

- (2) The party demanding removal must promptly serve the order on the opposing party and file proof of service with the court.
 - (3) There is no fee for the removal, order, or mailing.
- (C) Motion for More Definite Statement. After removal, the affidavit is deemed to be a sufficient statement of the plaintiff's claim unless a defendant, within the time permitted for answer, files a motion for a more definite statement.
- (1) The motion must state the information sought and must be supported by an affidavit that the defendant
 - (a) does not have the information and cannot secure it with the exercise of reasonable diligence, and
 - (b) is unable to answer the plaintiff's claim without it.
 - (2) The court may decide the motion without a hearing on just and reasonable terms or may direct that a hearing be held after notice to both parties at a time set by the court.
 - (3) If the plaintiff fails to file a more definite statement after having been ordered to do so, the clerk shall dismiss the claim for want of prosecution.
- (D) Default. On removal, if the defendant fails to file an answer or motion within the time permitted, the clerk shall enter the default of the defendant. MCR 2.603 governs further proceedings.
- (E) Procedure After Removal. Except as provided in this rule, further proceedings in actions removed to the trial court are governed by the rules applicable to other civil actions.

Subchapter 4.400 Magistrates

Rule 4.401 District Court Magistrates

- (A) Procedure. Proceedings involving district court magistrates must be in accordance with relevant statutes and rules.
- (B) Duties. Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division.
- (C) Control of Magisterial Action. An action taken by a district court magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves.
- (D) Appeals. Appeals of right may be taken from a decision of the district court magistrate to the district court in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.104 within 7 days of the entry of the decision of the magistrate. No fee is required on the filing of the appeal, except as otherwise provided by statute or court rule. The action is heard de novo by the district court.

(E) A district court magistrate may use videoconferencing technology in accordance with MCR 2.407 and MCR 6.006.

MICHIGAN COURT RULES OF 1985

Chapter 5. Probate Court

Chapter Updated with MSC Order(s) Effective on April 11, 2024

Subchapter 5.000 General Provisions

Rule 5.001 Applicability

- (A) Applicability of Rules. Procedure in probate court is governed by the general rules set forth in chapter one and by the rules applicable to other civil proceedings set forth in chapter two, except as modified by the rules in this chapter.
- (B) Terminology.
 - (1) References to the “clerk” in the Michigan Court Rules also apply to the register in probate court proceedings.
 - (2) References to “pleadings” in the Michigan Court Rules also apply to petitions, objections, and claims in probate court proceedings.

Subchapter 5.100 General Rules of Pleading and Practice

Rule 5.101 Form and Commencement of Action; Confidential Records

- (A) Form of Action. There are two forms of action, a “proceeding” and a “civil action.”
- (B) Commencement of Proceeding. A proceeding is commenced by filing an application or a petition with the court.
- (C) Civil Actions, Commencement, Governing Rules. The following actions must be titled civil actions and commenced by filing a complaint and are governed by the rules applicable to civil actions in circuit court:
 - (1) Any action against another filed by a fiduciary or trustee.
 - (2) Any action filed by a claimant after notice that the claim has been disallowed.
- (D) Records are public except as otherwise indicated in court rule and statute

Rule 5.102 Notice of Hearing

A petitioner, fiduciary, or other moving party must cause to be prepared, served, and filed, a notice of hearing for all matters requiring notification of interested persons. It must state the time and date, the place, and the nature of the hearing. Hearings must be noticed for and held at times previously approved by the court.

Rule 5.103 Who May Serve

- (A) Qualifications. Service may be made by any adult or emancipated minor, including an interested person.
- (B) Service in a Governmental Institution. Personal service on a person in a governmental institution, hospital, or home must be made by the person in charge of the institution or a person designated by that person.

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

(A) Proof of Service.

- (1) Whenever service is required by statute or court rule, a proof of service must be filed promptly and before a hearing to which the document relates. If the document does not involve a hearing, a proof of service must be filed with the document. The proof of service must include a description of the documents served, the date of service, the manner and method of service, and the person or persons served.
- (2) Except as otherwise provided by rule, proof of service of a paper required or permitted to be served may be by
 - (a) including it at the end of the notice of hearing or other documents being filed with the court, or;
 - (b) a written statement by the individual who served the notice of hearing or other documents, verified under MCR 1.109(D)(3).
- (3) Subrule (A)(1) notwithstanding, in decedent estates, no proof of service need be filed in connection with informal proceedings or unsupervised administration unless required by court rule.
- (4) In unsupervised administration of a trust, subrule (A)(1) notwithstanding, no proof of service need be filed unless required by court rule.

(B) Waiver and Consent.

- (1) Waiver. The right to notice of hearing may be waived. The waiver must
 - (a) be stated on the record at the hearing, or
 - (b) be in a writing, which is dated and signed by the interested person or someone authorized to consent on the interested person's behalf and specifies the hearing to which it applies.
- (2) Consent. The relief requested in an application, petition, or motion may be granted by consent. An interested person who consents to an application, petition, or motion does not have to be served with or waive notice of hearing on the application, petition, or motion. The consent must
 - (a) be stated on the record at the hearing, or
 - (b) be in a writing which is dated and signed by the interested person or someone authorized to consent on the interested person's behalf and must contain a

statement that the person signing has received a copy of the application, petition, or motion.

- (3) Who May Waive and Consent. A waiver and a consent may be made
- (a) by a legally competent interested person;
 - (b) by a person designated in these rules as eligible to be served on behalf of an interested person who is a legally disabled person; or
 - (c) on behalf of an interested person whether competent or legally disabled, by an attorney who has previously filed a written appearance.

However, a guardian, conservator, or trustee cannot waive or consent with regard to petitions, motions, accounts, or reports made by that person as guardian, conservator, or trustee.

- (4) Order. If all interested persons have consented, the order may be entered immediately.
- (C) Unopposed Petition. If a petition is unopposed at the time set for the hearing, the court may either grant the petition on the basis of the recitations in the petition or conduct a hearing. However, an order determining heirs based on an uncontested petition to determine heirs may only be entered on the basis of testimony or a completed SCAO-approved testimony identifying heirs form verified under MCR 1.109(D)(3). An order granting a petition to appoint a guardian may only be entered on the basis of testimony at a hearing.

Rule 5.105 Manner and Method of Service

(A) Manner of Service.

- (1) Service on an interested person may be by personal service within or without the State of Michigan.
- (2) Unless another method of service is required by statute, court rule, or special order of a probate court, service may be made:
 - (a) to the current address of an interested person by registered, certified, or ordinary first-class mail, or
 - (b) by electronic service in accordance with MCR 1.109(G)(6)(a).

Foreign consul and the Attorney General may be served by mail or by electronic service in accordance with MCR 1.109(G)(6)(a).

- (3) An interested person whose address or whereabouts is not known may be served by publication if a declaration of intent to give notice by publication, verified under MCR 1.109(D)(3), is filed with the court. The declaration must set forth facts asserting 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) The court, for good cause on ex parte petition, may direct the manner of service if
 - (a) no statute or court rule provides for the manner of service on an interested person, or
 - (b) service cannot otherwise reasonably be made.

(B) Method of Service.

(1) Personal Service.

- (a) On an Attorney. Personal service of a document on an attorney must be made by
 - (i) handing it to the attorney personally;
 - (ii) leaving it at the attorney's office with a clerk or with some person in charge or, if no one is in charge or present, by leaving it in some conspicuous place there, or by electronically delivering a facsimile to the attorney's office;
 - (iii) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there; or
 - (iv) sending the document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the document.
- (b) On Other Individuals. Personal service of a document on an individual other than an attorney must be made by
 - (i) handing it to the individual personally;
 - (ii) leaving it at the person's usual residence with some person of suitable age and discretion residing there; or
 - (iii) sending the document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the document.
- (c) On Persons Other Than Individuals. Service on an interested person other than an individual must be made in the manner provided in MCR 2.105(C)-(G).

- (2) Mailing. Mailing of a copy under this rule means enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.
- (3) Publication. Service by publication must be made in the manner provided in MCR 5.106.

- (4) E-mail. Unless otherwise limited or provided by this court rule or MCR 1.109(G)(6)(a)(ii), parties to a civil action or interested persons to a proceeding may agree to service by e-mail in the manner provided in and governed by MCR 2.107(C)(4).
 - (5) Electronic Service. Electronic service of a document shall be made in accordance with MCR 1.109(G)(6)(a) when required.
- (C) Petitioner, Service Not Required. For service of notice of hearing on a petition, the petitioner, although otherwise an interested person, is presumed to have waived notice and consented to the petition, unless the petition expressly indicates that the petitioner does not waive notice and does not consent to the granting of the requested prayers without a hearing. Although a petitioner or a fiduciary may in fact be an interested person, the petitioner need not indicate, either by written waiver or proof of service, that the petitioner has received a copy of any document required by these rules to be served on interested persons.
- (D) Service on Persons Under Legal Disability or Otherwise Legally Represented. In a guardianship or conservatorship proceeding, a petition or notice of hearing asking for an order that affects the ward or protected individual must be served on that ward or protected individual if he or she is 14 years of age or older. In all other circumstances, service on an interested person under legal disability or otherwise legally represented must be made on the following:
- (1) The guardian of an adult, conservator, or guardian ad litem of a minor or other legally incapacitated individual, except with respect to:
 - (a) a petition for commitment or
 - (b) a petition, account, inventory, or report made as the guardian, conservator, or guardian ad litem.
 - (2) The trustee of a trust with respect to a beneficiary of the trust, except that the trustee may not be served on behalf of the beneficiary on petitions, accounts, or reports made by the trustee as trustee or as personal representative of the settlor's estate.
 - (3) The guardian ad litem of any person, including an unascertained or unborn person, except as otherwise provided in subrule (D)(1).
 - (4) A parent of a minor with whom the minor resides, provided the interest of the parent in the outcome of the hearing is not in conflict with the interest of the minor and provided the parent has filed an appearance on behalf of the minor.
 - (5) The attorney for an interested person who has filed a written appearance in the proceeding. If the appearance is in the name of the office of the United States attorney, the counsel for the Veterans' Administration, the Attorney General, the prosecuting attorney, or the county or municipal corporation counsel, by a specifically designated attorney, service must be directed to the attention of the designated attorney at the address stated in the written appearance.

