

Order

Michigan Supreme Court
Lansing, Michigan

August 30, 2018

Stephen J. Markman,
Chief Justice

ADM File No. 2002-37

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

Amendments of Rules 2.107, 2.111, 2.116, 2.119,
2.406, 2.518, 2.625, 3.101, 3.203, 3.208, 3.211, 3.703,
3.802, 3.903, 3.930, 5.104, 5.105, 5.119, 6.310, 6.429,
6.431, 6.433, 6.502, 7.104, 7.204, 7.205, 7.206, 7.210,
8.111 of the Michigan Court Rules and Rule 1.2
of the Michigan Rules of Professional Conduct

On order of the Court, the following amendments are adopted, effective September 1, 2018.

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

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A)-(B) [Unchanged.]

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1)-(3) [Unchanged.]

(4) E-mail. Some or all of the parties may agree to e-mail service among themselves by filing a stipulation in that case. Some or all of the parties may agree to e-mail service by a court by filing an agreement with the court to do so. E-mail service shall be subject to the following conditions:

(a)-(c) [Unchanged.]

(d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 1.109(E)~~2.114(C) and (D)~~.

(e)-(i) [Unchanged.]

(D)-(G) [Unchanged.]

Rule 2.111 General Rules of Pleading

(A) Pleading to be Concise and Direct; Inconsistent Claims.

(1) [Unchanged.]

(2) Inconsistent claims or defenses are not objectionable. A party may

(a)-(b) [Unchanged.]

All statements made in a pleading are subject to the requirements of MCR 1.109(D)(3) and (E)2.114.

(B)-(F) [Unchanged.]

Rule 2.116 Summary Disposition

(A)-(E) [Unchanged.]

(F) Motion or Affidavit Filed in Bad Faith. A party or an attorney found by the court to have filed a motion or an affidavit in violation of the provisions of MCR 1.109(D)(3) and (E)2.114 may, in addition to the imposition of other penalties prescribed by that rule, be found guilty of contempt.

(G)-(J) [Unchanged.]

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) An application to the court for an order in a pending action must be by motion. Unless made during a hearing or trial, a motion must

(a)-(c) [Unchanged.]

(d) be signed by the party or attorney as provided in MCR 1.109(D)(3) and (E)2.114.

(2)-(4) [Unchanged.]

(B)-(G) [Unchanged.]

Rule 2.406 Use of Facsimile Communication Equipment

(A)-(G) [Unchanged.]

(H) **Signature.** For purposes of MCR ~~1.109(E)2.114~~, a signature includes a signature transmitted by facsimile communication equipment.

Rule 2.518 Receipt and Return or Disposal of Exhibits

(A)-(B) [Unchanged.]

(C) **Confidentiality.** If the court retains discovery materials filed pursuant to MCR 1.109(~~D~~E) or an exhibit submitted pursuant to this rule after a hearing or trial and the material is confidential as provided by law, court rule, or court order pursuant to MCR 8.119(I), the court must continue to maintain the material in a confidential manner.

Rule 2.625 Taxation of Costs

(A)-(J) [Unchanged.]

(K) **Procedure for Taxing Costs and Fees After Judgment.**

(1) [Unchanged.]

(2) Until the judgment is satisfied, the judgment debtor may serve on the judgment creditor a request to review postjudgment taxable costs and fees.

(a) Within 28 days of receipt from a judgment debtor of a request to review postjudgment taxable costs and fees, the judgment creditor shall file with the court a memorandum of postjudgment taxable costs and fees and serve the same upon the judgment debtor. A memorandum of postjudgment taxable costs and fees shall include an itemized list of postjudgment taxable costs and fees. The memorandum must be verified by oath under MCR 1.109(D)(3)(~~a~~).

(b)-(d) [Unchanged.]

Rule 3.101 Garnishment After Judgment

(A)-(C) [Unchanged.]

(D) Request for and Issuance of Writ. The clerk of the court that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement verified in the manner provided in MCR 1.109(D)(3)~~2.114(A)~~ stating:

(1)-(3) [Unchanged.]

(E)-(T) [Unchanged.]

Rule 3.203 Service of Notice and Court Papers in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1)-(2) [Unchanged.]

(3) Alternative Electronic Service

(a)-(d) [Unchanged.]

