

Order

Michigan Supreme Court
Lansing, Michigan

August 26, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-32

Michael F. Cavanagh
Stephen J. Markman

Amendments of Rule 3.210
of the Michigan Court Rules

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

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 Rule 3.210 of the Michigan Court Rules are adopted, effective January 1, 2015.

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

Rule 3.210 Hearings and Trials

(A) [Unchanged.]

(B) Default Cases.

- (1) ~~Default cases are governed by MCR 2.603. This subrule applies to the entry of a default and a default judgment in all cases governed by this subchapter.~~
- (2) ~~A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on the default of the defendant because of failure to appear at the hearing or by consent. Every case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule.~~Entry of Default.
 - (a) A party may request the entry of a default of another party for failure to plead or otherwise defend. Upon presentation of an affidavit by a party asserting facts setting forth proof of service and failure to plead or otherwise defend, the clerk must enter a default of the party.
 - (b) The party who requested entry of the default must provide prompt notice, as provided by MCR 3.203, to the defaulted party and all other parties and persons entitled to notice that the default has been entered, and file a proof of service.

- (c) Except as provided under subrule (B)(2)(d), after the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court under subrule (B)(3).
 - (d) The court may permit a party in default to participate in discovery as provided in Subchapter 2.300, file motions, and participate in court proceedings, referee hearings, mediations, arbitrations, and other alternative dispute resolution proceedings. The court may impose conditions or limitations on the defaulted party's participation.
 - (e) A party in default must be served with the notice of default and a copy of every paper later filed in the case as provided by MCR 3.203, and the person serving the notice or other paper must file a proof of service with the court.
- (3) ~~If a party is in default, proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court.~~Setting Aside Default Before Entry of Default Judgment. A motion to set aside a default, except when grounded on lack of jurisdiction over the defendant or subject matter, shall be granted only upon verified motion of the defaulted party showing good cause.
- (4) ~~If the court determines that the proposed judgment is inappropriate, the party who prepared it must, within 14 days, present a modified judgment in conformity with the court's opinion.~~Notice of Hearing and Motion for Entry of Default Judgment.
- (a) A party moving for default judgment must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment upon the defaulted party at least 14 days before the hearing on entry of the default judgment, and promptly file a proof of service when:
 - (i) the action involves entry of a judgment of divorce, separate maintenance, or annulment under subrule (B)(5)(a);
 - (ii) the proposed judgment involves a request for relief that is different from the relief requested in the complaint; or
 - (iii) the moving party does not have sufficient facts to complete the judgment or order without a judicial determination of the relief to which the party is entitled.
 - (b) If the action does not require a hearing under subrule (B)(4)(a) and if the relief can be determined based on information available to the

moving party that is stated in or attached to the motion or complaint, the moving party for default judgment may either:

- (i) schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment upon the defaulted party at least 14 days before the hearing on entry of the default judgment, and promptly file a proof of service, or
 - (ii) serve a verified motion for default judgment supporting the relief requested and a copy of the proposed judgment upon the defaulted party, along with a notice that it will be submitted to the court for signing if no written objections are filed with the court clerk within 14 days. If no written objections are filed within 14 days after filing, the moving party shall submit the judgment or order to the court for entry. If objections are filed, the moving party shall notice the entry of default judgment for hearing.
- (c) Service under this subrule shall be made in the manner provided by MCR 3.203 or, as permitted by the court, in any manner reasonably calculated to give the defaulted party actual notice of the proceedings and an opportunity to be heard.
- (d) If the default is entered for failure to appear for a scheduled trial or hearing, notice under this subrule is not required.
- (5) If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it. Entry of Default Judgment.
- (a) A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on the default of a party because of failure to appear at the hearing or by consent, and the case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule.
 - (b) Proofs for a default judgment may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court. Nonmilitary affidavits required by law must be filed before a default judgment is entered in cases in which the defendant has failed to appear. A default judgment may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator or other representative, except as otherwise provided by law.

- (c) The moving party may be required to present evidence sufficient to satisfy the court that the terms of the proposed judgment are in accordance with law. The court may consider relevant and material affidavits, testimony, documents, exhibits, or other evidence.
 - (d) In cases involving minor children, the court may take testimony and receive or consider relevant and material affidavits, testimony, documents, exhibits, or other evidence, as necessary, to make findings concerning the award of custody, parenting time, and support of the children.
 - (e) If the court does not approve the proposed judgment, the party who prepared it must, within 14 days, submit a modified judgment under MCR 2.602(B)(3), in conformity with the court's ruling, or as otherwise directed by the court.
 - (f) Upon entry of a default judgment and as provided by MCR 3.203, the moving party must serve a copy of the judgment as entered by the court on the defaulted party within 7 days after it has been entered, and promptly file a proof of service.
- (6) Setting Aside Default Judgment.
- (a) A motion to set aside a default judgment, except when grounded on lack of jurisdiction over the defendant, lack of subject matter jurisdiction, failure to serve the notice of default as required by subrule (B)(2)(b), or failure to serve the proposed default judgment and notice of hearing for the entry of the judgment under subrule (B)(4), shall be granted only if the motion is filed within 21 days after the default judgment was entered and if good cause is shown.
 - (b) In addition, the court may set aside a default judgment or modify the terms of the judgment in accordance with statute or MCR 2.612.
- (7) Costs. An order setting aside the default or default judgment must be conditioned on the defaulted party paying the taxable costs incurred by the other party in reliance on the default or default judgment, except as prescribed in MCR 2.625(D). The order may also impose other conditions, including imposition of a reasonable attorney fee.

(C)-(D)[Unchanged.]

(E) Consent Judgment.

- (1) At a hearing that involves entry of a judgment of divorce, separate maintenance, or annulment under subrule (B)(5)(a), or at any time for all other actions, any party may present to the court for entry a judgment approved as to form and content and signed by all parties and their attorneys of record.
- (2) If the court determines that the proposed consent judgment is not in accordance with law, the parties shall submit a modified consent judgment in conformity with the court's ruling within 14 days, or as otherwise directed by the court.
- (3) Upon entry of a consent judgment and as provided by MCR 3.203, the moving party must serve a copy of the judgment as entered by the court on all other parties within 7 days after it has been entered and promptly file a proof of service.

Staff Comment: The amendments of MCR 3.210 clarify default and default judgment procedures to be used in domestic relations cases. The amendments also allow parties to reach agreement on issues related to property division, custody, parenting time, and support, and enter a consent judgment on those issues if the court approves.

The staff comment is not an authoritative construction by the Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 26, 2014

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk