

Order

Michigan Supreme Court
Lansing, Michigan

September 28, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-20

Michael F. Cavanagh
Marilyn Kelly

Proposed Amendment of
Rule 6.302 of the Michigan
Court Rules

Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.302 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.mi.gov/supremecourt/resources/administrative/ph.htm.

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 6.302 Pleas of Guilty and Nolo Contendere

- (A) Plea Requirements. The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant or defendants under oath and personally carry out subrules (B)-(E).
- (B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:
- (1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;
 - (2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law; further, the court shall advise the defendant that if the defendant has been previously convicted of a felony,

the defendant may be charged as an habitual offender and the maximum possible sentence may be increased;

- (3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:
 - (a) to be tried by a jury;
 - (b) to be presumed innocent until proved guilty;
 - (c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;
 - (d) to have the witnesses against the defendant appear at the trial;
 - (e) to question the witnesses against the defendant;
 - (f) to have the court order any witnesses the defendant has for the defense to appear at the trial;
 - (g) to remain silent during the trial;
 - (h) to not have that silence used against the defendant; and
 - (i) to testify at the trial if the defendant wants to testify.
- (4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;
- (5) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right;

The requirements of subrules (B)(3) and (B)(5) may be satisfied by a writing on a form approved by the State Court Administrative Office. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(C)-(F)[Unchanged.]

Staff Comment: This proposed amendment of MCR 6.302 would reinsert a requirement that a court advise a defendant who pleads guilty that the defendant's maximum possible prison sentence may be longer than the maximum possible prison sentence for a particular offense if the defendant falls within the parameters of the habitual offender statute (MCL 769.13). The statute allows a prosecutor to notify the defendant that the prosecutor intends to seek an enhanced sentence after the defendant pleads guilty. Thus, the sentence range given by the court may not take into account any sentence enhancement at the plea hearing.

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 the proposals may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-20. 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.

September 28, 2011

Corbin R. Davis

Clerk