Amendments of Rules 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.101, 3.222, 3.618, and 8.119 of the Michigan Court Rules

Amendments of Rules 6.310, 6.429, 6.431, 6.509, and 7.205 and Addition of Rule 6.126 of the Michigan Court Rules

To read ADM File No. 2002-37, dated October 28, 2020; and ADM File No. 2019-27, dated September 3, 2020; visit **http://courts.michigan.gov/courts/michigansupremecourt** and click "Administrative Matters & Court Rules" and "Proposed & Recently Adopted Orders on Admin Matters."

Proposed Amendment of Rule 7 of the Rules Concerning the State Bar of Michigan (Dated October 28, 2020)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7 of the Rules Concerning the State Bar of Michigan. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

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) a vice-president who, after serving a one-year term, automatically succeeds to the office of president-elect for a one-year term, and then to the office of president, for a one-year term;
(2) a secretary; and
(3) a treasurer.

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 proposed amendment of Rule 7 of the Rules Concerning the State Bar of Michigan would ensure that all main officers (president, vice-president, treasurer, and secretary) move sequentially through the leadership roles of the 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.

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 February 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. 2020-24. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

Amendment of Administrative Order 2020-17 Priority Treatment and New Procedure for Landlord/Tenant Cases (Dated October 22, 2020)

On order of the Court, the following amendment of Administrative Order No. 2020-17 is adopted, effective immediately.

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

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)–(10) [Unchanged.]

(11) A court shall discontinue ~~compliance with this order~~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 ~~June 30~~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, is in effect.

(12) In complying with the provisions of the CDC order referenced above and during the pendency of the order, trial courts must:

a. Require a plaintiff filing a LT case to also file a verification form indicating whether a declaration has been submitted by defendant or whether the case may proceed because it is not subject to the CDC order's moratorium. The verification shall be made on a SCAO-approved form, and a plaintiff shall have a continuing obligation to inform the court if a declaration has been submitted by defendant; in addition, a court may accept a declaration prepared pursuant to the CDC order from plaintiff or defendant.

b. Accept filings related to LT cases and proceed as follows:

(i) For cases that are not subject to the moratorium under the CDC order, the court shall proceed as provided in this order and MCR 4.201.

(ii) For cases that are subject to the moratorium under the CDC order, the court shall process the case through entry of judgment. A judgment issued in this type of case shall allow defendant to pay or move (under item 4 on DC 105 or similarly on non-SCAO forms) within the statutory period (MCL 600.5744) or by December 31, 2020, whichever date is later. MCR 4.201(L)(4)(a), which prohibits an order of eviction from being issued later than 56 days after the judgment enters unless a hearing is held, is suspended for cases subject to the CDC moratorium. The 56 day period in that rule shall commence January 1, 2021 for those cases.

This order is effective until further order of the Court.

Viviano, J. (*dissenting*). Today, the Court suspends the statutory rules entitling property owners to recover their premises from tenants through summary proceedings in court. See MCL 600.5701 *et seq*. Normally, the plaintiff-owner is entitled to a writ enabling him or her to obtain possession as soon as 10 days after judgment enters in the plaintiff's favor. MCL 600.5744(5). In this administrative order, however, Subsection (12)(B)(ii) allows the district court to process the case through entry of judgment but prohibits the plaintiff from obtaining possession until at least December 31, 2020.

The only basis for the extraordinary act of administratively suspending a statute is a recent order from the Centers for Disease Control and Prevention (CDC) purporting to prohibit landlords from evicting certain tenants covered by the order. CDC, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 Fed Reg 55,292 (September 4, 2020). But that order has been challenged on a host of grounds and, I believe, rests on a shaky legal foundation. The CDC relied on a single statute and an accompanying regulation. The statute provides:

> The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary. [42 USC 264(a).]

The related regulation states:

> Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable

> diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection. [42 CFR 70.2 (2019).[1]]

The CDC order relies on dubious legal authority. The statute and regulation give a broad power to do whatever the CDC Director "deems reasonably necessary" to prevent a disease's spread. But it seems a stretch to say that they authorize the CDC to tinker with state landlord-tenant laws, a topic that neither the statute nor regulation mention. The examples of permissible orders provided in the law and regulation reflect "terms or tools traditionally associated with public-health emergencies." *In re Certified Questions from the United States Dist Court*, ___ Mich ___, ___ (2020) (Docket No. 161492) (Viviano, J., concurring in part and dissenting in part); slip op at 21. The regulation was, in fact, promulgated as part of a broader transfer of "regulatory authority with respect to interstate quarantine over persons" from the Food and Drug Administration to the CDC. Food and Drug Administration, *Control of Communicable Diseases; Apprehension and Detention of Persons With Specific Diseases; Transfer of Regulations*, 65 Fed Reg 49,906, 49,907 (August 16, 2000). I am unaware of any historical uses of eviction moratoriums in response to public-health crises. Cf. Witt, *American Contagions: Epidemics and the Law from Smallpox to COVID-19* (New Haven: Yale Univ Press, 2020) (describing legal frameworks for addressing past epidemics but not mentioning suspension of evictions until the COVID-19 pandemic). It appears, then, arguable that the CDC order is outside the authority granted under the statute or even the regulation.