- (6) The agent of an interested person under an unrevoked power of attorney filed with the court. A power of attorney is deemed unrevoked until written revocation is filed or it is revoked by operation of law.

For purposes of service, an emancipated minor without a guardian or conservator is not deemed to be under legal disability.

- (E) Service on Beneficiaries of Future Interests. A notice that must be served on unborn or unascertained interested persons not represented by a fiduciary or guardian ad litem is considered served on the unborn or unascertained interested persons if it is served as provided in this subrule.
 - (1) If an interest is limited to persons in being and the same interest is further limited to the happening of a future event to unascertained or unborn persons, notice and documents must be served on the persons to whom the interest is first limited.
 - (2) If an interest is limited to persons whose existence as a class is conditioned on some future event, notice and documents must be served on the persons in being who would comprise the class if the required event had taken place immediately before the time when the documents are served.
 - (3) If a case is not covered by subrule (E)(1) or (2), notice and documents must be served on all known persons whose interests are substantially identical to those of the unascertained or unborn interested persons.

Rule 5.106 Publication of Notice of Hearing

- (A) Requirements. A notice of hearing or other notice required to be made by publication must be published in a newspaper as defined by MCR 2.106(F) one time at least 14 days before the date of the hearing, except that publication of a notice seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2) must be made once a month for 4 consecutive months before the hearing.
- (B) Contents of Published Notice. If notice is given to a person by publication because the person's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the published notice must include the name of the person to whom the notice is given and a statement that the result of the hearing may be to bar or affect the person's interest in the matter.
- (C) Affidavit of Publication. The person who orders the publication must cause to be filed with the court a copy of the publication notice and the publisher's affidavit stating
 - (1) the facts that establish the qualifications of the newspaper, and
 - (2) the date or dates the notice was published.
- (D) Service of Notice. A copy of the notice:
 - (1) must be mailed to an interested person at his or her last known address if the person's present address is not known and cannot be ascertained by diligent inquiry;
 - (2) need not be mailed to an interested person if an address cannot be ascertained by diligent inquiry.

- (E) Location of Publication. Publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court.

Rule 5.107 Other Documents Required to be Served

- (A) Other Documents to be Served. The person filing a petition, an application, a completed SCAO-approved testimony identifying heirs form, a completed SCAO-approved supplemental testimony identifying heirs form, a motion or objection, a response or objection, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.
- (B) Exceptions.
 - (1) Service of the papers listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent inquiry, is unknown, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.
 - (2) Service is not required for a small estate filed under MCL 700.3982.

Rule 5.108 Time of Service

- (A) Personal. Personal service of a petition or motion must be made at least 7 days before the date set for hearing, or an adjourned date, unless a different period is provided or permitted by court rule. This subrule applies regardless of conflicting statutory provisions.
- (B) Mail.
 - (1) Petition or Motion. Service by mail of a petition or motion must be made at least 14 days before the date set for hearing, or an adjourned date.
 - (2) Application by a Guardian or Conservator Appointed in Another State.
 - (a) A court may appoint a temporary guardian or conservator without a hearing pursuant to MCL 700.5202a, MCL 700.5301a, or MCL 700.5433.
 - (b) If a court appoints a temporary guardian or conservator pursuant to MCL 700.5202a, MCL 700.5301a or MCL 700.5433, the temporary guardian or conservator must, not later than 14 days after the appointment, serve notice of the appointment by mail to all interested persons.
- (C) Electronic Service. Electronic service made under MCR 1.109(G)(6)(a) must be made at least 7 days before the date set for hearing or an adjourned date.
- (D) Exception: Foreign Consul. This rule does not affect the manner and time for service on foreign consul provided by law.
- (E) Computation of Time. MCR 1.108 governs computation of time in probate proceedings.

- (F) Responses. A written response or objection may be served at any time before the hearing or at a time set by the court.

Rule 5.109 Notice of Guardianship Proceedings Concerning Indian Child

If an Indian child is the subject of a guardianship proceeding and an Indian tribe does not have exclusive jurisdiction as defined in MCR 3.002(2):

- (1) in addition to any other service requirements, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by personal service or by registered mail with return receipt requested and delivery restricted to the addressee, of the pending proceedings on a petition to establish guardianship over the Indian child and of their right of intervention on a form approved by the State Court Administrative Office. If the identity or location of the parent or Indian custodian, or of the Indian child's tribe, cannot be determined, notice shall be given to the Secretary of the Interior by registered mail with return receipt requested. If a petition is filed with the court that subsequently identifies the minor as an Indian child after a guardianship has been established, notice of that petition must be served in accordance with this subrule.
- (2) the court shall notify the parent or Indian custodian and the Indian child's tribe of all other hearings pertaining to the guardianship proceeding as provided in MCR 5.105. If the identity or location of the parent or Indian custodian, or of the Indian child's tribe, cannot be determined, notice of the hearings shall be given to the Secretary of the Interior. Such notice may be made by first-class mail.

Rule 5.112 Prior Proceedings Affecting the Person of a Minor

Proceedings affecting the person of a minor subject to the prior continuing jurisdiction of another court of record are governed by MCR 3.205, including the requirement that petitions in such proceedings must contain allegations with respect to the prior proceedings.

Rule 5.113 Form, Captioning, Signing, and Verifying of Documents

- (A) Form of Documents Generally. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). If the State Court Administrative Office has approved a form for the particular purpose, it must be used when preparing that particular document for filing with the court. An application, petition, inventory, accounting, proof of claim, or proof of service must be verified in accordance with MCR 1.109(D)(3).
- (B) Contents of Petitions.
 - (1) A petition must include allegations and representations sufficient to justify the relief sought and must:
 - (a) identify the petitioner, and the petitioner's interest in proceedings, and qualification to petition;

- (b) include allegations as to residence, domicile, or property situs essential to establishing court jurisdiction;
 - (c) identify and incorporate, directly or by reference, any documents to be admitted, construed, or interpreted;
 - (d) include any additional allegations required by law or court rule;
 - (e) except when ex parte relief is sought, include a current list of interested persons, indicate the existence and form of incapacity of any of them, the mailing addresses of the persons or their representatives, the nature of representation and the need, if any, for special representation.
- (2) The petition may incorporate by reference documents and lists of interested persons previously filed with the court if changes in the papers or lists are set forth in the incorporating petition.
- (C) Filing by Registered Mail. Except as otherwise stated in this subrule, any document required by law to be filed in or delivered to the court by registered mail may be filed in accordance with MCR 1.109(G)(6)(a). Deliveries of wills or codicils must be delivered in accordance with MCL 700.2515 and 700.2516.
- (D) Filing Additional Documents. The court in its discretion may receive for filing a document not required to be filed.

Rule 5.117 Appearance by Attorneys

- (A) Representation of Fiduciary. An attorney filing an appearance on behalf of a fiduciary shall represent the fiduciary.
- (B) Appearance.
- (1) In General. An attorney may generally appear by an act indicating that the attorney represents an interested person in the proceeding. A limited appearance may be made by an attorney for an interested person in a civil action or proceeding as provided in MCR 2.117(B)(2)(c), except that any reference to parties of record in MCR 2.117(B)(2)(c) shall instead refer to interested persons. An appearance by an attorney for an interested person is deemed an appearance by the interested person. Unless a particular rule indicates otherwise, any act required to be performed by an interested person may be performed by the attorney representing the interested person.
 - (2) Notice of Appearance. If an appearance is made in a manner not involving the filing of a document served with the court or if the appearance is made by filing a document which is not served on the interested persons, the attorney must promptly file a written appearance and serve it on the interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a) and on the fiduciary.
 - (3) Appearance by Law Firm.

- (a) A pleading, appearance, motion, or other document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a document in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the client.
 - (b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court-ordered conference or trial if it is within the scope of the appearance.
- (C) Duration of Appearance by Attorney.
- (1) In General. Unless otherwise stated in the appearance or ordered by the court, an attorney's appearance applies only in the court in which it is made or to which the action is transferred and only for the proceeding in which it is filed.
 - (2) Appearance on Behalf of Fiduciary. An appearance on behalf of a fiduciary applies until the proceedings are completed, the client is discharged, or an order terminating the appearance is entered.
 - (3) Termination of Appearance on Behalf of a Personal Representative. In unsupervised administration, the probate register may enter an order terminating an appearance on behalf of a personal representative if the personal representative consents in writing to the termination.
 - (4) Other Appearance. An appearance on behalf of a client other than a fiduciary applies until a final order is entered disposing of all claims by or against the client, or an order terminating the appearance is entered.
 - (5) Limited Scope Appearances. Notwithstanding other provisions in this section, limited appearances under MCR 2.117(B)(2)(c) may be terminated in accordance with MCR 2.117(C)(3), except that any reference to parties of record in MCR 2.117(B)(2)(c) shall instead refer to interested persons.
 - (6) Substitution of Attorneys. In the case of a substitution of attorneys, the court in a supervised administration or the probate register in an unsupervised administration may enter an order permitting the substitution without prior notice to the interested persons or fiduciary. If the order is entered, the substituted attorney must give notice of the substitution to all interested persons and the fiduciary.
- (D) Right to Determination of Compensation. An attorney whose services are terminated retains the right to have compensation determined before the proceeding is closed.

Rule 5.118 Amending or Supplementing Papers

- (A) Documents Subject to Hearing. A person who has filed a document that is subject to a hearing may amend or supplement the document
 - (1) before a hearing if notice is given pursuant to these rules, or

- (2) at the hearing without new notice of hearing if the court determines that material prejudice would not result to the substantial rights of the person to whom the notice should have been directed.
- (B) Documents Not Subject to Hearing. A person who has filed a document that is not subject to a hearing may amend or supplement the document if service is made pursuant to these rules.

Rule 5.119 Additional Petitions; Objections; Hearing Practices

- (A) Right to Hearing, New Matter. An interested person may, within the period allowed by law or these rules, file a petition and obtain a hearing with respect to the petition. The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a).
- (B) Objection to Pending Matter. An interested person may object to a pending petition orally at the hearing or by filing and serving a document which conforms with MCR 1.109(D). The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.
- (C) Adjournment. A petition that is not heard on the day for which it is noticed, in the absence of a special order, stands adjourned from day to day or until a day certain.
- (D) Briefs; Argument. The court may require that briefs of law and fact and proposed orders be filed as a condition precedent to oral argument. The court may limit oral argument.