(e) A paper served by alternative electronic service that the friend of the court or an authorized designee is required to sign may include the actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 1.109(E)~~2.114(C) and (D)~~.

(f)-(k) [Unchanged.]

(B)-(J) [Unchanged.]

Rule 3.208 Friend of the Court

(A) [Unchanged.]

(B) Enforcement. The friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, parenting time, or custody. The procedures in this subrule govern contempt proceedings under the Support and

Parenting Time Enforcement Act. MCR 3.606 governs contempt proceedings under MCL 600.1701.

(1)-(2) [Unchanged.]

(3) The notice of the show cause hearing shall comply with requirements for the form of a subpoena under MCR 2.506(D).

(a) For the purpose of this subrule, an authorized signature is one that comports with MCR 1.109(~~E~~).

(b)-(c) [Unchanged.]

(4)-(7) [Unchanged.]

(C)-(D) [Unchanged.]

Rule 3.211 Judgments and Orders

(A)-(E) [Unchanged.]

(F) Entry of Judgment or Order

(1)-(4) [Unchanged.]

(5) The Judgment Information Form must be filed in addition to the verified statement that is required by MCR 1.109(D)(3)~~3.206~~.

(G) [Unchanged.]

(H) Service of Judgment or Order.

(1) [Unchanged.]

(2) The party securing entry of a judgment or order that provides for child support or spousal support must serve a copy on the party ordered to pay the support, as provided in MCR 2.602(~~E~~)(1), even if that party is in default.

(3) [Unchanged.]

Rule 3.703 Commencing a Personal Protection Action

- (A) [Unchanged.]
- (B) Petition in General. The petition must
 - (1)-(5) [Unchanged.]
 - (6) be signed by the party or attorney as provided in MCR ~~1.109(E)2.114~~. The petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address.
- (C)-(G) [Unchanged.]

Rule 3.802 Manner and Method of Service

- (A) [Unchanged.]
- (B) Service When Identity or Whereabouts of Father is Unascertainable
 - (1) If service cannot be made under subrule (A)(2) because the identity of the father of a child born out of wedlock or the whereabouts of the identified father has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR ~~1.109(D)(3)2.114(B)(2)~~, of the attempt to identify or locate the father. No further service is necessary before the hearing to identify the father and to determine or terminate his rights.
 - (2) [Unchanged.]
- (C) Service When Whereabouts of Noncustodial Parent Is Unascertainable. If service of a petition to terminate the parental rights of a noncustodial parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2) because the whereabouts of the noncustodial parent has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR ~~1.109(D)(3)2.114(B)(2)~~, of the attempt to locate the noncustodial parent. If the court finds, on reviewing the affidavit or declaration, that service cannot be made because the whereabouts of the person has not been determined after reasonable efforts, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

Rule 3.903 Definitions

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

(1)-(19) [Unchanged.]

(20) “Petition” means a complaint or other written allegation, verified in the manner provided in MCR ~~1.109(D)(3)2.114(B)~~, that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.

(21)-(27) [Unchanged.]

(B) [Unchanged.]

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1)-(12) [Unchanged.]

(13) “Supplemental petition” means:

- (a) a written allegation, verified in the manner provided in MCR ~~1.109(D)(3)2.114(B)~~, that a parent, for whom a petition was authorized, has committed an additional offense since the adjudication of the petition, or
- (b) a written allegation, verified in the manner provided in MCR ~~1.109(D)(3)2.114(B)~~, that a nonrespondent parent is being added as an additional respondent in a case in which an original petition has been authorized and adjudicated against the other parent under MCR 3.971 or MCR 3.972, or
- (c) a written allegation, verified in the manner provided in MCR ~~1.109(D)(3)2.114(B)~~, that requests the court terminate parental rights of a parent or parents under MCR 3.977(F) or MCR 3.977(H).

(D)-(F) [Unchanged.]

Rule 3.930 Receipt and Return or Disposal of Exhibits in Juvenile Proceedings

(A)-(B) [Unchanged.]

(C) Confidentiality. If the court retains discovery materials filed pursuant to MCR 1.109(~~D~~E) or an exhibit submitted pursuant to this rule after a hearing or trial and the material is confidential as provided by MCR 3.903(A)(3) or order of the court

pursuant to MCR 8.119(I), the court must continue to maintain the material in a confidential manner.