Assuming that the statute and regulation encompass the power to put a halt to evictions nationwide, these laws run headlong into serious constitutional questions. The most obvious is the separation-of-powers problem that arises with such sweeping grants of power to executive agencies. We recently addressed that very issue and noted the present approach in federal courts that delegations to agencies are permissible if they contain intelligible principles to guide the exercise of the delegated authority. See *In re Certified Questions*, ___ Mich at___; slip op at 24 (opinion of the Court).

The CDC order here represents a vast delegation of power that might raise significant constitutional doubts. Under it, the executive could "restrict almost any type of activity. Pretty much any economic transaction or movement of people and goods could potentially spread disease in some way." Somin, The Volokh Conspiracy, *Trump's Eviction Moratorium Could Set a Dangerous Precedent* [*Updated*] <https://reason.com/2020/09/02/trumps-eviction-moratorium-could-set-a-dangerous-precedent/> (posted September 2, 2020) (accessed October 21, 2020) [https://perma.cc/N2RQ-3EF4]. And it does not take a pandemic with a novel disease to invoke this authority: the regulation defines "communicable diseases" to include any illnesses due to "infectious agents" that can be transmitted directly or indirectly. 42 CFR 70.1 (2019). The seasonal flu and common cold fit this definition. All the Director needs to show is that he or she "deem[ed]" the order "reasonably necessary." 42 CFR 70.2 (2019). Under that line, it is questionable whether the order even needs to be reasonably necessary as long as the Director asserted it was so. See Somin, *supra*.

All of this makes me question whether the CDC order is valid under the regulation, the statute, or the federal Constitution. And I am not alone in raising these questions. To date, at least two challenges to the CDC's order have been brought in federal court and are currently pending. See *Brown v Azar* (Case No. 1:20-cv-03702) (ND Ga); *Tiger Lily LLC v US Dep't of Housing & Urban Dev* (Case No. 2:20-cv-02692) (WD Tenn).

Even if the order is valid, to rely on it as the sole basis for our administrative order today, we must further assume that it preempts our state law governing landlord-tenant evictions, MCL 600.5701 *et seq.* and MCR 4.201. This question is open to debate and, it seems to me, better resolved in an actual case than an administrative order. The statute itself disclaims any intent to preempt state laws that do not conflict with the exercise of authority under the statute. 42 USC 264(e). As noted above, nothing in 42 USC 264(a) or the regulation appears to grant power to make or enforce an eviction moratorium.

Without a valid CDC order that preempts our law, I am unaware of any authority for this Court to suspend until December 31, 2020, a plaintiff's ability to obtain a writ of restitution under MCL 600.5744.[2] The statute, as noted above, provides a district court power to enter the writ of restitution 10 days after entry of judgment in favor of the plaintiff. MCL 600.5744(5). The Legislature has established that "[e]xcept as otherwise provided in [the Revised Judicature Act], the procedure in summary proceedings shall be regulated by rules adopted by the supreme court and by local court rules not inconsistent therewith." MCL 600.5708. But we do not have the power to change the substantive relief to which the prevailing party is entitled in a landlord-tenant proceeding.

I believe the CDC's order rests on questionable legal grounds and very well might be struck down. Consequently, I would not rely on it as the basis to suspend the normal workings of our statutes. And without the order, we lack any authority for our present action. For these reasons, I dissent.

ENDNOTES

1. Although the statute mentions the Surgeon General, a subsequent administrative reorganization vested the powers in a different department, and they now fall under the CDC's purview. See generally *Reorganization Plan No. 3 of 1966*, 31 Fed Reg 8,855 (June 25, 1966).
2. Our original eviction moratorium, in Administrative Order No. 2020-17, 505 Mich ___ (2020), was adopted under 1963 Const, art 6, § 4, which grants this Court with general superintending control over all courts. AO 2020-17 also relied on, among other things, Administrative Order No. 2020-6, 505 Mich ___ (2020) (Order Expanding Authority for Judicial Officers to Conduct Proceedings Remotely). That order, in turn, referenced Executive Order No. 2020-33, which was the Governor's emergency and disaster declaration, and Administrative Order No. 2020-8, 505 Mich ___ (2020), which was adopted to comply with the federal Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), PL 116-136; 134 Stat 281. This Court recently held that all of the Governor's executive orders issued under the Emergency Powers of the Governor Act, MCL 10.31 *et seq.*, including EO 2020-33 "are of no continuing legal effect." *House of Representatives v Governor*, ___ Mich ___ (2020) (Docket No. 161917). Additionally, the eviction moratorium in

the CARES Act lasted 120 days and ended months ago. 15 USC 9058(b). Thus, this Court's original action in adopting AO 2020-17 was based on the premise that the Governor's executive orders were valid and that there was a valid federally mandated eviction moratorium in place. One of these rationales turned out not to be true, and the other rationale is no longer valid. The lessons I take from this are that we should be much more circumspect before rushing to embrace an executive's sweeping assertion of legislative power, and that we are on much more solid ground when we tailor our rules to conform to laws duly enacted by the Legislature.

