v Independent Citizens Redistricting Commission*, Docket No. 163486, the Court announced that it would issue “emergency rules forthwith establishing the procedural requirements for original actions filed under Const 1963, art 4, §6(19).” By order of the Court, until those emergency rules are issued, the Court will issue orders in all cases in which an action is brought by or against the Independent Citizens Redistricting Commission advising the parties of all necessary deadlines and requirements to be followed in the matter. This order is intended to allow maximum flexibility in the short term to address the potential need for the parties to act under truncated time frames and possibly nonuniform periods.

This order will remain in effect until any emergency rules are issued by this Court.

### Proposed Amendment of Rule 5.125 of the Michigan Court Rules (Dated September 15, 2021)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 5.125 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 hearing are posted on the Public Administrative Hearings page.

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

Rule 5.125 Interested Persons Defined

(A)–(B) [Unchanged.]

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

(1)–(17) [Unchanged.]

(18) The persons interested in a proceeding under the Mental Health Code that may result in an individual receiving involuntary mental health treatment or judicial admission of an individual with a developmental disability to a center are the

(a)–(e) [Unchanged.]

(f) ~~the~~ individual’s spouse, if the spouse’s whereabouts are known,

(g) ~~the~~ individual’s guardian, if any,

(h) in a proceeding for judicial admission to a center or in a proceeding in which assisted outpatient treatment is ordered, the community mental health program, and

(i) [Unchanged.]

(19)–(33) [Unchanged.]

(D)–(E) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 5.125 would add the community mental health program as an interested person to be served a copy of the court’s order when assisted outpatient treatment is ordered.

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 submitted by January 1, 2022, by clicking on the “Comment on this Proposal” link under this proposal on the Court’s Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing to P.O. Box 30052, Lansing, MI 48909 or via email to ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-34. Your comments and the comments of others will be posted under the chapter affected by this proposal.

### Proposed Amendment of Rule 6.502 of the Michigan Court Rules (Dated September 15, 2021)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.502 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

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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 hearing are posted on the Public Administrative Hearings page.

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[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) [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 was filed, ~~or~~ a claim of new evidence that was not discovered before the first such motion was filed, or a claim of a jurisdictional defect in the trial court when the judgment was entered. The clerk shall refer a successive motion 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 proposed amendment of MCR 6.502 would make the rule consistent with the Court's ruling in *People v Washington*, \_\_\_ Mich \_\_\_ (2021) by allowing a defendant to file a second or subsequent motion for relief from judgment based on a claim of a jurisdictional defect in the trial court when the judgment was entered. Although the Court's analysis in *Washington* related specifically to subject matter jurisdiction, reference to "jurisdictional defect" is consistent with MCR 6.508(D).

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 submitted by January 1, 2022, by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing to P.O. Box 30052, Lansing, MI 48909 or via email to ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-26. Your comments and the comments of others will be posted under the chapter affected by this proposal.

#### Amendment of Rule 6.425 of the Michigan Court Rules (Dated September 15, 2021)

On order of the Court, the following amendment of Rule 6.425 of the Michigan Court Rules is adopted, retroactive to July 26, 2021.

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

#### Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)–(G) [Unchanged.]

(H) Notwithstanding any other provision in this rule, until further order of the Court, if the defendant is indigent, a request for the appointment of appellate counsel under MCR 6.425(F)(3) must be granted if it is received by the trial court or the Michigan Appellate Assigned Counsel System (MAACS) within six months after sentencing. This provision applies to all cases in which sentencing took place on or after ~~between~~ March 24, 2020 ~~and June 15, 2021.~~

STAFF COMMENT: The amendment of MCR 6.425 corrects a provision from this Court's July 26, 2021, order that rescinded pandemic-related administrative orders and instead reformatted the substantive provision into court rule format. This court rule provision is now consistent with the last version of Administrative Order No. 2020-21 prior to its rescission.

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.

#### Supreme Court Appointments to the Attorney Discipline Board (Dated September 15, 2021)

On order of the Court, pursuant to MCR 9.110, Peter A. Smit (attorney member) is reappointed to the Attorney Discipline Board for a term commencing on October 1, 2021, and ending on October 1, 2024. Jason M. Turkish (attorney member) and Dr. Louis J. Prues (layperson member) are appointed to the Attorney Discipline Board for terms commencing on October 1, 2021, and ending on October 1, 2024.

Michael B. Rizik, Jr. is appointed as chairperson and Dr. Linda Hotchkiss is appointed vice chairperson of the board for terms commencing on October 1, 2021, and ending October 1, 2022.

#### Supreme Court Appointments to the Attorney Grievance Commission (Dated September 15, 2021)

On order of the Court, pursuant to MCR 9.108, Latoya M. Willis (attorney member) is reappointed to the Attorney Grievance Commission for a term commencing on October 1, 2021, and ending on October 1, 2024. Kathleen Hickey (attorney member) and Wallace E. Smith (layperson member) are appointed to the Attorney Grievance Commission for terms commencing on October 1, 2021, and ending on October 1, 2024.

Thomas G. Kienbaum is appointed as chairperson and J. Paul Janes is appointed vice chairperson of the commission for terms commencing on October 1, 2021, and ending October 1, 2022.

**Supreme Court Appointment of Commissioners-at-Large to the State Bar of Michigan Board of Commissioners**  
(Dated September 15, 2021)

On order of the Court, pursuant to State Bar Rule 5, Section 2, Delphia Simpson and Danielle Walton are appointed and Valerie R. Newman is reappointed after serving a partial term as commissioners-at-large of the State Bar of Michigan Board of Commissioners to serve three-year terms commencing on adjournment of the 2021 annual meeting of the outgoing Board of Commissioners.

**Supreme Court Appointment to the Foreign Language Board of Review** (Dated September 15, 2021)

On order of the Court, pursuant to MCR 8.127(A) and effective immediately, George M. Strander (court administrator member) is appointed to the Foreign Language Board of Review for the remainder of a term expiring on December 31, 2022.

**Appointment to the Michigan Tribal State Federal Judicial Forum** (Dated September 15, 2021)

On order of the Court, pursuant to Administrative Order No. 2014-12 and effective immediately, Hon. Kelley R. Kostin is appointed to the Michigan Tribal State Federal Judicial Forum for the remainder of a partial term ending on July 1, 2022.

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