Rule 5.120 Action by Fiduciary in Contested Matter; Notice to Interested Persons; Failure to Intervene

The fiduciary represents the interested persons in a contested matter. The fiduciary must give notice to all interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a) that a contested matter has been commenced and must keep such interested persons reasonably informed of the fiduciary's actions concerning the matter. The fiduciary must inform the interested persons that they may file a petition to intervene in the matter and that failure to intervene shall result in their being bound by the actions of the fiduciary. The interested person shall be bound by the actions of the fiduciary after such notice and until the interested person notifies the fiduciary that the interested person has filed with the court a petition to intervene.

Rule 5.121 Guardian Ad Litem; Visitor

- (A) Appointment.
 - (1) Guardian Ad Litem. The court shall appoint a guardian ad litem when required by law. If it deems necessary, the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding. The court shall state the purpose of the appointment in the order of appointment. The order may be entered with or without notice.

- (2) Visitor. The court may appoint a visitor when authorized by law.
- (B) Revocation. If it deems necessary, the court may revoke the appointment and appoint another guardian ad litem or visitor.
- (C) Duties. Before the date set for hearing, the guardian ad litem or visitor shall conduct an investigation and shall make a report in open court or file a written report of the investigation and recommendations. The guardian ad litem or visitor need not appear personally at the hearing unless required by law or directed by the court. Any written report must be filed with the court at least 24 hours before the hearing or such other time specified by the court.
- (D) Evidence.
 - (1) Reports, Admission Into Evidence. Oral and written reports of a guardian ad litem or visitor may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.
 - (2) Reports, Review and Cross-Examination.
 - (a) Any interested person shall be afforded an opportunity to examine and controvert reports received into evidence.
 - (b) The person who is the subject of a report received under subrule (D)(1) shall be permitted to cross-examine the individual making the report if the person requests such an opportunity.
 - (c) Other interested persons may cross-examine the individual making a report on the contents of the report, if the individual is reasonably available. The court may limit cross-examination for good cause.
- (E) Attorney-Client Privilege.
 - (1) During Appointment of Guardian Ad Litem. When the guardian ad litem appointed to represent the interest of a person is an attorney, that appointment does not create an attorney-client relationship. Communications between that person and the guardian ad litem are not subject to the attorney-client privilege. The guardian ad litem must inform the person whose interests are represented of this lack of privilege as soon as practicable after appointment. The guardian ad litem may report or testify about any communication with the person whose interests are represented.
 - (2) Later Appointment as Attorney. If the appointment of the guardian ad litem is terminated and the same individual is appointed attorney, the appointment as attorney creates an attorney-client relationship. The attorney-client privilege relates back to the date of the appointment of the guardian ad litem.

Rule 5.125 Interested Persons Defined

- (A) Special Persons. In addition to persons named in subrule (C) with respect to specific proceedings, the following persons must be served:

- (1) The Attorney General must be served if required by law or court rule. The Attorney General must be served in the specific proceedings enumerated in subrule (C) when the decedent is not survived by any known heirs, or the protected person has no known presumptive heirs.
- (2) A foreign consul must be served if required by MCL 700.1401(4) or court rule. An attorney who has filed an appearance for a foreign consul must be served when required by subrule (A)(5).
- (3) On a petition for the appointment of a guardian or conservator of a person on whose account benefits are payable by the Veterans' Administration, the Administrator of Veterans' Affairs must be served through the administrator's Michigan district counsel.
- (4) A guardian, conservator, or guardian ad litem of a person must be served with notice of proceedings as to which the represented person is an interested person, except as provided by MCR 5.105(D)(1).
- (5) An attorney who has filed an appearance must be served notice of proceedings concerning which the attorney's client is an interested person.
- (6) A special fiduciary appointed under MCL 700.1309.
- (7) A person who filed a demand for notice under MCL 700.3205 or a request for notice under MCL 700.5104 if the demand or request has not been withdrawn, expired, or terminated by court order.
- (8) In a guardianship proceeding for a minor, if the minor is an Indian child as defined by the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*, the minor's tribe and the Indian custodian, if any, and, if the Indian child's parent or Indian custodian or tribe is unknown, the Secretary of the Interior.

(B) Special Conditions for Interested Persons.

- (1) Claimant. Only a claimant who has properly presented a claim and whose claim has not been disallowed and remains unpaid need be notified of specific proceedings under subrule (C).
- (2) Devisee. Only a devisee whose devise remains unsatisfied, or a trust beneficiary whose beneficial interest remains unsatisfied, need be notified of specific proceedings under subrule (C).
- (3) Trust as Devisee. If either a trust or a trustee is a devisee, the trustee is the interested person. If no trustee has qualified, the interested persons are the qualified trust beneficiaries described in MCL 700.7103(g)(i)(A) and the nominated trustee, if any.
- (4) Father of a Child Born out of Wedlock. Except as otherwise provided by law, the natural father of a child born out of wedlock need not be served notice of proceedings in which the child's parents are interested persons unless his paternity has been determined in a manner provided by law.
- (5) Decedent as Interested Person. If a decedent is an interested person, the personal representative of the decedent's estate is the interested person. If there is no personal

representative, the interested persons are the known heirs of the estate of the decedent, and the known devisees. If there are no known heirs, the Attorney General must receive notice.

- (C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:
- (1) The persons interested in an application or a petition to probate a will are the
 - (a) devisees,
 - (b) nominated trustee and qualified trust beneficiaries described in MCL 700.7103(g)(i)(A) of a trust created under the will,
 - (c) heirs,
 - (d) nominated personal representative, and
 - (e) trustee of a revocable trust described in MCL 700.7605(1).
 - (2) The persons interested in an application or a petition to appoint a personal representative, other than a special personal representative, of an intestate estate are the
 - (a) heirs,
 - (b) nominated personal representative, and
 - (c) trustee of a revocable trust described in MCL 700.7605(1).
 - (3) The persons interested in a petition to determine the heirs of a decedent are the presumptive heirs.
 - (4) The persons interested in a petition of surety for discharge from further liability are the
 - (a) principal on the bond,
 - (b) co-surety,
 - (c) devisees of a testate estate,
 - (d) heirs of an intestate estate,
 - (e) qualified trust beneficiaries, as referred to in MCL 700.7103(g)(i)(A),
 - (f) protected person and presumptive heirs of the protected person in a conservatorship, and
 - (g) claimants.
 - (5) The persons interested in a proceeding for spouse's allowance are the
 - (a) devisees of a testate estate,
 - (b) heirs of an intestate estate,
 - (c) claimants,

- (d) spouse, and
 - (e) the personal representative, if the spouse is not the personal representative.
- (6) The persons interested in a proceeding for examination or approval of an account of a fiduciary are:
- (a) for a testate estate, the devisees under the will (and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125[B][3]),
 - (b) for an intestate estate, the heirs,
 - (c) for a conservatorship, the protected individual (if he or she is 14 years of age or older), the presumptive heirs of the protected individual, and the guardian ad litem, if any,
 - (d) for a final conservatorship or guardianship account following the death of the protected person, the personal representative, if one has been appointed,
 - (e) for a guardianship, the ward (if he or she is 14 years of age or older), the presumptive heirs of the ward, and the guardian ad litem, if any,
 - (f) for a revocable trust, the settlor (and if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603[2]), the current trustee, and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust director,
 - (g) for an irrevocable trust, the current trustee, the qualified trust beneficiaries, as defined in MCL 700.7103(g), and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust director,
 - (h) in all matters described in this subsection (6), any person whose interests would be adversely affected by the relief requested, including a claimant or an insurer or surety who might be subject to financial obligations as the result of the approval of the account.
- (7) The persons interested in a proceeding for partial distribution of the estate of a decedent are the
- (a) devisees of a testate estate entitled to share in the residue,
 - (b) heirs of an intestate estate,
 - (c) claimants, and
 - (d) any other person whose unsatisfied interests in the estate may be affected by such assignment.
- (8) The persons interested in a petition for an order of complete estate settlement under MCL 700.3952 or a petition for discharge under MCR 5.311(B)(3) are the
- (a) devisees of a testate estate,
 - (b) heirs unless there has been an adjudication that decedent died testate,

- (c) claimants, and
 - (d) such other persons whose interests are affected by the relief requested.
- (9) The persons interested in a proceeding for an estate settlement order pursuant to MCL 700.3953 are the
- (a) personal representative,
 - (b) devisees,
 - (c) claimants, and
 - (d) such other persons whose interests are affected by the relief requested.
- (10) The persons interested in a proceeding for assignment and distribution of the share of an absent apparent heir or devisee in the estate of a decedent are the
- (a) devisees of the will of the decedent,
 - (b) heirs of the decedent if the decedent did not leave a will,
 - (c) devisees of the will of the absent person, and
 - (d) presumptive heirs of the absent person.
- (11) The persons interested in a petition for supervised administration after an estate has been commenced are the
- (a) devisees, unless the court has previously found decedent died intestate,
 - (b) heirs, unless the court has previously found decedent died testate,
 - (c) personal representative, and
 - (d) claimants.
- (12) The persons interested in an independent request for adjudication under MCL 700.3415 and a petition for an interim order under MCL 700.3505 are the
- (a) personal representative, and
 - (b) other persons who will be affected by the adjudication.
- (13) The persons interested in a petition for settlement of a wrongful-death action or distribution of wrongful-death proceeds are the
- (a) heirs of the decedent,
 - (b) other persons who may be entitled to distribution of wrongful-death proceeds, and
 - (c) claimants whose interests are affected.
- (14) The persons interested in a will contest settlement proceeding are the
- (a) heirs of the decedent and
 - (b) devisees affected by settlement.

- (15) The persons interested in a partition proceeding where the property has not been assigned to a trust under the will are the
- (a) heirs in an intestate estate or
 - (b) devisees affected by partition.
- (16) The persons interested in a partition proceeding where the property has been assigned to a trust under the will are the
- (a) trustee and
 - (b) beneficiaries affected by the partition.
- (17) The persons interested in a petition to establish the cause and date of death in an accident or disaster case under MCL 700.1208 are the heirs of the presumed decedent.
- (18) The persons interested in a proceeding under the Mental Health Code that may result in an individual receiving involuntary mental health treatment or judicial admission of an individual with a developmental disability to a center are the
- (a) individual,
 - (b) individual's attorney,
 - (c) petitioner,
 - (d) prosecuting attorney or petitioner's attorney,
 - (e) director of any hospital or center to which the individual has been admitted,
 - (f) individual's spouse, if the spouse's whereabouts are known,
 - (g) individual's guardian, if any,
 - (h) in a proceeding for judicial admission to a center or in a proceeding in which assisted outpatient treatment is ordered, the community mental health program, and
 - (i) such other relatives or persons as the court may determine.
- (19) The persons interested in a proceeding under the Mental Health Code in a petition for appointment of a guardian of an individual with a developmental disability are the
- (a) individual,
 - (b) individual's attorney,
 - (c) petitioner,
 - (d) individual's presumptive heirs,
 - (e) preparer of the report or another appropriate person who performed an evaluation,
 - (f) director of any facility where the individual may be residing,
 - (g) individual's guardian ad litem, if appointed, and

- (h) such other persons as the court may determine.
- (20) The persons interested in an application for appointment of a guardian of a minor by a guardian appointed in another state and in a petition for appointment of a guardian of a minor are
- (a) the minor, if 14 years of age or older;
 - (b) if known by the petitioner or applicant, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition or application;
 - (c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor;
 - (d) the nominated guardian, and
 - (e) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to make decisions regarding the person of a minor.
- (21) The persons interested in the acceptance of parental appointment of the guardian of a minor under MCL 700.5202 are
- (a) the minor, if 14 years of age or older,
 - (b) the person having the minor's care, and
 - (c) each grandparent and the adult presumptive heirs of the minor.
- (22) The persons interested in a 7-day notice of acceptance of appointment as guardian of an incapacitated individual under MCL 700.5301 are the
- (a) incapacitated individual,
 - (b) person having the care of the incapacitated individual, and
 - (c) presumptive heirs of the incapacitated individual.
- (23) The persons interested in an application for appointment of a guardian of an incapacitated individual by a guardian appointed in another state or in a petition for appointment of a guardian of an alleged incapacitated individual are
- (a) the alleged incapacitated individual or the incapacitated individual,
 - (b) if known, a person named as attorney in fact under a durable power of attorney,
 - (c) the alleged incapacitated individual's spouse or the incapacitated individual's spouse,
 - (d) the alleged incapacitated individual's adult children and the individual's parents or the incapacitated individual's adult children and parents,
 - (e) if no spouse, adult child, or parent is living, the presumptive heirs of the individual,
 - (f) the person who has the care and custody of the alleged incapacitated individual or of the incapacitated individual,
 - (g) the nominated guardian, and

- (h) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to have care and control of the incapacitated individual.
- (24) The persons interested in receiving a copy of the report of a guardian of a minor, or of a legally incapacitated individual, on the condition of a ward are:
- (a) the ward, if 14 years of age or older;
 - (b) the person who has principal care and custody of the ward, if other than the guardian;
 - (c) for an adult guardianship, the spouse and adult children or, if no adult children are living, the presumptive heirs of the individual; and
 - (d) for a minor guardianship, the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor.
- (25) The persons interested in an application for appointment of a conservator for a protected individual by a conservator appointed in another state or for the petition for the appointment of a conservator or for a protective order are:
- (a) the individual to be protected if 14 years of age or older,
 - (b) the presumptive heirs of the individual to be protected,
 - (c) if known, a person named as attorney in fact under a durable power of attorney,
 - (d) the nominated conservator,
 - (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending, and
 - (f) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to manage the protected individual's finances.
- (26) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are
- (a) those interested in a petition for appointment under subrule (C)(20), (22), (23), or (25) as the case may be, and
 - (b) the guardian or conservator.
- (27) The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other assets are
- (a) the protected individual and
 - (b) those persons listed in subrule (C)(25) who will be affected by the instructions or order.
- (28) The persons interested in receiving a copy of an inventory or account of a conservator or of a guardian are:
- (a) the protected individual or ward, if he or she is 14 years of age or older,
 - (b) the presumptive heirs of the protected individual or ward,

- (c) the claimants,
 - (d) the guardian ad litem, and
 - (e) the personal representative, if any.
- (29) The persons interested in a petition for approval of a trust under MCR 2.420 are
- (a) the protected individual if 14 years of age or older,
 - (b) the presumptive heirs of the protected individual,
 - (c) if there is no conservator, a person named as attorney in fact under a durable power of attorney,
 - (d) the nominated trustee, and
 - (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.
- (30) Interested persons for any proceeding concerning a durable power of attorney for health care are
- (a) the patient,
 - (b) the patient's advocate,
 - (c) the patient's spouse,
 - (d) the patient's adult children,
 - (e) the patient's parents if the patient has no adult children,
 - (f) if the patient has no spouse, adult children, or parents, the patient's minor children, or, if there are none, the presumptive heirs whose addresses are known,
 - (g) the patient's guardian and conservator, if any, and
 - (h) the patient's guardian ad litem.
- (31) Persons interested in a proceeding to require, hear, or settle an accounting of an agent under a power of attorney are
- (a) the principal,
 - (b) the attorney in fact or agent,
 - (c) any fiduciary of the principal,
 - (d) the principal's guardian ad litem or attorney, if any, and
 - (e) the principal's presumptive heirs.
- (32) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in the modification or termination of a noncharitable irrevocable trust are:
- (a) the qualified trust beneficiaries affected by the relief requested,
 - (b) the settlor,

- (c) if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the settlor’s representative, as referred to in MCL 700.7411(6);
 - (d) the trust director, if any, as referred to in MCL 700.7103(m),
 - (e) the current trustee, and
 - (f) any other person named in the terms of the trust to receive notice of such a proceeding.
- (33) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6), (C)(29), and (C)(32) are:
- (a) the qualified trust beneficiaries affected by the relief requested,
 - (b) the holder of a power of appointment affected by the relief requested,
 - (c) the current trustee,
 - (d) in a proceeding to appoint a trustee, the proposed trustee,
 - (e) the trust director, if any, as referred to in MCL 700.7103(m),
 - (f) the settlor of a revocable trust, and
 - (g) if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2).
- (D) The court shall make a specific determination of the interested persons if they are not defined by statute or court rule.
- (E) In the interest of justice, the court may require additional persons be served.

Rule 5.126 Demand or Request for Notice

- (A) Applicability. For purposes of this rule “demand” means a demand or request. This rule governs the procedures to be followed regarding a person who files a demand for notice pursuant to MCL 700.3205 or MCL 700.5104. This person under both sections is referred to as a “demandant.”
- (B) Procedure.
- (1) Obligation to Provide Notice or Copies of Documents. Except in small estates under MCL 700.3982 and MCL 700.3983, the person responsible for serving a document in a decedent estate, guardianship, or conservatorship in which a demand for notice is filed is responsible for providing copies of any orders and filings pertaining to the proceeding in which the demandant has requested notification. If no proceeding is pending at the time the demand is filed, the court must notify the petitioner or applicant at the time of filing that a demand for notice has been filed and of the responsibility to provide notice to the demandant.
 - (2) Rights and Obligations of Demandant.

- (a) The demandant must serve on interested persons a copy of a demand for notice filed after a proceeding has been commenced.
 - (b) Unless the demand for notice is limited to a specified class of documents, the demandant is entitled to receive copies of all orders and filings subsequent to the filing of the demand. The copies must be served on the demandant through the electronic filing system if the demandant is an authorized user under MCR 1.109(G)(6)(a), but if not, mailed to the address specified in the demand. If the copies are undeliverable, no further copies of documents need be provided to the demandant.
- (C) Termination, Withdrawal.
- (1) Termination on Disqualification of Demandant. The fiduciary or an interested person may petition the court to determine that a person who filed a demand for notice does not meet the requirements of statute or court rule to receive notification. The court on its own motion may require the demandant to show cause why the demand should not be stricken.
 - (2) Expiration of Demand When no Proceeding is Opened. If a proceeding is not opened, the demand expires three years from the date the demand is filed.
 - (3) Withdrawal. The demandant may withdraw the demand at any time by communicating the withdrawal in writing to the fiduciary and to the court. If withdrawn, the demandant shall not continue to be served with documents in the case.

Rule 5.127 Venue of Certain Actions

- (A) Defendant Found Incompetent to Stand Trial. When a criminal defendant is found mentally incompetent to stand trial and is referred to the probate court for admission to a treating facility,
 - (1) if the defendant is a Michigan resident, venue is proper in the county where the defendant resides;
 - (2) if the defendant is not a Michigan resident, venue is proper in the county of the referring criminal court.
- (B) Guardian of Property of Nonresident With a Developmental Disability. If an individual with a developmental disability is a nonresident of Michigan and needs a guardian for Michigan property under the Mental Health Code, venue is proper in the probate court of the county where any of the property is located.
- (C) Guardian of Individual With a Developmental Disability Who is in a Facility. If venue for a proceeding to appoint a guardian for an individual with a developmental disability who is in a facility is questioned, and it appears that the convenience of the individual with a developmental disability or guardian would not be served by proceeding in the county where the individual with a developmental disability was found, venue is proper in the county where the individual with a developmental disability most likely would reside if not disabled. In making its decision, the court shall consider the situs of the

property of the individual with a developmental disability and the residence of relatives or others who have provided care.

Rule 5.128 Change of Venue

Reasons for Change. On petition by an interested person or on the court's own initiative, the venue of a proceeding may be changed to another county by court order for the convenience of the parties and witnesses, for convenience of the attorneys, or if an impartial trial cannot be had in the county where the action is pending. Procedure for change of venue is governed by MCR 2.222 and MCR 2.223 except that a court must also transfer the original of an unadmitted will or a certified copy of an admitted will.

Rule 5.131 Discovery Generally

- (A) Civil Actions. Discovery for civil actions in probate court is governed by subchapter 2.300.
- (B) Proceedings.
 - (1) Discovery in General. With the exception of mandatory initial disclosures under MCR 2.302(A), the discovery rules in subchapter 2.300 apply in probate proceedings, and, except as otherwise ordered by the court, any interested person in a probate proceeding is considered a party for the purpose of applying discovery rules.
 - (2) Mandatory Initial Disclosure.
 - (a) Demand or Objection. Mandatory disclosures under MCR 2.302(A) are required in probate proceedings if, by the time of the first hearing on the petition initiating the proceeding:
 - (i) an interested person other than the petitioner files a demand for mandatory initial disclosure and properly serves the demand on all interested persons or
 - (ii) an interested person objects to or otherwise contests the petition, in writing or orally, properly serves any written objection or response on all interested persons, and the judge determines mandatory initial disclosure is appropriate. When mandatory initial disclosures are required through demand or objection, and except as otherwise ordered by the court, such disclosures must be made by the petitioner and any demandant or objecting interested person.
 - (b) Court Order. At any time, on its own motion or on a motion filed by an interested person, the court may require:
 - (i) mandatory disclosures and designate those interested persons who must make disclosures or
 - (ii) in a proceeding with some parties already making disclosures, an additional interested person or persons to make disclosures.