Proposed Rescission of Administrative Order No. 1997-9 and Proposed Addition of Administrative Order No. 2020-X
(Dated October 14, 2020)

On order of the Court, this is to advise that the Court is considering a proposed rescission of Administrative Order No. 1997-9 to be replaced with Administrative Order No. 2020-X. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

Administrative Order No. 2020-X—Allocation of Funds from Lawyer Trust Account Program

On order of the Court, effective immediately, Administrative Order No. 1997-9 is rescinded and replaced with Administrative Order No. 2020-X to provide that funds to be distributed by the Board of Trustees of the Michigan State Bar Foundation shall be disbursed as follows:

1. Seventy percent of the net proceeds of the Lawyer Trust Account Program to support the delivery of civil legal services to the poor;
2. Fifteen percent of the net proceeds of the Lawyer Trust Account Program to support programs to promote improvements in the administration of justice;
3. Ten percent of the net proceeds of the Lawyer Trust Account Program to support increased access to justice, including matters relating to gender, racial, and ethnic equality, to be implemented at the direction of the State Court Administrator;
4. Five percent of the net proceeds of the Lawyer Trust Account Program, not to exceed a maximum of $XX,XXX, to support the activities of the Michigan Supreme Court Historical Society. Any funds in excess of the maximum amount shall be divided evenly among the recipients in paragraph 1 through 3.

STAFF COMMENT: The proposed administrative order would replace the current administrative order regarding distribution of funds from the Lawyer Trust Account Program that was adopted more than 20 years ago. The distribution would remain largely the same as it is now: 70 percent to support delivery of civil legal services to the poor, 15 percent to promote improvements in the administration of justice, 10 percent to support increased access to justice (including racial, gender, and ethnic equality), and 5 percent for support of the activities of the Michigan Supreme Court Historical Society. What would be different is that in paragraph three, funds would be used to support increased access to justice generally with specific reference to racial, gender, and ethnic equality, instead of reference to the long-defunct task forces on Gender Issues in the Courts and Racial/Ethnic Issues in the Court. Those issues will continue to be a focus of the money to be spent, but will be able to include additional recommendations. Further, the money could be spent as directed by the State Court Administrator, instead of being spent "within the judiciary," which unnecessarily restricts the ability to fund programs that exist outside the judiciary but fit within the funding parameters. Finally, the proposed AO would establish a cap on funding for the Michigan State Historical Society to reflect what are likely largely fixed costs for operational expenses; the remainder would be split among the remaining recipients.

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 February 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. 2020-25. 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.

Administrative Order No. 2020-20 Regarding Election-Related Litigation
(Dated September 23, 2020)

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

In an effort to promote the efficient and timely disposition of election-related litigation, the Court adopts the following requirements and procedural rules, effective immediately.

1. Court proceedings regarding an election matter lawsuit may not be instituted and orders may not be issued except upon a written complaint filed pursuant to the pertinent MCR provision. A full and complete record of the proceedings must be kept.
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).

   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.

3. The chief judge or chief judge's designee of the court in which the election matter lawsuit is filed must provide the following information to the Supreme Court Clerk:
   (a) Case number and names of parties;
   (b) Name of assigned judge and the telephone number where he or she can be reached;
   (c) Brief statement of the issues;
   (d) Brief statement of the case status; and
   (e) An electronic copy of the final order or judgment, or an order granting a stay or injunctive relief at the email address provided in the memo referenced above.
4. On or before the date of an election, the Court of Appeals will publish on the home page of its website information for contacting that court's clerk's office after business hours and the steps required of a party who might wish to seek emergency appellate relief.

STAFF COMMENT: This administrative order requires various notifications and information to be made regarding election-related litigation.

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.

Proposed Amendments of Rules 1.109 and 8.119 of the Michigan Court Rules (Dated October 28, 2020)

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.109 and 8.119 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

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

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1)-(8) [Unchanged.]

(9) Personal Identifying Information.

(a) [Unchanged.]

(b) Filing, Accessing, and Serving Personal Identifying Information

(i)-(ii) [Unchanged.]

(iii) If a party is required to include protected personal identifying information in a public document filed with the court, the party shall file the document with the protected personal identifying information redacted, along with a personal identifying information form approved by the State Court Administrative Office under subrule (i). The personal identifying information form must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers listed in the personal identifying information form will be understood to refer to the corresponding complete identifier. A party may amend the personal identifying information form as of right. Fields for protected personal identifying information may~~will not~~ be included in SCAO-approved court forms, and the information will be protected, in the form and manner established by the State Court Administrative Office.

(iv)-(vii) [Unchanged.]

(c)-(e) [Unchanged.]

(10) Request for Copy of Public Document with Protected Personal Identifying Information; Redacting Personal Identifying Information; Responsibility; Certifying Original Record; Other.

(a) The responsibility for excluding or redacting personal identifying information listed in subrule (9) from all documents filed with or offered to the court rests solely with the parties and their attorneys. The clerk of the court is not required to review, redact, or screen documents at time of filing for personal identifying information, protected or otherwise, whether filed electronically or on paper. For a document filed with or offered to the court, the clerk of the court is not required to redact protected personal identifying information from that document before providing a requested copy of the document (whether requested in person or via the internet) or before providing direct access to the document via a publicly accessible computer at the courthouse. The clerk of the court is required to redact protected personal identifying information before providing direct access to the document via the internet, such as through the court's website.

(b)-(e) [Unchanged.]

(E)-(H) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(G) [Unchanged.]

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk shall not permit any case record to be taken from the court without the order of the court. A court may provide access to the public case history information through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039. If a request is made for a public record that is maintained electronically, the court is required to provide a means for access

to that record~~; however, the documents cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those documents~~. If a public document prepared or issued by the court contains protected personal identifying information, the information must be redacted before it can be provided to the public, whether the document is provided via a paper or electronic copy, direct access via a publicly accessible computer at the courthouse, or direct access via the internet, such as on the court's website. The court may provide access to any case record that is not available in paper or digital image, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(D), in a medium for which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.

(1)-(2) [Unchanged.]

(I)-(L) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 1.109 and 8.119 would allow SCAO flexibility in protecting an individual's personal identifying information and clarify when a court is and is not required to redact protected personal identifying 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 sent to the Supreme Court Clerk in writing or electronically by February 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-26. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

Proposed Amendment of Rule 6.502 of the Michigan Court Rules (Dated September 16, 2020)

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 the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

Rule 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 or a claim of new evidence that was not discovered before the first such motion. The clerk shall refer a successive motion ~~that asserts that one of these exceptions is applicable~~ to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

The court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime. 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 eliminate the requirement to return successive motions to the filer and would eliminate the prohibition on appeal of a decision made on a motion for relief from judgment. Further, it would require all such motions to be submitted to the assigned judge, and require 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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-35. 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 Alternative Amendments of Rule 6.502 of the Michigan Court Rules (Dated October 28, 2020)

On order of the Court, this is to advise that the Court is considering proposed alternative amendments of Rule 6.502 of the Michigan Court Rules. Before determining whether either proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

ALTERNATIVE A

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 ___ 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, 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.]

ALTERNATIVE B

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. Where the defendant files a 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 direct that it be returned to the defendant with a statement of the reasons for its return, along with the appropriate form. The clerk of the court shall retain a copy of the motion.

(E)–(G) [Unchanged.]

STAFF COMMENT: The proposed alternative amendments of MCR 6.502 would address 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. Under Alternative A, the court would be required to notify the defendant of its intent to recharacterize the motion and allow the defendant an opportunity to withdraw or amend the motion. Under Alternative B, the court would be required to return the motion to the defendant with a statement of the reason for return.

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 February 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. 2020-07. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

Amendments of Rules 6.425, 6.428, 7.208, and 7.211 of the Michigan Court Rules

(Dated September 30, 2020)

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 amendments of Rules 6.425, 6.428, 7.208, and 7.211 of the Michigan Court rules are adopted, effective January 1, 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) Presentence Report; Contents.

(1) [Unchanged.]

(2) On request, the probation officer must give the defendant's attorney notice and a reasonable opportunity to attend the presentence interview.

(2) [Renumbered (3) but otherwise unchanged.]

~~(3) Regardless of the sentence imposed, the court must have a copy of the presentence report and of any psychiatric report sent to the Department of Corrections. If the defendant is sentenced to prison, the copies must be sent with the commitment papers.~~

(B) [Unchanged.]

~~(C) Presentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the presentence report and any attachments to it. The court must exempt from disclosure any information the sentencing court exempted from disclosure pursuant to subrule (B).~~

(C~~D~~) [Relettered (C) but otherwise unchanged.]

(~~E~~D) Sentencing Procedure.

(1) [Unchanged.]

(2) ~~Resolution of~~ Challenges and Corrections.

(a) If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge, ~~or~~ determines that it will not take the challenged information into account in sentencing, or otherwise determines that the report should be corrected, it must order~~direct~~ the probation officer to ~~(i)~~ correct the report. ~~or delete the challenged information in the report, whichever is appropriate, and~~ If ordered to correct the report, the probation officer must ~~(ii)~~ provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections, certify that the report has been corrected, and ensure that no prior version of the report is used for classification, programming, or parole purposes.

(b) [Unchanged.]

(3) [Unchanged.]

(E) Presentence Report; Retention and Disclosure after Sentencing. Regardless of the sentence imposed, the Department of Corrections must retain the presentence report reflecting any corrections ordered under subrule (D)(2). On written request or order of the court, the Department of Corrections must provide the prosecutor, the defendant's lawyer, or the defendant if not represented by a lawyer, with a copy of the report. On written request, the court must provide the prosecutor, the defendant's lawyer, or the defendant if not represented by a lawyer, with copies of any documents that were presented for consideration at sentencing, including the court's initial copy of the presentence report if corrections were made after sentencing. If the court exempts or orders the exemption of any information from disclosure, it must follow the exemption requirements of subrule (B).

(F)–(G) [Unchanged.]