Rule 5.104 Proof of Service; Waiver and Consent; Unopposed Petition

(A) Proof of Service.

(1) [Unchanged.]

(2) Except as otherwise provided by rule, proof of service of a paper required or permitted to be served may be by

(a)-(b) [Unchanged.]

(c) authentication under MCR 1.109(D)(3)~~5.114(B)~~ of the person making service.

(3)-(4) [Unchanged.]

(B)-(C) [Unchanged.]

Rule 5.105 Manner and Method of Service

(A) Manner of Service.

(1)-(2) [Unchanged.]

(3) An interested person whose address or whereabouts is not known may be served by publication, if an affidavit or declaration under MCR 1.109(D)(3)~~5.114(B)~~ is filed with the court, showing that the address or whereabouts of the interested person could not be ascertained on diligent inquiry. Except in proceedings seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2), after an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.

(4) [Unchanged.]

(B)-(E) [Unchanged.]

Rule 5.119 Additional Petitions; Objections; Hearing Practices

- (A) [Unchanged.]
- (B) Objection to Pending Matter. An interested person may object to a pending petition orally at the hearing or by filing and serving a paper which conforms with MCR ~~1.109(D)5.113~~. The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.

(C)-(D) [Unchanged.]

Rule 6.310 Withdrawal or Vacation of Plea

(A)-(B) [Unchanged.]

(C) Motion to Withdraw Plea After Sentence.

- (1) [Unchanged.]
- (2) If 6 months have elapsed since sentencing, the defendant may file a motion to withdraw the plea if:
 - (a) [Unchanged.]
 - (b) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G)~~(2)~~, and
 - (c) [Unchanged.]
- (3)-(4) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 6.429 Correction and Appeal of Sentence

- (A) [Unchanged.]
- (B) Time for Filing Motion.
 - (1)-(2) [Unchanged.]

- (3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence may be filed:
 - (a) [Unchanged.]
 - (b) if 6 months have elapsed since entry of the judgment of conviction and sentence, the defendant may file a motion to correct an invalid sentence if:
 - (i) [Unchanged.]
 - (ii) The defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G)~~(2)~~, and
 - (iii) [Unchanged.]
- (4) [Unchanged.]

(C) [Unchanged.]

Rule 6.431 New Trial

(A) Time for Making Motion.

(1)-(2) [Unchanged.]

- (3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion for a new trial may be filed:
 - (a) [Unchanged.]
 - (b) If 6 months have elapsed since entry of the judgment of conviction and sentence, the defendant may file a motion for new trial if:
 - (i) [Unchanged.]
 - (ii) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the request for counsel or

substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G)(2), and

(iii) [Unchanged.]

(4) [Unchanged.]

(B)-(D) [Unchanged.]

Rule 6.433 Documents for Postconviction Proceedings; Indigent Defendant

(A) Appeals of Right. An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant, and, unless the transcript has already been ordered as provided in MCR 6.425(G)(2), must order the preparation of the transcript.

(B)-(C) [Unchanged.]

Rule 6.502 Motion for Relief From Judgment

(A)-(B) [Unchanged.]

(C) Form of Motion. The motion may not be noticed for hearing, and must be typed or legibly handwritten and include a verification by the defendant or defendant's lawyer in accordance with MCR 1.109(D)(3)2.114. Except as otherwise ordered by the court, the combined length of the motion and any memorandum of law in support may not exceed 50 pages double-spaced, exclusive of attachments and exhibits. If the court enters an order increasing the page limit for the motion, the same order shall indicate that the page limit for the prosecutor's response provided for in MCR 6.506(A) is increased by the same amount. The motion must be substantially in the form approved by the State Court Administrative Office, and must include:

(1)-(15) [Unchanged.]

(D)-(G) [Unchanged.]

Rule 7.104 Filing Appeal of Right

(A)-(B) [Unchanged.]

(C) Claim of Appeal.

(1) Form.

(a) The caption of a claim of appeal shall comply with MCR 1.109(D)(1)~~2.113(C)(1)~~.

(b) [Unchanged.]

(2)-(3) [Unchanged.]

(D)-(F) [Unchanged.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(1) [Unchanged.]

(2) An appeal of right in a criminal case must be taken

(a) in accordance with MCR 6.425(G)(~~13~~);

(b)-(e) [Unchanged.]