- (c) Time for Initial Disclosures.
 - (i) The petitioner must serve initial disclosures within 14 days after the first hearing on the petition subject to a demand or objection.
 - (ii) The demandant or objecting interested person must serve initial disclosures within the later of 14 days after the petitioner's disclosures are due or 28 days after the demand or objection is filed.
 - (iii) When mandatory disclosures are ordered pursuant to MCR 5.131(B)(2)(b)(ii), an interested person's disclosures are due within 21 days after the court's order.
- (3) Scope of Discovery in Probate Proceedings. Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court.

Rule 5.132 Proof of Wills

- (A) Deposition of Witness to Will. If no written objection has been filed to the admission to probate of a document purporting to be the will of a decedent, the deposition of a witness to the will or of other witnesses competent to testify at a proceeding for the probate of the will may be taken and filed without notice. However, the deposition is not admissible in evidence if at the hearing on the petition for probate of the will an interested person who was not given notice of the taking of the deposition as provided by MCR 2.306(B) objects to its use.
- (B) Use of Copy of Will. When proof of a will is required and a deposition is to be taken, a copy of the original will or other document reproduced in accordance with the Records Reproduction Act, MCL 24.401 *et seq.*, may be used at the deposition.

Rule 5.133 Opening Wills Originally Filed for Safekeeping

If a will filed for safekeeping under MCL 700.2515 remains unopened 100 years after the date it was filed with a court, the will shall be opened by the probate register and maintained in accordance with MCR 8.302. Upon opening, the will shall be considered a will delivered after the death of the testator and shall be retained for the period prescribed in the record retention and disposal schedule established under MCR 8.119(K).

Rule 5.140 Use of Videoconferencing Technology

- (A) Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407.
- (B) In a mental health proceeding, if the subject of the petition wants to be physically present, the court must allow the individual to be present unless the court excludes or waives the physical presence of the subject pursuant to MCL 330.1455. This does not apply to proceedings concerning a person originally committed as a result of MCL 330.2050.

- (C) In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present. The right to be present for the subject of a minor guardianship applies only to a minor 14 years of age or older. Subject to this right to be present and to MCR 2.407(B)(5), the use of videoconferencing technology is presumed in all uncontested petitions or motions in guardianship, conservatorship, protected individual and decedent estates.
- (D) Mechanics of Use. The use of videoconferencing technology under this chapter must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court.

Rule 5.141 Pretrial Procedures; Conferences; Scheduling Orders

The procedures of MCR 2.401 shall apply in a contested proceeding.

Rule 5.142 Pretrial Motions in Contested Proceedings

In a contested proceeding, pretrial motions are governed by the rules that are applicable in civil actions in circuit court.

Rule 5.143 Alternative Dispute Resolution

- (A) The court may submit to mediation, case evaluation, or other alternative dispute resolution process one or more requests for relief in any contested proceeding. MCR 2.410 applies to the extent possible.
- (B) If a dispute is submitted to case evaluation, MCR 2.403 and 2.404 shall apply to the extent feasible.

Rule 5.144 Administratively Closed File

- (A) Administrative Closing. The court may administratively close a file
 - (1) for failure to file a notice of continuing administration as provided by MCL 700.3951(3) or
 - (2) for other reasons as provided by MCR 5.203(D) or, after notice and hearing, upon a finding of good cause.

In a conservatorship, the court may administratively close a file only when there are insufficient assets in the estate to employ a successor or special fiduciary, or after notice and hearing upon a finding of good cause.

- (B) Reopening Administratively Closed Estate. Upon petition by an interested person, with or without notice as the court directs, the court may order an administratively closed estate reopened. The court may appoint the previously appointed fiduciary, a successor fiduciary, a special fiduciary, or a special personal representative, or the court may order completion of the administration without appointing a fiduciary. In a decedent estate, the

court may order supervised administration if it finds that supervised administration is necessary under the circumstances.

Rule 5.151 Jury Trial, Applicable Rules

Jury trials in probate proceedings shall be governed by MCR 2.508 through 2.516 except as modified by this subchapter or MCR 5.740 for mental health proceedings.

Rule 5.158 Jury Trial of Right in Contested Proceedings

- (A) Demand. A party may demand a trial by jury of an issue for which there is a right to trial by jury by filing in a manner provided by these rules a written demand for a jury trial within 28 days after an issue is contested. However, if trial is conducted within 28 days of the issue being joined, the jury demand must be filed at least 4 days before trial. A party who was not served with notice of the hearing at least 7 days before the hearing or trial may demand a jury trial at any time before the time set for the hearing. The court may adjourn the hearing in order to impanel the jury. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed.
- (B) Waiver. A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury. A jury is waived if trial or hearing is commenced without a demand being filed.

Rule 5.162 Form and Signing of Judgments and Orders

- (A) Form of Judgments and Orders. A proposed judgment or order must be prepared in accordance with MCR 2.602(A) and MCR 1.109(D)(2).
- (B) Procedure for Entry of Judgments and Orders. In a contested matter, the procedure for entry of judgments and orders is as provided in MCR 2.602(B).

Subchapter 5.200 Provisions Common to Multiple Types of Fiduciaries

Rule 5.201 Applicability

Except for MCR 5.204 and MCR 5.208, which apply in part to trustees and trusts, rules in this subchapter contain requirements applicable to all fiduciaries except trustees and apply to all estates except trusts.

Rule 5.202 Letters of Authority

- (A) Issuance. Letters of authority shall be issued after the appointment and qualification of the fiduciary. If bond is ordered, the letters shall be issued after proof of bond has been filed with the court, unless otherwise ordered. Unless ordered by the court, letters of authority will not have an expiration date.

- (B) Restrictions and Limitations. The court may restrict or limit the powers of a fiduciary. The restrictions and limitations imposed must appear on the letters of authority. The court may modify or remove the restrictions and limitations with or without a hearing.
- (C) Certification. A certification of the letters of authority and a statement that on a given date the letters are in full force and effect may appear on the face of copies furnished to the fiduciary or interested persons.

Rule 5.203 Follow-Up Procedures

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

- (A) Notice of Deficiency. The court must notify the fiduciary, the attorney for the fiduciary, if any, and each of the sureties for the fiduciary of the nature of the deficiency, together with a notice to correct the deficiency within 28 days, or, in the alternative, to appear before the court or an officer designated by it at a time specified within 28 days for a conference concerning the deficiency. Service of the notice of deficiency is complete on mailing to the last known address of the fiduciary or when served under MCR 1.109(G)(6)(a).
- (B) Conference, Memorandum. If a conference is held, the court must prepare a written memorandum setting forth the date of the conference, the persons present, and any steps required to be taken to correct the deficiency. The steps must be taken within the time set by the court but not to exceed 28 days from the date of the conference. A copy of the memorandum must be given to those present at the conference. If the fiduciary is not present at the conference, a copy of the memorandum must be mailed to the last known address of the fiduciary or served on the fiduciary under MCR 1.109(G)(6)(a).
- (C) Extension of Time. For good cause, the court may extend the time for performance of required duties for a further reasonable period or periods, but any extended period may not exceed 28 days and shall only be extended to a day certain. The total period as extended may not exceed 56 days.
- (D) Suspension of Fiduciary, Appointment of Special Fiduciary. If the fiduciary fails to perform the duties required within the time allowed, the court may do any of the following: suspend the powers of the dilatory fiduciary, appoint a special fiduciary, and close the estate administration. If the court suspends the powers of the dilatory fiduciary or closes the estate administration, the court must notify the dilatory fiduciary, the attorney of record for the dilatory fiduciary, the sureties on any bond of the dilatory fiduciary that has been filed, any financial institution listed on the most recent inventory or account where the fiduciary has deposited funds, any currently serving guardian ad litem, and the interested persons at their addresses shown in the court file. This rule does not preclude contempt proceedings as provided by law.
- (E) Reports on the Status of Estates. The chief judge of each probate court must file with the state court administrator, on forms provided by the state court administrative office, any reports on the status of estates required by the state court administrator.

Rule 5.204 Appointment of Special Fiduciary

- (A) Appointment. The court may appoint a special fiduciary or enjoin a person subject to the court's jurisdiction under MCL 700.1309 on its own initiative, on the notice it directs, or without notice in its discretion.
- (B) Duties and Powers. The special fiduciary has all the duties and powers specified in the order of the court appointing the special fiduciary. Appointment of a special fiduciary suspends the powers of the general fiduciary unless the order of appointment provides otherwise. The appointment may be for a specified time and the special fiduciary is an interested person for all purposes in the proceeding until the appointment terminates.

Rule 5.205 Address of Fiduciary

A fiduciary must keep the court and the interested persons informed in writing within 7 days of any change in the fiduciary's address even if the fiduciary is an authorized user of the electronic filing system. Any notice served on the fiduciary by the court to the last address on file or under MCR 1.109(G)(6)(a) shall be notice to the fiduciary.

Rule 5.206 Duty to Complete Administration

A fiduciary and an attorney for a fiduciary must take all actions reasonably necessary to regularly administer an estate and close administration of an estate. If the fiduciary or the attorney fails to take such actions, the court may act to regularly close the estate and assess costs against the fiduciary or attorney personally.

Rule 5.207 Sale of Real Estate

- (A) Petition. Any petition to approve the sale of real estate must contain the following:
 - (1) the terms and purpose of the sale,
 - (2) the legal description of the property,
 - (3) the financial condition of the estate before the sale, and
 - (4) an appended copy of the most recent assessor statement or tax statement showing the state equalized value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.
- (B) Bond. The court may require a bond before approving a sale of real estate in an amount sufficient to protect the estate.