Rule 6.428 Restoration of Appellate Rights~~Reissuance of Judgment.~~

If the defendant ~~did not appeal within the time allowed by MCR 7.204(A)(2) and demonstrates that the attorney or attorneys retained or appointed to represent the defendant on direct appeal from the judgment either disregarded the defendant's instruction to perfect a timely appeal of right~~, or otherwise failed to provide effective assistance, and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right, whether convicted by plea or at trial, was denied the right to appellate review or the appointment of appellate counsel due to errors by the defendant's prior attorney or the court, or other factors outside the defendant's control, the trial court shall issue an order restarting the time in which to file an appeal or request counsel~~of right~~.

Rule 7.208 Authority of Court or Tribunal Appealed From

(A) [Unchanged.]

(B) Postjudgment Motions in Criminal Cases.

(1) Within~~No later than 56 days after the commencement of~~ the time for filing the defendant-appellant's brief as provided by MCR 7.212(A)(1)(a)(iii), the defendant may file in the trial court a motion for a new trial, for judgment of acquittal, to withdraw a plea, or to correct an invalid sentence.

(2) [Unchanged.]

(3) The trial court shall hear and decide the motion within 56~~28~~ days of filing, unless the court determines that an adjournment is necessary to secure evidence needed for the decision on the motion or that there is other good cause for an adjournment.

(4)–(6) [Unchanged.]

(C)–(J) [Unchanged.]

Rule 7.211 Motions in Court of Appeals

(A)–(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1) Motion to Remand.

(a) ~~Within the time provided for filing the appellant's brief,~~ tThe appellant may move to remand to the trial court. The motion must identify an issue sought to be reviewed on appeal and show:

(i)–(ii) [Unchanged.]

A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing.

(b)–(c) [Unchanged.]

(d) If a motion to remand is filed~~granted~~, further proceedings in the Court of Appeals are stayed until the motion is denied or the trial court proceedings are completed~~completion of the proceedings in the trial court pursuant to the remand~~, unless the Court of Appeals orders otherwise.

(e)–(f) [Unchanged]

(2)–(9) [Unchanged.]

(D)–(E) [Unchanged.]

STAFF COMMENT: The amendments, submitted by the State Appellate Defender Office, make several substantive changes. The amendments expand certain time periods within which to file and dispose of postjudgment motions (MCR 7.208 and 7.211), and reconfigure and expand the Reissuance of Judgment Rule (MCR 6.428) (renaming it Restoration of Judgment Rule). Finally, the amendments of MCR 6.425 require a probation officer to give defendant's attorney notice and a reasonable opportunity to attend the presentence interview, require a probation agent to not only correct a report but certify the correction has been made and provide for additional requirements regarding use of and access to the presentence investigation report.

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 7.118 of the Michigan Court Rules (Dated September 23, 2020)

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 7.118 of the Michigan Court Rules is adopted, effective January 1, 2021.

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

Rule 7.118 Appeals from the Michigan Parole Board

(A)–(C) [Unchanged.]

(D) Application for Leave to Appeal.

(1)–(2) [Unchanged.]

(3) Manner of Filing. An application for leave must comply with MCR 7.105, must include statements of jurisdiction and venue, and must be served on the parole board and the prisoner. If the victim seeks leave, the prosecutor must be served. If the prosecutor seeks leave, the victim must be served if the victim requested notification under MCL 780.771.

(a) [Unchanged.]

(b) Service on a prisoner incarcerated in a state correctional facility must be accomplished by serving the application for leave on the warden or administrator, along with the form approved by the State Court Administrative Office for personal service on a prisoner. Otherwise, service must be accomplished by certified mail, return receipt requested, as described in MCR 2.103(C) and MCR 2.104(A)(2) or in compliance with MCR 2.105(A)(2). In addition to the pleadings, service on the prisoner must also include a notice in a form approved by the State Court Administrative Office advising the prisoner that:

(i) the prisoner may respond to the application for leave to appeal through ~~retained~~ counsel or in propria persona, although no response is required, and that an indigent prisoner is entitled to appointment of counsel, and

(ii) [Unchanged.]

(c) [Unchanged.]

(d) If a prosecutor or victim files an application for leave to appeal, the circuit court shall appoint counsel for an indigent prisoner through the Michigan Appellate Assigned Counsel System.

(4) [Unchanged.]

(E)–(J) [Unchanged.]

STAFF COMMENT: The amendment of MCR 7.118 requires counsel to be appointed to an indigent prisoner when an application for leave to appeal a grant of parole is filed by the prosecutor or victim. The right to counsel also would be included on the notice to be provided the prisoner.

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.

Amendments of Rules 7.212 and 7.312 of the Michigan Court Rules (Dated September 23, 2020)

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 amendments of Rules 7.212 and 7.312 of the Michigan Court Rules are adopted, effective January 1, 2021.

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

Rule 7.212 Briefs

(A)–(I) [Unchanged.]

(J) Appendix.

(1) ~~In all civil cases (except those pertaining to child protection proceedings, including termination of parental rights, and non-criminal delinquency proceedings under chapter XIIA of the Probate Code and adoptions under chapter X), and in all appeals from administrative agencies, except those described in section (J)(5) of this rule, the appellant shall file and serve an appendix. The appellant's appendix shall contain a table of contents and copies of the following documents if they exist:~~Requirements. Except as provided in subrules (1)(a)–(f) of this rule, the appellant must file an individual or joint appendix with the appellant's brief. An appellee may file an appendix with the appellee's brief if the appellant's appendix does not contain all the information set forth in subrule (3) of this rule. The appellee's appendix should not contain any of the documents contained in the appellant's appendix except when including additional pages to provide a more complete context, but should only contain additional information described in subrule (3) that is relevant and necessary to the determination of the issues on appeal. To avoid duplication in cases with more than one appellant or appellee, the parties are encouraged to submit a joint appendix pursuant to subsection (4) rather than separate appendixes. An appendix is not required in appeals from:

(a) Criminal proceedings.

(b) Child protective proceedings.

(c) Delinquency proceedings under chapter XIIA of the Probate Code.

(d) Adoption proceedings under chapter X.

(e) Involuntary mental health treatment proceedings under the Mental Health Code.

(f) The Michigan Public Service Commission where the record is available on the Commission's e-docket, or the Michigan Tax Tribunal where the record is available on the Tribunal's tax docket lookup page. In those cases, the parties' briefs shall cite to the document number and relevant pages in the electronic record.

(2) Form. The appendix must include a cover page or pages with the case caption that sets forth the parties' names and their designations (e.g., plaintiff-appellant), along with the appellate court and trial court or tribunal docket numbers. The cover page(s) must also state whether the appendix is an "Appellant's Appendix," "Appellee's Appendix," or "Joint Appendix." Following the cover page(s), the appendix must include a table of contents that identifies each document with reasonable specificity and indicates both the appendix number or letter and the page number on which the first page of the document appears in the appendix. An appendix must be numbered sequentially in a prominent location at the bottoms of the pages. When the appendix is composed of multiple volumes, pagination must continue from one volume to the next. For multiple appendix volumes, each volume must include a cover page and table of contents, and the first volume must contain a complete table of contents referencing all volumes of the appendix.

(a) For an appendix filed in paper form, one signed copy that is separately bound from the brief shall be filed. Each separate document in the appendix must be preceded by a title page that identifies the appendix number or letter and the title of the document. The binding method should allow the easy dismantling of the appendix for scanning.

(b) For an appendix filed electronically:

(i) The appendix must be separate from the electronically-filed brief and should be transmitted as a single PDF document unless the file size is too large to do so, in which case the appendix should be divided into separate volumes.

(ii) The appendix must be text searchable and include bookmarks for each document in the appendix and for important information or sections within the documents.

(iii) The table of contents should, if possible without unduly burdening the filer, link to the documents contained in the appendix or in that volume of the appendix.

(3) Content. The appendix must include copies of the following documents if they exist:

(a) The trial court or tribunal judgment or order(s) appealed from, including any written opinion, memorandum, findings of fact and conclusions of law stated on the record, in conjunction with the judgment or order(s) appealed from.~~;~~

(b) ~~A copy of t~~The trial court or tribunal register of action~~s docket sheet;~~.

(c) The relevant pages of any transcripts cited in support of the argument~~appellant's position on appeal~~. When~~re~~ appropriate, pages that precede or follow~~the appellant may attach pages preceding and succeeding~~ the cited page should be included~~cited if helpful~~ to provide context to the citation. Submitting entire transcripts is discouraged unless necessary for the understanding of an argument. If a complete trial, deposition, or administrative transcript is filed, an~~the~~ index to such transcript must be included if one was provided by the court reporter. Transcripts must contain only a single transcript page per document page, not multiple pages combined on a single document page. ~~Only noncompressed (one sheet to a page) transcripts may be filed;~~

(d) When~~If~~ a jury instruction is challenged, the language~~a copy~~ of the instruction, any portion of the transcript containing a discussion of the instruction, and any relevant request for the instruction.~~; and~~

(e) Any other exhibit, pleading, or ~~other~~ evidence that was submitted to the trial court and that is relevant and necessary for the Court to consider in deciding the appeal. Briefs submitted in the trial court are not required to be included in the appendix unless they pertain to a contested preservation issue.

~~For material that is subject to an existing protective order, or for evidence that is not subject to such an order, but which contains information that is confidential or privileged, the procedures of MCR 7.211(C)(9) apply.~~

(4) Joint Appendix.

(a) The parties may stipulate to using a joint appendix, so designated, containing the matters that are deemed necessary to fairly decide the questions involved. A joint appendix shall meet the requirements of subrules (J)(2) and (3) and shall be included with the initial appellant's brief or, for a joint appendix of multiple appellees, with the first appellee's brief to be filed.

(b) The stipulation to use a joint appendix may specify that any party may file, as a supplemental appendix, additional portions of the record not covered by the joint appendix.

