

Order

Michigan Supreme Court
Lansing, Michigan

May 20, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2009-13

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Proposed Amendment
of Rules 2.112 and 2.118 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.112 and 2.118 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 www.courts.michigan.gov/supremecourt.

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 are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.112 Pleading Special Matters

(A)-(K) [Unchanged.]

(L) Medical Malpractice Actions.

- (1) In an action alleging medical malpractice filed on or after October 1, 1993, each party must file an affidavit as provided in MCL 600.2912d, 600.2912e. Notice of filing the affidavit must be promptly served on the opposing party. If the opposing party has appeared in the action, the notice may be served in the manner provided by MCR 2.107. If the opposing party has not appeared, the notice must be served in the manner provided by MCR 2.105. Proof of service of the notice must be promptly filed with the court.

(2) In a medical malpractice action, unless the court allows a later challenge for good cause:

(a) all challenges to a notice of intent to sue must be made at the time the defendant files its first response to the complaint, whether by answer or motion, and

(b) all challenges to an affidavit of merit or affidavit of meritorious defense, including the qualifications of the signer, must be made within 63 days of service of the affidavit on the opposing party. If the court finds that the affidavit is insufficient, it shall afford the party that filed the challenged affidavit to file a revised affidavit unless the information before the court shows that amendment would not be justified. See MCR 2.116(I)(5).

(M) [Unchanged.]

Rule 2.118 Amended and Supplemental Pleadings

(A)-(C) [Unchanged.]

(D) Relation Back of Amendments. An amendment that adds a claim or defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading. In a medical malpractice action, an amendment of an affidavit of merit or affidavit of meritorious defense relates back to the date of original filing of the affidavit.

(E) [Unchanged.]

Staff Comment: The proposed amendments of MCR 2.112 and 2.118 would set a time limit on the period for raising challenges to affidavits of merit and meritorious defense and notices of intent in medical malpractice actions. The proposal also would allow amendment when an affidavit is found to be insufficient unless such amendment would be unjustified, and would explicitly state that the amended affidavit of merit or meritorious defense relates back to the date of the affidavit's original filing.

The staff comment is not an authoritative construction by the 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 these proposals may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or

MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2009-13. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, 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.

May 20, 2009

Corbin R. Davis

Clerk