Rule 5.208 Notice to Creditors, Presentment of Claims

- (A) Publication of Notice to Creditors; Contents. Unless the notice has already been given, the personal representative must publish, and a special personal representative may publish, in a newspaper, as defined by MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a nonresident was initiated, a notice to creditors as provided in MCL 700.3801. The notice must include:

- (1) The name, and, if known, the date of death, and date of birth of the decedent;
 - (2) The name and address of the personal representative;
 - (3) The name and address of the court where proceedings are filed; and
 - (4) A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative within 4 months after the publication of the notice.
- (B) Notice to Known Creditors and Trustee. A personal representative who has published notice must cause a copy of the published notice or a similar notice to be served personally or by mail on each known creditor of the estate and to the trustee of a trust of which the decedent is settlor, as defined in [MCL 700.7605\(1\)](#). Notice need not be served on the trustee if the personal representative is the trustee.
- (1) Within the time limits prescribed by law, the personal representative must cause a copy of the published notice or a similar notice to be served personally or by mail on each creditor of the estate whose identity at the time of publication or during the 4 months following publication is known to, or can be reasonably ascertained by, the personal representative.
 - (2) If, at the time of the publication, the address of a creditor is unknown and cannot be ascertained after diligent inquiry, the name of the creditor must be included in the published notice.
- (C) Publication of Notice to Creditors and Known Creditors by Trustee. A notice that must be published under MCL 700.7608 must include:
- (1) The name, and, if known, date of death, and date of birth of the trust's deceased settlor;
 - (2) The trust's name or other designation;
 - (3) The date the trust was established;
 - (4) The name and address of each trustee serving at the time of or as a result of the settlor's death;
 - (5) The name and address of the trustee's attorney, if any and must be served on known creditors as provided in subrule (B) above.
- (D) No Notice to Creditors. No notice need be given to creditors in the following situations:
- (1) The decedent or settlor has been dead for more than 3 years;
 - (2) Notice need not be given to a creditor whose claim has been presented or paid;
 - (3) For a personal representative:
 - (a) The estate has no assets;
 - (b) The estate qualifies and is administered under MCL 700.3982, MCL 700.3983, or MCL 700.3987;
 - (c) Notice has previously been given under MCL 700.7608 in the county where the decedent was domiciled in Michigan.

- (4) For a trustee, the costs of administration equal or exceed the value of the trust estate.
- (E) Presentment of Claims. A claim shall be presented to the personal representative or trustee by mailing or delivering the claim to the personal representative or trustee, or the attorney for the personal representative or trustee, or, in the case of an estate, by filing the claim with the court and mailing or delivering a copy of the claim to the personal representative.
- (F) A claim is considered presented
 - (1) on mailing, if addressed to the personal representative or trustee, or the attorney for the personal representative or trustee, or
 - (2) in all other cases, when received by the personal representative, or trustee or the attorney for the personal representative or trustee or in the case of an estate when filed with the court.

Subchapter 5.300 Proceedings In Decedent Estates

Rule 5.301 Applicability

The rules in this subchapter apply to decedent estate proceedings other than proceedings provided by law for small estates under MCL 700.3982.

Rule 5.302 Commencement of Decedent Estates

- (A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding.
 - (1) When filing either an application or petition to commence a decedent estate, two copies of the death certificate must be filed with the application or petition. If the death certificate is not available, the petitioner may file two copies of alternative documentation of the decedent's death. In either instance, the petitioner must redact from one of the copies being filed all protected personal identifying information as required by MCR 1.109(D)(9). The unredacted copy of the death certificate or alternative documentation must be maintained by the court as a nonpublic record.
 - (2) If a will that is being filed with the court for the purposes of commencing an estate contains protected personal identifying information, the filer must provide the will being filed for probate and a copy that has the protected personal identifying information redacted as required by MCR 1.109(D)(9). The unredacted version of the will must be maintained by the court as a nonpublic record.
 - (3) Where electronic filing is implemented, if the application or petition to commence a decedent estate indicates that there is a will, it is available, and that it is not already in the court's possession, an exact copy of the will and any codicils must be attached to the application or petition. Within 14 days of the filing of the application or

- (b) that a valid consent has been executed by both parents or the Indian custodian as required by MCL 712B.13 and this subrule.
 - (c) if it is in the Indian child's best interest to appoint a guardian.
 - (d) if a lawyer-guardian ad litem should be appointed to represent the Indian child.
- (3) **Withdrawal of Consent.** A consent may be withdrawn at any time by sending written notice to the court substantially in compliance with a form approved by the State Court Administrative Office. Upon receipt of the notice, the court shall immediately enter an ex parte order terminating the guardianship and returning the Indian child to the parent or Indian custodian except, if both parents executed a consent, both parents must withdraw their consent or the court must conduct a hearing within 21 days to determine whether to terminate the guardianship.

(C) **Involuntary Guardianship of an Indian Child.**

- (1) **Hearing.** The court must conduct a hearing on a petition for involuntary guardianship of an Indian child in accordance with this rule before the court may enter an order appointing a guardian. Notice of the hearing must be sent to the persons prescribed in MCR 5.125(A)(8) and (C)(20) in compliance with MCR 5.109(1). At the hearing on the petition, the court shall determine:
- (a) if the tribe has exclusive jurisdiction as defined in MCR 3.002(6). The court shall comply with MCR 5.402(E)(2).
 - (b) if the placement with the guardian meets the placement requirements in subrule (C)(2) and (3).
 - (c) if it is in the Indian child's best interest to appoint a guardian.
 - (d) if a lawyer-guardian ad litem should be appointed to represent the Indian child.
 - (e) whether or not each parent wants to consent to the guardianship if consents were not filed with the petition. If each parent wants to consent to the guardianship, the court shall proceed in accordance with subrule (B).
- (2) **Placement.** An Indian child shall be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child. Absent good cause to the contrary, the placement of an Indian child must be in descending order of preference with:
- (a) a member of the child's extended family,
 - (b) a foster home licensed, approved, or specified by the child's tribe,
 - (c) an Indian foster family licensed or approved by the Department of Health and Human Services,
 - (d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The standards to be applied in meeting the preference requirements above shall be the prevailing social and cultural standards of the Indian community in which the

- (C) Restraints at Hearing. At a court hearing, the individual may not be handcuffed or otherwise restrained, except
 - (1) on the prior approval of the court, based on the individual's immediate past conduct indicating the individual is reasonably likely to try to escape or to inflict physical harm on himself or herself or others; or
 - (2) after an incident occurring during transportation in which the individual has attempted to escape or inflict physical harm on himself or herself or others.

Rule 5.740 Jury Trial

- (A) Persons Permitted to Demand Jury Trial. Notwithstanding MCR 5.158(A), only an individual alleged to be in need of involuntary mental health treatment or an individual with mental retardation alleged to meet the criteria for judicial admission may demand a jury trial in a civil admission proceeding.
- (B) Time for Demand. An individual may demand a jury trial any time before testimony is received at the hearing for which the jury is sought.
- (C) Verdict in Commitment Proceedings. In proceedings involving possible commitment to a hospital or facility under the Mental Health Code, or to a correctional or training facility under the juvenile code, the jury's verdict must be unanimous.
- (D) Fee. A jury fee is not required from a party demanding a jury trial under the Mental Health Code.

Rule 5.741 Inquiry Into Adequacy of Treatment

- (A) Written Report or Testimony Required. Before ordering a course of involuntary mental health treatment or of care and treatment at a center, the court must receive a written report or oral testimony describing the type and extent of treatment that will be provided to the individual and the appropriateness and adequacy of this treatment.
- (B) Use of Written Report; Notice. The court may receive a written report in evidence without accompanying testimony if a copy is filed with the court before the hearing. At the time of filing the report with the court, the preparer of the report must promptly provide the individual's attorney with a copy of the report. The attorney may subpoena the preparer of the report to testify.

Rule 5.743 Appeal by Individual Receiving Involuntary Mental Health Treatment Who is Returned to Hospital After Authorized Leave

- (A) Applicability. This rule applies to an individual receiving involuntary mental health treatment who has been returned to a hospital following an authorized leave.
- (B) Notifications. When an individual receiving involuntary mental health treatment has been returned to a hospital from an authorized leave in excess of 10 days, the director of the hospital must, within 24 hours, notify the court of the return and notify the individual of the right to appeal the return and have a hearing to determine the appeal. The court

must notify the individual's attorney or appoint a new attorney to consult with the individual and determine whether the individual desires a hearing.

- (C) **Request and Time for Hearing.** An individual who wishes to appeal must request a hearing in writing within 7 days of the notice to the individual under subrule (B). The court must schedule a requested hearing to be held within 7 days of the court's receipt of the request.
- (D) **Reports Filed With Court.** At least 3 days before the hearing, the director of the hospital must deliver to the court, the individual, and the individual's attorney, copies of a clinical certificate and a current alternative treatment report.
- (E) **Conduct of Hearing.** At the hearing, the director of the hospital must show that the individual requires treatment in a hospital. The clinical certificate may be admitted in evidence without accompanying testimony by the preparer. However, the individual's attorney may subpoena the preparer of the clinical certificate to testify.
- (F) **Order After Hearing.** If the court finds that the individual requires treatment at a hospital, it must dismiss the appeal and order the individual returned to the hospital. If the court finds that the director lacked an adequate basis for concluding that the individual requires further treatment in the hospital, it must do one of the following:
 - (1) order the individual returned to authorized leave status; or
 - (2) order treatment through an alternative to hospitalization
 - (a) if the individual was under an order of hospitalization of up to 60 days), for a period not to exceed the difference between 90 days and the combined time the individual has been hospitalized and on authorized leave status, or
 - (b) if the individual was under an order of hospitalization of up to 90 days or under a continuing order), for a period not to exceed the difference between 1 year and the combined time the individual has been hospitalized and on authorized leave status.

Rule 5.743a Appeal by Administratively Admitted Individual Returned to Center After Authorized Leave

- (A) **Applicability.** This rule applies to an individual with a developmental disability who was admitted to a center by an administrative admission and who has been returned to a center following an authorized leave.
- (B) **Notifications.** When an administratively admitted individual has been returned to a center from an authorized leave in excess of 10 days, the director of the center must, within 24 hours, notify the court of the return and notify the individual of the right to appeal the return. The court must notify the individual's guardian, if any, and the parents of an individual who is a minor of the return and the right to appeal the return and have a hearing to determine the appeal.
- (C) **Request for Hearing.** An individual who wishes to appeal that individual's return must request a hearing in writing within 7 days of the notice to the individual under subrule (B). If the individual is less than 13 years of age, the request may be made by the

individual's parent or guardian. The court must schedule a requested hearing to be held within 7 days of the court's receipt of the request.