~~(2) The appellee shall file and serve an appendix with its responsive brief only if the appellant's appendix does not contain all the information set forth in section (J)(1) of this rule. The appellee's appendix shall not contain any of the documents contained in the appellant's appendix, but shall only contain additional information described in section (J)(1) that is relevant and necessary to the determination of the issues raised in the appeal.~~

~~(3) Each volume of any appendix shall contain no more than 250 pages. The table of contents shall identify each document with reasonable definiteness, and indicate the volume and page of the appendix where the document is located. The cover to the appendix shall indicate in bold type whether it is the "Appellant's Appendix" or "Appellee's Appendix."~~

~~(a) For a paper appendix, each document shall also be tabbed. A paper appendix shall be bound separate from the brief. Five copies of the paper appendix shall be filed with the court.~~

~~(b) If an appendix is to be filed electronically, it must be filed as an independent .pdf file or a series of independent .pdf files. The table of contents for electronically~~

~~filed appendixes shall contain bookmarks, linking to each document in the appendix.~~

~~(4) In cases involving more than one appellant or appellee, including cases consolidated for appeal, to avoid duplication each side shall, where practicable, file a joint rather than separate appendixes.~~

~~(5) This subsection does not apply to appeals arising from the Michigan Public Service Commission (in which the record is available on the Commission's e-docket) or the Michigan Tax Tribunal (in which the record is available on the Tribunal's tax docket lookup page). In those cases, the parties shall cite to the document number and relevant pages.~~

Rule 7.312 Briefs and Appendixes in Calendar Cases and Oral Arguments on the Application

(A)–(C) [Unchanged.]

(D) Appendixes~~.~~ Unless the Court orders otherwise, briefs in a calendar case or in a case being argued on an application must be filed with an individual or joint appendix that conforms with the requirements, form, and content of MCR 7.212(J), except that the exclusions listed in MCR 7.212(J)(1)(a)–(f) do not apply to the Supreme Court. The individual or joint appendix must also include a copy of the Court of Appeals opinion or order being appealed but need not include the briefs submitted in the Court of Appeals unless they pertain to a contested preservation issue.

~~(1) Form. Appendixes must be prepared in conformity with MCR 7.212(B), and shall be similarly endorsed as briefs under MCR 7.312(C) but designated as an appendix. Appendixes must be printed on both sides of the page and, if they encompass more than 20 sheets of paper, must also be submitted on electronic storage media in a file format that can be opened, read, and printed by the Court.~~

~~(2) Appellant's Appendix. An appendix filed by the appellant must be entitled "Appellant's Appendix," must be separately bound, and numbered separately from the brief with the letter "a" following each page number (e.g., 1a, 2a, 3a). Each page of the appendix must include a header that briefly describes the character of the document, such as the names of witnesses for testimonial evidence or the nature of the documents for record evidence. The appendix must include a table of contents and, when applicable, must contain:~~

~~(a) the relevant docket entries of the trial court or tribunal and the Court of Appeals arranged in a single column;~~

~~(b) the trial court judgment, order, or decision in question and the Court of Appeals opinion or order being appealed;~~

~~(c) any relevant finding or opinion of the trial court;~~

~~(d) any relevant portions of the pleadings or other parts of the record; and~~

~~(e) any relevant portions of the transcript, including the complete jury instructions if an issue is raised regarding a jury instruction.~~

~~The items listed in subrules (D)(2)(a) to (e) must be presented in chronological order.~~

~~(3) Joint Appendix.~~

~~(a) The parties may stipulate to use a joint appendix, so designated, containing the matters that are deemed necessary to fairly decide the questions involved. A joint appendix shall meet the requirements of subrule (D)(2) and shall be separately bound and served with the appellant's brief.~~

~~(b) The stipulation to use a joint appendix may provide that either party may file, as a supplemental appendix, any additional portion of the record not covered by the joint appendix.~~

~~(4) Appellee's Appendix. An appendix, entitled "Appellee's Appendix," may be filed. The appellee's appendix must comply with the provisions of subrule (D)(2) and be numbered separately from the brief with the letter "b" following each page number (e.g., 1b, 2b, 3b). Materials included in the appellant's appendix or joint appendix may not be repeated in the appellee's appendix, except to clarify the subject matter involved.~~

(E)–(J) [Unchanged.]

STAFF COMMENT: The amendments of MCR 7.212 and 7.312 allow practitioners to efficiently produce an appendix for all appellate purposes by making the appendix rule consistent within the Court of Appeals and Supreme Court.

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 7.216 of the Michigan Court Rules

(Dated September 23, 2020)

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 7.216 of the Michigan Court Rules is adopted, effective January 1, 2021.

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

Rule 7.216 Miscellaneous Relief

(A)–(B) [Unchanged.]

(C) Vexatious Proceedings; Vexatious Litigator.

(1)–(2) [Unchanged.]

(3) Vexatious Litigator. If a party habitually, persistently, and without reasonable cause engages in vexatious conduct under subrule (C)(1), the Court may, on its own initiative or on motion of another party, find the party to be a vexatious litigator and impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Court without first obtaining leave, prohibiting the filing of actions in the Court without the filing fee or security for costs required by MCR 7.209 or MCR 7.219, or other restriction the Court deems just.

STAFF COMMENT: The amendment of MCR 7.216 enables the Court of Appeals to impose filing restrictions on a vexatious litigator, similar to the Supreme Court's rule (MCR 7.316).

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 7.314 of the Michigan Court Rules (Dated September 23, 2020)

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 7.314 of the Michigan Court Rules is adopted, effective January 1, 2021.

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

Rule 7.314 Call and Argument of Cases

(A) [Unchanged.]

(B) Argument.

(1) In a calendar case in which one side is or both sides are entitled to oral argument, the time allowed for argument shall be provided in the order granting leave~~is 30 minutes for each side unless the Court orders otherwise. When only one side is scheduled for oral argument, 15 minutes is allowed unless the Court orders otherwise~~.

(2) [Unchanged.]

The time for argument may be extended by Court order on motion of a party filed at least 14 days before the session begins or by the Chief Justice during the argument.

STAFF COMMENT: The amendment of MCR 7.314 eliminates the oral argument time period and instead directs that the amount of time for oral argument be established in the order granting leave to appeal.

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.

Appointment of Deputy Grievance Administrator (Dated October 30, 2020)

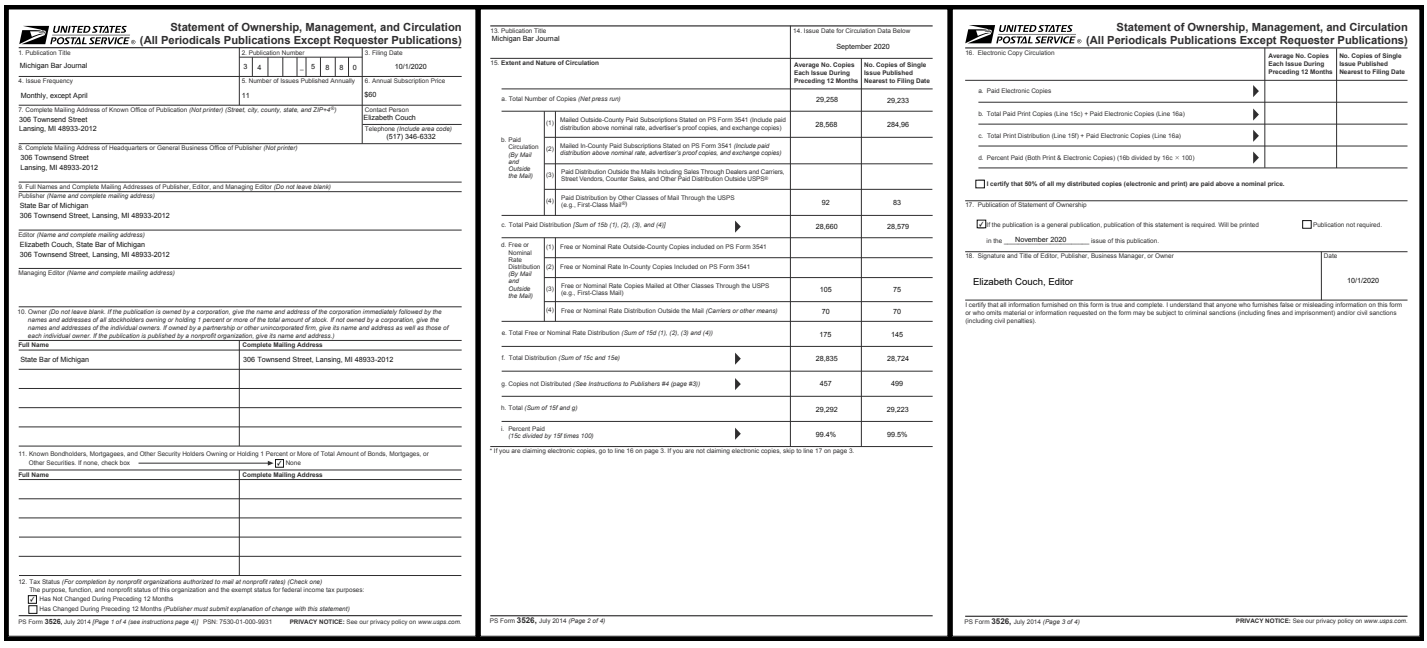
On order of the Court, pursuant to MCR 9.109(A), Kimberly Uhuru is appointed Deputy Administrator of the Attorney Grievance Commission, effective January 1, 2021.

Assignment of Business Court Judge in the 6th Circuit Court (Oakland County) (Dated October 14, 2020)

On order of the Court, effective January 1, 2021, the Honorable Michael Warren is assigned to serve as a business court judge in the 6th Circuit Court for a term expiring April 1, 2025.

Assignment of Business Court Judge in the 31st Circuit Court (St. Clair County) (Dated October 14, 2020)

On order of the Court, effective January 1, 2021, the Honorable Michael West is assigned to serve as a business court judge in the 31st Circuit Court for a term expiring April 1, 2025.



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The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:
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☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

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b. Paid Circulation (By Mail and Outside the Mail)	(1)	Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	28,568	284,96
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c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))			28,660	28,579
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e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))			175	145
f. Total Distribution (Sum of 15c and 15e)			28,835	28,724
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h. Total (Sum of 15f and g)			29,292	29,223
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PS Form 3526, July 2014 (Page 2 of 4)

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