

Summary of Amendments to the Michigan Court Rules on Civil Discovery

This form outlines some of the major changes to the Michigan Court Rules (MCRs) on discovery going into effect January 1, 2020. This chart is meant to be a quick guide to the major amendments, but it does not cover every change to the rules. It includes the following:

- New rules requiring initial disclosures, with special provisions for no-fault and personal injury cases
- New provisions on the scope of discovery, which now includes proportionality considerations
- Limits on interrogatories (20 in most cases, and 35 in domestic relations matters)
- New “one day of 7 hours” limit on depositions
- Provisions on discovery plans, conferences, and mediation of discovery disputes
- New provisions on electronically stored information (ESI), including ESI discovery conferences and plans
- New MCR 3.229 regarding filing of confidential materials in domestic relations cases
- New discovery provisions for juvenile proceedings
- New probate court discovery provisions

This chart shortens and paraphrases much of the new rule language, so be sure to review the [order](#) to see the exact language and numbering of the amendments, as well as additional amendments not covered in this chart.

Subchapter 2.300 Civil Procedure; Discovery		
2.301 Availability and Timing of Discovery		
2.301(A)	Availability and Timing of Discovery	(1) When initial disclosures are required, party may seek discovery only after serving them under MCR 2.302(A). Otherwise party may seek discovery when authorized by MCRs, stipulation, or court order. (2) No discovery is permitted in district court except by leave of court or on stipulation of parties. Discovery motions may not be filed unless discovery sought has already been requested and refused. (3) No discovery is permitted in small claims and civil infraction actions. (4) After postjudgment motion is filed in a domestic relations action (as defined in subchapter 3.200) parties may obtain discovery by means provided in subchapter 2.300.
2.301(B)	Completion of Discovery	(1) In circuit or probate court, time for completion of discovery must be set by order entered under MCR 2.401(B). (4) Serving party shall initiate the discovery by a time that provides for a response or appearance before the completion date. By leave of court or as reasonable, discovery motions may be brought after completion date.
2.301(C)	Course of Discovery	Court may control scope, order, and amount of discovery consistent with the MCRs.

2.302(A) Duty to Disclose; General Rules Governing Discovery; Required Initial Disclosures		
2.302(A)(1)	In General	<p>Party must provide (without being asked):</p> <ul style="list-style-type: none"> (a) Factual basis of party’s claims/defenses (b) Legal theories on which claims/defenses are based, and citations to legal authorities if necessary for reasonable understanding (c) Name and, if known, address and phone number of each person likely to have discoverable information—and the subject of that information—that disclosing party may use to support claims/defenses (d) Copy or description by category/location of all documents, ESI, and tangible things disclosing party has in possession/custody/control and may use to support claims/defenses (e) Description by category/location of all documents, ESI, and tangible things not in the disclosing party’s possession/custody/control that the disclosing party may use to support claims/defenses, along with name, and, if known, address and phone number of the person who has possession/custody/control of the material (f) Computation of each category of damages claimed plus nonprivileged documentation supporting computation (g) Copy of (or opportunity to inspect) pertinent portions of insurance, indemnity, security equivalent, or suretyship agreement under which another person may be liable to satisfy all or part of a possible judgment or to indemnify or reimburse for payments made (h) Anticipated subject areas of expert testimony
MCR 2.302(A)(2)	Additional Disclosures for No-Fault Cases	<p>In addition to disclosures in (A)(1), in first-party no-fault cases, must also make the following without awaiting request:</p> <ul style="list-style-type: none"> (a) Defendants: (i) Copy of first-party claim file and privilege log for any redactions, and (ii) payments insurance company has made on claim (b) Plaintiffs: All applicable claims, including all of the following information in plaintiff’s possession/custody/control: (i) Identity of those providing medical, household, and attendant care services, (ii) all provider bills or outstanding balances plaintiff wants reimbursed, (iii) name/address/phone number of plaintiff’s employers, (iv) additional disclosures in MCR 2.302(A)(3)
MCR 2.302(A)(3)	Additional Disclosures for Personal Injury	<p>Plaintiff must also provide other parties with executed medical record authorizations in form approved by SCAO or agreed on by parties for all persons, institutions, hospitals, and other custodians in possession of medical information relating to the condition (unless privileged under MCR 2.314(B)).</p>
2.302(A)(4)	Cases Exempt from Initial Disclosure	<p>New subrule lists various actions exempt from (A)(1)-(3), including, e.g., appeals to circuit court, actions to enforce/quash administrative summons/subpoena, action to compel or stay arbitration, and personal protection proceedings.</p>
2.302(A)(5)	Time for Initial Disclosures	<ul style="list-style-type: none"> (a) Deadlines apply unless stipulation or order states otherwise. (b) In general: <ul style="list-style-type: none"> (i) Parties filing a complaint, counterclaim, cross-claim, or third-party complaint must serve initial disclosures 14 days after opposing party files an answer. (ii) Parties answering a complaint, counterclaim, cross-claim, or third-party complaint must serve initial disclosures 14 days after the opposing party’s disclosures are due or 28 days after filing an answer, whichever is later. (iii) Parties need only serve disclosures on parties that have appeared and must serve later-appearing parties within 14 days of the appearance. (c) Parties served/joined later must serve initial disclosures within 14 days after filing first pleading unless stipulation or order sets a different time.
2.302(A)(6)	Basis for Initial Disclosure; Unacceptable Excuses	<p>A party must serve initial disclosures based on the information then reasonably available to the party. A party is not excused from making disclosures because the party has not fully investigated the case or because the party challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.</p>
2.302(A)(7)	Form of Disclosures	<p>Subject to MCR 3.302(G), disclosures must be in writing, signed, and served, and proof of service promptly filed.</p>

2.302(B) Scope of Discovery		
2.302(B)(1)	In General	Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable.
2.302(B)(4) (e), (f)	Trial Preparation; Experts	Certain drafts and communications are protected by MCR 2.303(B)(3)(a).
2.302(B)(5)	Duty to Preserve ESI	Party has the same obligation to preserve ESI as it does for all other types of info.
2.302(B)(6)	Limitation of Discovery of ESI	In addition to the provision that parties need not provide discovery of ESI from sources not reasonably accessible or because of undue burden or cost, the court may allocate the expense of discovery of ESI , and may limit the frequency or extent of discovery of ESI (whether or not the ESI is from a source that is reasonably accessible).
2.302(E)(1)	Duty to Supplement	(a) Party must supplement or correct a MCR 2.302(A) disclosure or other response (i) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during discovery or in writing or (ii) as ordered by the court. (b) Duty to supplement disclosures or responses may be imposed by order of court, agreement of parties, or any time before trial through requests for supplementation.
2.302(E)(2)	Failure to Supplement	If court finds that a party has not supplemented disclosures or responses, court may enter an order as is just, including providing sanctions stated in MCR 2.313(B).
2.302(F)	Changes to Discovery Procedure	Parties may stipulate to change disclosure requirements, limits on interrogatories, or other procedures as long as not inconsistent with a court order.
2.302(G)(3), (4)	Signing of Disclosures, Discovery Requests, Responses, and Objections; Sanctions.	(3) Attorney signature constitutes certification that he or she has read the disclosure, request, response, or objection and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry the disclosure is complete and correct as of the time made and the disclosure, discovery request, response, or objection is consistent with MCRs and existing law or good-faith argument for extension, modification, or reversal of existing law. (4) Imposition of sanctions is discretionary and not mandatory.
MCR 2.305 Discovery Subpoena to a Non-Party		
MCR 2.305(A)	General Provisions	(1) Represented party may issue a subpoena to a nonparty for a deposition, production or inspection of documents, etc., upon court order or after all parties have had a reasonable opportunity to obtain an attorney, as determined under MCR 2.306(A). An unrepresented party may move the court for issuance of nonparty discovery subpoenas. (2) Requirements for copies/inspection of documents (3) Subpoena shall provide minimum of 14 days after services for the requested act. A motion to compel under MCR 2.313(A) is permissible. (4)-(7) Provisions regarding motions; service; depositions of corporations, partnerships, associations, or governmental agencies; and copying costs
MCR 2.305(B), (C), (D)	Compliance; Petition to Courts Outside MI; Action Pending in Another Country	(B) Except for subpoena for documents under (A)(2), nonparty served with subpoena in Michigan can only be required to comply in the county where the deponent resides, is employed, has its principal place of business, or transacts relevant business; at the location of the things to be inspected or land to be entered; or at another convenient place specified by court order. (C), (D) Provisions re: petitioning courts in other states, territories, and countries

MCR 2.306 Depositions on Oral Examination of a Party		
MCR 2.306(A)(3)	Limits	Deposition may not exceed one day of seven hours.
MCR 2.306(B)(3)	Notice of Examination; Production of Documents/ Things	Notice of deposition on a “public or private corporation, partnership, association, or governmental agency” must be served at least 14 days before scheduled deposition . No later than 10 days after being serviced with notice, noticed entity may serve objections or file motion for protective order, then seeking party can either proceed on agreed-upon topics or move to enforce the notice.
MCR 2.309 Interrogatories to Parties		
MCR 2.309(A)(2)	Availability; Procedure for Service; Limits	Each separately represented party may serve no more than 20 interrogatories on each party . A discrete subpart of an interrogatory counts as a separate interrogatory.
MCR 2.310 Request for Production of Documents and Other Things; Entry on Land for Inspection and Other Purposes		
2.310(A)(1), (2)	Definitions	Definition of “documents” includes ESI; “ESI” means electronically stored information, regardless of format, system, or properties.
MCR 2.312 Request for Admission		
MCR 2.312(A)	Availability, Scope	Request must clearly identify in the caption and before each request that it is a Request for Admission.
MCR 2.313 Failure to Serve Disclosure or to Provide or Permit Discovery; Sanctions		
2.313(A)(2)	Motion	Separate motions available for (a) compelling disclosure (for violation of MCR 2.302(A)), (b) compelling discovery, and (c) compelling compliance with nonparty discovery subpoena.
2.313(A)(6)	Additional Sanctions	Court may order such sanctions as are just, including anything authorized under MCR 2.313(B)(2)(a), (b), and (c).
2.313(C)(1)	Failure to Disclose or Supplement	If a party fails to provide information or identify a witness as required by MCR 2.302(A) or (E), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard (a) may order payment of the reasonable expenses, including attorney fees, caused by the failure; (b) may inform the jury of the party’s failure; and (c) may impose other appropriate sanctions, including any of the orders listed in MCR 2.313(B)(2)(a)-(c).
2.313(D)	Failure to Preserve ESI	If ESI that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice or (2) only upon finding that the party acted with the intent to deprive another party of the information’s use in the litigation, may order appropriate remedies, including (a) a presumption that the lost information was unfavorable to the party; (b) a jury instruction directing that the jury may or must presume the information was unfavorable to the party; or (c) dismissal of the action or entry of a default judgment.

Subchapter 2.400 Civil Procedure; Pretrial Procedure; Alternative Dispute Resolution; Offers of Judgment; Settlements

2.401 Pretrial Procedures; Conferences; Scheduling Orders

2.401(B)(1)	Early Scheduling Conference	<p>Court should address any matters that will facilitate the fair and expeditious disposition of the action. Rule includes areas of discussion:</p> <ul style="list-style-type: none"> (a) Whether jurisdiction and venue are proper or whether case is frivolous (b) Whether to refer the case to an alternative dispute resolution (ADR) procedure under MCR 2.410 (c) Complexity of the case (d) Disclosure, discovery, preservation, and claims of privilege of ESI (e) Simplification of the issues (f) Amount of time necessary for discovery and modification of extent of discovery (g) Amendments to pleadings (h) Admissions of fact and documents (i) Form and content of pretrial order (j) Timing of MCR 2.302(A) disclosures (k) Limitation on number of expert witnesses, etc. (l) Trial issues (m) Settlement (n) Appropriateness of mediation/case evaluation/other ADR (o) Identity of trial witnesses (p) Estimated length of trial (q) Joinder of claims (r) Other matters that may aid disposition of the action
2.401(B)(2) (a), (c)	Scheduling Order	<p>Additional provisions to include in the order:</p> <ul style="list-style-type: none"> • What changes should be made to timing, form, or requirement for MCR 2.302(A) disclosures • What changes should be made to limitations on discovery imposed under MCRs and whether other presumptive limitations should be established <p>Initial disclosure and discovery of ESI</p>
2.401(C)	Discovery Planning	<ul style="list-style-type: none"> (1) On court order or party request, parties MUST confer among themselves and prepare a proposed discovery plan. (2) Plan must address all disclosure and discovery matters and must show good cause to request a change in deadlines set by scheduling order. (3) Plan may be submitted as part of stipulation or motion. (4) Appropriate sanctions, including attorney fees/costs, are available for noncompliance.
2.401(H)	Final Pretrial Conference/ Order	<p>New provisions for the final pretrial conference (which can be combined with settlement conference) and list of items the final pretrial order may include</p>

2.401(J)(1)	ESI Conference	<p>When a case is reasonably likely to include discovery of ESI, parties can have conference by stipulation, order, or motion. Parties shall consider the following:</p> <ul style="list-style-type: none"> (a) Any issues relating to preservation of ESI (b) ID of potentially relevant types, categories, and time frames of ESI (c) ID of sources/accessibility of ESI (d) Manner in which ESI is maintained (e) Implementation of ESI preservation plan (f) Form of production (g) What metadata will be produced (h) Time to produce ESI (i) Method for asserting/preserving claims of privilege (j) Privilege log format (k) Confidentiality of nonparties (l) Whether appropriate to allocate the expense of production among the parties (m) Any other ESI issue
2.401(J)(2)	ESI Discovery Plan	<p>Within 14 days after an ESI conference, the parties shall file with the court an ESI discovery plan and a statement concerning any issues on which the parties cannot agree. Unless the parties agree otherwise, the attorney for the plaintiff shall be responsible for submitting the ESI discovery plan to the court. Rule includes items that the plan may include.</p>
2.401(J)(3)	ESI Competence	<p>Attorneys who participate in an ESI conference or who appear at a conference addressing ESI issues must be sufficiently versed in matters relating to their clients' technological systems to competently address ESI issues; counsel may bring a client representative or outside expert to assist in such discussions.</p>
2.401(J)(4)	ESI Order	<p>The court may enter an order governing the discovery of ESI pursuant to the parties' ESI discovery plan, upon motion of a party, by stipulation of the parties, or on its own.</p>

2.411 Mediation

2.411(H)	Mediation of Discovery Disputes	<p>Parties may stipulate to or court may order mediation of discovery disputes. Rule provides for certain exceptions to MCR 2.411 general rules for discovery mediators. For example:</p> <ul style="list-style-type: none"> • Court may specify that discovery disputes must first be submitted to mediator before being filed as a motion unless there's a need for expedited attention by the court. • In cases involving complex ESI issues, court may appoint an expert under MRE 706.
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Subchapter 3.200 Special Proceedings and Actions; Domestic Relations Actions

3.201 Applicability of Rules

3.201(C)	Interrogatories	<p>In domestic relations actions, interrogatories are limited to 35 (as opposed to the 20-interrogatory limit in other matters).</p>
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3.206 Initiating a Case

3.206(C)(2)	Verified Statement and Disclosure Form	<p>New provision requires parties in domestic relations actions to serve a Verified Financial Information Form (as provided by SCAO) within 28 days following the date of service of defendant's initial responsive pleading.</p>
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NEW 3.229 Filing Confidential Materials

3.229(A)		<p>If a party or interested party files any of the following items with the court, the items shall be served on the other parties in the case and maintained in a nonpublic file in accordance with subrule (B):</p> <ul style="list-style-type: none"> (1) verified statements and disclosure forms under MCR 3.206(B) (2) child protective services reports (3) psychological evaluations (4) custody evaluations (5) medical, mental health, and academic records of a minor (6) any part of a confidential file under MCR 3.903(A)(3) (7) any item designated as confidential or nonpublic by statute or court rule (8) any other document which, in the court’s discretion, should not be part of the public record
3.229(B)		<p>Any item filed under (A) is nonpublic and must be maintained separately from the legal file. The nonpublic file must be made available for any appellate review.</p>

Subchapter 3.900 Special Proceedings and Actions; Proceedings Involving Juveniles

3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

3.922(A)	Discovery	<p>Discovery must be produced no less than 21 days before trial, even without a discovery request. Additional specific types of discoverable statements and materials include Child Protective Services complaints and reports; psychiatric or psychological tests, experiments, and evaluations; and criminal records that party may use at trial to impeach a witness.</p>
3.922(B)	Discovery and Disclosure in Delinquency Matters	<p>New comprehensive provision includes the timing and types of discoverable materials in delinquency matters.</p>

NOTE: The order includes various amendments to a number of other rules in this subchapter, including MCR 3.973, 3.975, 3.976, and 3.977 regarding discovery and disclosures, not outlined here.

Subchapter 5.100 Probate Court; General Rules of Pleading and Practice

5.131 Discovery Generally

5.131(B)	Proceedings	<p>Outlines mandatory initial disclosure rules specific to probate matters, as well as the scope of discovery in probate proceedings—discovery is limited to matters raised in any petitions or objections pending before the court.</p>
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