- (D) **Statement Filed With Court.** At least 3 days before the hearing, the director of the center must deliver to the court, the individual, the individual's parents or guardian, if applicable, and the individual's attorney a statement setting forth:
 - (1) the reason for the individual's return to the center;
 - (2) the reason the individual is believed to need care and treatment at the center; and
 - (3) the plan for further care and treatment.
- (E) **Conduct of Hearing.** The hearing shall proceed as provided in § 511(4) of the Mental Health Code, MCL 330.1511. At the hearing, the director of the center must show that the individual needs care and treatment at the center and that no alternative to the care and treatment provided at the center is available and adequate to meet the individual's needs.
- (F) **Order After Hearing.** If the court finds the individual requires care and treatment at the center, it must dismiss the appeal and order the individual to remain at the center. If the court finds the director did not sustain the burden of proof, it must order the individual returned to authorized leave status.

Rule 5.743b Appeal by Judicially Admitted Individual Returned to Center After Authorized Leave

- (A) **Applicability.** This rule applies to an individual with mental retardation who has been admitted to a center by judicial order, and who has been on authorized leave for a continuous period of less than 1 year.
- (B) **Notifications.** When a judicially admitted individual has been returned to a center from an authorized leave in excess of 10 days, the director of the center must, within 24 hours, notify the court of the return and notify the individual of the right to appeal the return and have a hearing to determine the appeal. The court must notify the individual's attorney or appoint a new attorney to consult with the individual and to determine whether the individual desires a hearing.
- (C) **Request for Hearing.** An individual who wishes to appeal the return must request a hearing in writing within 7 days of the notice to the individual under subrule (B). The court must schedule a requested hearing to be held within 7 days of the court's receipt of the request.
- (D) **Statement Filed With Court.** At least 3 days before the hearing, the director of the center must deliver to the court, the individual, and the individual's attorney a statement setting forth:
 - (1) the reason for the individual's return to the center;
 - (2) the reason the individual is believed to need care and treatment at the center; and
 - (3) the plan for further care and treatment.

- (E) Report. The court may order an examination of the individual and the preparation and filing with the court of a report that contains such information as the court deems necessary.
- (F) Conduct of Hearing. The court shall proceed as provided in § 511(4) of the Mental Health Code, MCL 330.1511(4). At the hearing, the director of the center must show that the individual needs care and treatment at the center, and that no alternative to the care and treatment provided at the center is available and adequate to meet the individual's needs.
- (G) Order After Hearing. If the court finds the individual requires care and treatment at the center, it must dismiss the appeal and order the individual to remain at the center. If the court finds the director did not sustain the burden of proof, it must do one of the following:
 - (1) order the individual returned to authorized leave status; or
 - (2) order the individual to undergo a program of care and treatment for up to one year as an alternative to remaining at the center.

Rule 5.744 Proceedings Regarding Hospitalization Without a Hearing

- (A) Scope of Rule. This rule applies to any proceeding involving an individual hospitalized without a hearing as ordered by a court or a psychiatrist and the rights of that individual.
- (B) Notification. A notification requesting an order of hospitalization or a notification requesting a change in an alternative treatment program, a notice of noncompliance, or a notice of hospitalization as ordered by a psychiatrist, must be in writing.
- (C) Service of Papers. If the court enters a new or modified order without a hearing, the court must serve the individual with a copy of that order. If the order includes hospitalization, the court must also serve the individual with notice of the right to object and demand a hearing.
- (D) Objection; Scheduling Hearing. An individual hospitalized without a hearing, either by order of the court or by a psychiatrist's order, may file an objection to the order not later than 7 days after receipt of notice of the right to object. The court must schedule a hearing to be held within 10 days after receiving the objection.
- (E) Conduct of Hearing. A hearing convened under this rule is without a jury. At the hearing the party seeking hospitalization of the individual must present evidence that hospitalization is necessary.

Rule 5.744a Proceedings Regarding an Individual Subject to Judicial Admission who is Transferred to a Center from Alternative Setting

- (A) Applicability. This rule applies to an individual with mental retardation under court order to undergo a program of care and treatment as an alternative to admission to a center.

- (B) Immediate Transfer. After the court receives written notification concerning the need to transfer a judicially admitted individual receiving alternative care and treatment, the court may direct the filing of additional information and may do one of the following:
- (1) modify its original order and direct the individual's transfer to another program of alternative care and treatment for the remainder of the 1-year period;
 - (2) enter a new order directing the individual's admission to either
 - (a) a center recommended by the community mental health services program; or
 - (b) a licensed hospital requested by the individual or the individual's family if private funds are to be used; or
 - (3) set a date for a hearing.
- (C) Investigation Report. On receipt of notification, the court must promptly obtain from the community mental health services program or other appropriate agency a report stating
- (1) the reason for concern about the adequacy of the care and treatment being received at the time of the notification;
 - (2) the continued suitability of that care and treatment; and
 - (3) the adequacy of care and treatment available at another alternative or at a center or licensed hospital.
- (D) Service of Papers. If the court enters a new order without a hearing, it must serve the interested parties with a copy of that order and a copy of the investigation report when it becomes available. If the order includes transfer of the individual to a center, the court must also serve the interested parties with written notification of the individual's right to object and demand a hearing.
- (E) Hearing. If within 7 days of service under subrule (D) the court receives a written objection from the individual or the individual's attorney, guardian, or presumptive heir, the court must schedule a hearing to be held within 10 days of the court's receipt of the objection.
- (F) Conduct of Hearing. A hearing convened under this rule is without a jury. At the hearing, the person seeking transfer of the individual to a center must present evidence that the individual had not complied with the applicable order or that the order is not sufficient to prevent the individual from inflicting harm or injuries on himself, herself or others. The evidence must support a finding that transfer to another alternative, a center or a licensed hospital is necessary.
- (G) Order After Hearing. The court may affirm or rescind the order issued under subrule (B), order a new program of care and treatment, or order discharge. The court may not place the individual in a center without inquiring into the adequacy of care and treatment for that individual at that center.

Rule 5.745 Multiple Proceedings

- (A) **New Proceedings Not Prohibited.** The admission of an individual under the Mental Health Code may not be invalidated because the individual is already subject to a court order as a result of a prior admission proceeding.
- (B) **Procedure.** On being informed that an individual is subject to a previous court order, the court must:
 - (1) if it was the court issuing the previous order, dismiss the new proceeding and determine the proper disposition of the individual under its previous order or vacate the previous order and proceed under the new petition; or
 - (2) if the previous order was issued by another court, continue the new proceeding and issue an appropriate order. After entry of the order, the court with the new proceeding must consult with the court with the prior proceeding to determine if the best interests of the individual will be served by changing venue of the prior proceeding to the county where the new proceeding has been initiated. If not, the court with the new proceeding must transfer the matter to the other court.
- (C) **Disposition.** The court may treat a petition or certificate filed in connection with the more recent proceeding as “notification” under MCR 5.743 or 5.744 and proceed with disposition under those rules.

Rule 5.746 Placement of Individual with a Developmental Disability in a Facility

- (A) **Petition for Authorization.** If placement in a facility of an individual with a developmental disability has not been authorized or if permission is sought for authorization to place the individual in a more restrictive setting than previously ordered, a guardian of the individual must petition the court for authorization to place the individual in a facility or in a more restricted setting.
- (B) **Order.** If the court grants the petition for authorization, it may order that:
 - (1) the guardian may execute an application for the individual's administrative admission to a specific center;
 - (2) the guardian may request the individual's temporary admission to a center for a period not to exceed 30 days for each admission; or
 - (3) the guardian may place the individual in a specific facility or class of facility as defined in MCL 330.1600.
- (C) **Notice of Hearing.** Notice of hearing on a petition for authorization to place an individual must be given to those persons required to be served with notice of hearing for the appointment of a guardian.

Rule 5.747 Petition for Discharge of Individual

At a hearing on a petition for discharge of an individual, the burden is on the person who seeks to prevent discharge to show that the individual is a person requiring treatment.

Rule 5.748 Transitional Provision on Termination of Indefinite Orders of Hospitalization

If on March 27, 1996, any individual is subject to any order that may result in the individual's hospitalization for a period beyond March 27, 1997, a petition for a determination that the individual continues to require involuntary mental health treatment must be filed on or before the time set for the second periodic review after March 27, 1996. The petition may be for involuntary health treatment for a period of not more than one year. This rule expires on March 28, 1997.

Subchapter 5.780 Miscellaneous Proceedings

Rule 5.784 Proceedings on a Durable Power of Attorney for Health Care or Mental Health Treatment

- (A) **Petition, Who Shall File.** The petition concerning a durable power of attorney for health care or mental health treatment must be filed by any interested party or the patient's attending physician.
- (B) **Venue.** Venue for any proceeding concerning a durable power of attorney for health care or mental health treatment is proper in the county in which the patient resides or the county where the patient is found.
- (C) **Notice of Hearing, Service, Manner and Time.**
 - (1) **Manner of Service.** If the address of an interested party is known or can be learned by diligent inquiry, notice must be by mail or personal service, but service by mail must be supplemented by facsimile, electronic mail, or telephone contact within the period for timely service when the hearing is an expedited hearing or a hearing on the initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions.
 - (2) **Waiving Service.** At an expedited hearing or a hearing on an initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions, the court may dispense with notice of the hearing on those interested parties who could not be contacted after diligent effort by the petitioner.
 - (3) **Time of Service.** Notice of hearing must be served at least 2 days before the time of a hearing on an initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions. Notice of an expedited hearing must be served at such time as directed by the court. Notice of other hearings must be served at such time as directed by MCR 5.108.
- (D) **Hearings.**
 - (1) **Time.** Hearings on a petition for an initial determination regarding whether a patient is unable to participate in a medical or mental health treatment decision must be held within 7 days of the filing of the petition. The court may order an expedited hearing on any petition concerning a durable power of attorney for health care or mental

health treatment decisions on a showing of good cause to expedite the proceedings. A showing of good cause to expedite proceedings may be made ex parte.