(3) [Unchanged.]

(B)-(H) [Unchanged.]

Rule 7.205 Application for Leave to Appeal

(A)-(F) [Unchanged.]

(G) Late Appeal.

(1)-(3) [Unchanged.]

(4) The limitation provided in subrule (G)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an

application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for directed verdict of acquittal, to withdraw a plea, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.310(C), MCR 6.419(C), MCR 6.429(B), and MCR 6.431(A), or if

- (a) [Unchanged.]
- (b) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the delayed request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G)(~~2~~), and
- (c) [Unchanged.]

A motion for rehearing or reconsideration of a motion mentioned in subrule (G)(4) does not extend the time for filing an application for leave to appeal, unless the motion for rehearing or reconsideration was itself filed within 21 days after the trial court decides the motion mentioned in subrule (G)(4), and the application for leave to appeal is filed within 21 days after the court decides the motion for rehearing or reconsideration.

A defendant who seeks to rely on one of the exceptions in subrule (G)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

(5)-(6) [Unchanged.]

(H) [Unchanged.]

Rule 7.206 Extraordinary Writs, Original Actions, and Enforcement Actions

(A) **General Rules of Pleading.** Except as otherwise provided in this rule, the general rules of pleading apply as nearly as practicable. See MCR 1.109 and 2.111-2.1134.

(B)-(F) [Unchanged.]

Rule 7.210 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

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

(a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 3.977(J)(3) or MCR 6.425(G)(~~2~~), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.

(b)-(e) [Unchanged.]

(2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 8.111 Assignment of Cases

(A)-(C) [Unchanged.]

(D) Actions Arising out of Same Transaction or Occurrence. Subject to subrule 8.110(C),

(1)-(2) [Unchanged.]

(3) the attorney for the party bringing the other action under subrule (1) or the new action under subrule (2) shall notify the clerk of the fact in writing in the manner prescribed in MCR ~~1.109(D)(2)~~~~2.113(C)(2)~~. An attorney who knowingly fails to do so is subject to disciplinary action.

(4) [Unchanged.]

MRPC Rule: 1.2 Scope of Representation

(a) [Unchanged.]

(b) A lawyer licensed to practice in the State of Michigan may limit the scope of a representation, file a limited appearance in a civil action, and act as counsel of record for the limited purpose identified in that appearance, if the limitation is reasonable under the circumstances and the client gives informed consent, preferably confirmed in writing.

(1) [Unchanged.]

(2) The filing of such documents is not and shall not be deemed an appearance by the lawyer in the case. Any filing prepared pursuant to this rule shall be signed by the party designated as “self-represented” and shall not be signed by the lawyer who provided drafting preparation assistance. Further, the lawyer providing document preparation assistance without entering a general appearance may rely on the client’s representation of the facts, unless the lawyer has reason to believe that such representation is false, seeks objectives that are inconsistent with the lawyer’s obligation under the Rules of Professional Conduct, or asserts claims or defenses pursuant to pleadings or papers that would, if signed by the lawyer, violate MCR 1.1092.114, or which are materially insufficient.

(c)-(d) [Unchanged.]

Comment:

Scope of Representation [Unchanged.]

Independence From Client’s Views or Activities [Unchanged.]

Services Limited in Objectives or Means [Unchanged.]

Reasonable Under Circumstances

Factors to weigh in deciding whether the limitation is reasonable under the circumstances according to the facts communicated to the attorney include the apparent capacity of the person to proceed effectively with the limited scope assistance given the complexity and type of matter and other self-help resources available. For example, some self-represented persons may seek objectives that are inconsistent with an attorney’s obligation under the Rules of Professional Conduct, or assert claims or defenses pursuant to pleadings or motions that would, if signed by an attorney, violate MCR 1.1092.114

~~[Signatures of Attorneys and Parties; Verification; Effect: Sanctions]~~. Attorneys must be reasonably diligent to ensure a limited scope representation does not advance improper objectives, and the commentary should help inform lawyers of these considerations.

Illegal, Fraudulent and Prohibited Transactions [Unchanged.]

Staff comment: These amendments update cross-references in the rules, and are intended to reflect changes that are necessary as a result of the Court's recent e-Filing rules amendments.

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.



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 30, 2018

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk