

Order

Michigan Supreme Court
Lansing, Michigan

April 20, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-14

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendment of
Rule 2.311 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.311 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

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

Rule 2.311 Physical and Mental Examination of Persons

(A) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental or blood examination by a physician (or other appropriate professional) or to produce for examination the person in the party's custody or legal control. The order may be entered only on motion for good cause with notice to the person to be examined and to all parties. The order must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. Upon request of a party, the order and may also provide that

(1) the attorney for the person to be examined may be present at the examination,
or-

(2) a mental examination be recorded by video or audio.

- (B) If the court orders that a mental examination be recorded, the recording must
- (1) be unobtrusive,
 - (2) capture the examinee's and the examiner's conduct throughout the examination, and
 - (3) be filed under seal.
- (B) [Relettered (C) but otherwise unchanged.]

Staff Comment (ADM File No. 2022-14): The proposed amendment of MCR 2.311 would allow a mental examination to be recorded by video or audio under certain circumstances.

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.

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 proposal may be submitted by August 1, 2023 by clicking on the “Comment on this Proposal” link under this proposal on the [Court's Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-14. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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.

April 20, 2023

Handwritten signature of Larry S. Royster in black ink.

Clerk