- (2) Trial. Disputes concerning durable powers of attorney for health care or mental health treatment decisions are tried by the court without a jury.
 - (3) Proof. The petitioner has the burden of proof by a preponderance of evidence on all contested issues except that the standard is by clear and convincing evidence on an issue whether a patient has authorized the patient advocate under a durable power of attorney for health care to decide to withhold or withdraw treatment, which decision could or would result in the patient's death, or authorized the patient advocate under a durable power of attorney for mental health treatment to seek the forced administration of medication or hospitalization.
 - (4) Privilege, Waiver. The physician-patient privilege must not be asserted.
- (E) Temporary Relief. On a sufficient showing of need, the court may issue a temporary restraining order pursuant to MCR 3.310 pending a hearing on any petition concerning a durable power of attorney for health care or mental health treatment. MCR 5.784 retained 5.31.05

Subchapter 5.800 Appeals

Rule 5.801 Appeals to Court of Appeals

- (A) Appeal of Right. A party or an interested person aggrieved by a final order of the probate court may appeal as a matter of right as provided by this rule.

Orders appealable of right to the Court of Appeals are defined as and limited to the following:

- (1) a final order, as defined in MCR 7.202(6)(a), affecting the rights or interests of a party to a civil action commenced in the probate court under MCR 5.101(C);
- (2) a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:
 - (a) appointing or removing a fiduciary or trust director as defined in MCL 700.7103(m), or denying such an appointment or removal;
 - (b) admitting or denying to probate of a will, codicil, or other testamentary instrument;
 - (c) determining the validity of a governing instrument as defined in MCL 700.1104(m);
 - (d) interpreting or construing a governing instrument as defined in MCL 700.1104(m);

- (e) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);
- (f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;
- (g) granting or denying a petition to consolidate or divide trusts;
- (h) discharging or denying the discharge of a surety on a bond from further liability;
- (i) allowing, disallowing, or denying a claim;
- (j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
- (k) (k) authorizing or denying the continuation of a business;
- (l) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;
- (m) authorizing or denying rights of election;
- (n) determining heirs, devisees, or beneficiaries;
- (o) determining title to or rights or interests in property;
- (p) authorizing or denying partition of property;
- (q) authorizing or denying specific performance;
- (r) ascertaining survivorship of parties;
- (s) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
- (t) granting or denying a petition to determine *cy pres*;
- (u) directing or denying the making or repayment of distributions;
- (v) determining or denying a constructive trust;
- (w) determining or denying an oral contract relating to a will;
- (x) allowing or disallowing an account, fees, or administration expenses;
- (y) surcharging or refusing to surcharge a fiduciary or trust director as referred to in MCL 700.7103(m);
- (z) determining or directing payment or apportionment of taxes;
- (aa) distributing proceeds recovered for wrongful death under MCL 600.2922;
- (bb) assigning residue;
- (cc) granting or denying a petition for instructions;
- (dd) authorizing disclaimers.
- (ee) allowing or disallowing a trustee to change the principal place of a trust's administration;

- (ff) adoption assistance determinations pursuant to MCL 400.115k;
 - (3) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding under the Estates and Protected Individuals Code;
 - (4) a final order affecting the rights or interests of a person under the Mental Health Code;
 - (5) an order entered in a probate proceeding, other than a civil action commenced in a probate court, that otherwise affects with finality the rights or interests of a party or an interested person in the subject matter; or
 - (6) other appeals as provided by law.
- (B) Appeal by Leave. All orders of the probate court not listed in subrule (A) are appealable to the Court of Appeals by leave of that court.

Rule 5.802 Appellate Procedure; Stays Pending Appeal

- (A) Procedure. Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.
- (B) Record.
- (1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court.
 - (2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.
- (C) Stays Pending Appeals. An order removing or appointing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary's bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

Subchapter 5.900 Proceedings Involving Juveniles

Rule 5.900 Note:

Subchapter 5.900 was deleted effective May 1, 2003, and many of its provisions relocated to subchapter 3.900.

MICHIGAN COURT RULES OF 1985

Chapter 6. Criminal Procedure

Chapter Updated with MSC Order(s) Effective on May 1, 2026

Subchapter 6.000 General Provisions

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

- (A) Felony Cases. The rules in subchapters 6.000-6.500, except MCR 6.006(C), govern matters of procedure in criminal cases cognizable in the circuit courts and in courts of equivalent criminal jurisdiction.
- (B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006(A) and (C)-(E), 6.009, 6.101-6.103, 6.104(A), 6.105-6.106, 6.125, 6.202, 6.425(D)(3), 6.427, 6.430, 6.435, 6.440, 6.441, 6.445, 6.450, 6.451, and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.
- (C) Juvenile Cases. MCR 6.009 and the rules in subchapter 6.900 govern matters of procedure in the district courts and in circuit courts and courts of equivalent criminal jurisdiction in cases involving juveniles against whom the prosecutor has authorized the filing of a criminal complaint as provided in MCL 764.1f.
- (D) Civil Rules Applicable. The provisions of the rules of civil procedure apply to cases governed by this chapter, except
 - (1) as otherwise provided by rule or statute,
 - (2) when it clearly appears that they apply to civil actions only,
 - (3) when a statute or court rule provides a like or different procedure, or
 - (4) with regard to limited appearances and notices of limited appearance.Depositions and other discovery proceedings under subchapter 2.300 may not be taken for the purposes of discovery in cases governed by this chapter. The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in cases governed by this chapter.
- (E) Rules and Statutes Superseded. The rules in this chapter supersede all prior court rules in this chapter and any statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

Rule 6.002 Purpose and Construction

These rules are intended to promote a just determination of every criminal proceeding. They are to be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 6.003 Definitions

For purposes of subchapters 6.000-6.800:

- (1) “Party” includes the lawyer representing the party.
- (2) “Defendant’s lawyer” includes a self-represented defendant proceeding without a lawyer.
- (3) “Prosecutor” includes any lawyer prosecuting the case.
- (4) “Court” or “judicial officer” includes a judge, a magistrate, or a district court magistrate authorized in accordance with the law to perform the functions of a magistrate.
- (5) “Court clerk” includes a deputy clerk.
- (6) “Court reporter” includes a court recorder.
- (7) “Technical probation violation” means any violation of the terms of a probation order, including missing or failing a drug test, excluding the following:
 - (a) A violation of an order of the court requiring that the probationer have no contact with a named individual.
 - (b) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether or not a new criminal offense is charged.
 - (c) The consumption of alcohol by a probationer who is on probation for a felony violation of MCL 257.625.
 - (d) Absconding, defined as the intentional failure of a probationer to report to his or her supervising agent or to advise his or her supervising agent of his or her whereabouts for a continuous period of not less than 60 days.

Rule 6.004 Speedy Trial

- (A) Right to Speedy Trial. The defendant and the people are entitled to a speedy trial and to a speedy resolution of all matters before the court. Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice.
- (B) Priorities in Scheduling Criminal Cases. The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, and insofar as it is practicable,
 - (1) the trial of criminal cases must be given preference over the trial of civil cases, and
 - (2) the trial of defendants in custody and of defendants whose pretrial liberty presents unusual risks must be given preference over other criminal cases.
- (C) Delay in Felony and Misdemeanor Cases; Recognizance Release. In a felony case in which the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal

episode, or in a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community. In computing the 28-day and 180-day periods, the court is to exclude

- (1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,
- (2) the period of delay during which the defendant is not competent to stand trial,
- (3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,
- (4) the period of delay resulting from an adjournment requested by the prosecutor, but only if the prosecutor demonstrates on the record either
 - (a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or
 - (b) exceptional circumstances justifying the need for more time to prepare the state's case,
- (5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and
- (6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

(D) Untried Charges Against State Prisoner.

- (1) The 180-Day Rule. Except for crimes exempted by MCL 780.131(2), the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.
- (2) Remedy. In the event that action is not commenced on the matter for which request for disposition was made as required in subsection (1), no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment,

information, or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings

(A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant

- (1) of entitlement to a lawyer's assistance at all court proceedings, and
- (2) that the defendant is entitled to a lawyer at public expense if the defendant wants one and is financially unable to retain one.

The court must ask the defendant whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.

(B) Questioning Defendant About Indigency. If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the defendant is indigent unless the court's local funding unit has designated an appointing authority in its compliance plan with the Michigan Indigent Defense Commission. If there is an appointing authority, the court must refer the defendant to the appointing authority for indigency screening. If there is no appointing authority, or if the defendant seeks judicial review of the appointing authority's determination concerning indigency, the court's determination of indigency must be guided by the following factors:

- (1) present employment, earning capacity and living expenses;
- (2) outstanding debts and liabilities, secured and unsecured;
- (3) whether the defendant has qualified for and is receiving any form of public assistance;
- (4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned;
- (5) the rebuttable presumptions of indigency listed in the MIDC's indigency standard; and
- (6) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel.

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer. The court reviews an appointing authority's determination of indigency de novo and may consider information not presented to the appointing authority.

(C) Partial Indigency. If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution.

(D) Appointment or Waiver of a Lawyer. Where the court makes the determination that a defendant is financially unable to retain a lawyer, it must promptly refer the defendant to

the local indigent criminal defense system's appointing authority for appointment of a lawyer. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

- (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and
- (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

The court should encourage any defendant who appears without counsel to be screened for indigency and potential appointment of counsel.

- (E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,
- (1) the defendant must reaffirm that a lawyer's assistance is not wanted; or
 - (2) if the defendant requests a lawyer and is financially unable to retain one, the court must refer the defendant to the local indigent criminal defense system's appointing authority for the appointment of one; or
 - (3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one.

The court may refuse to adjourn a proceeding for the appointment of counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

- (F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the local indigent criminal defense system must appoint separate lawyers unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:
- (1) the lawyer or lawyers state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;
 - (2) the defendants state on the record after the court's inquiry and the lawyer's statement, that they desire to proceed with the same lawyer; and
 - (3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

- (G) Unanticipated Conflict of Interest. If, in a case of joint representation, a conflict of interest arises at any time, including trial, the lawyer must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate lawyers. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require.
- (H) Scope of Trial Lawyer's Responsibilities.
- (1) The responsibilities of the trial lawyer who represents the defendant include
 - (a) representing the defendant in all trial court proceedings through initial sentencing,
 - (b) filing of interlocutory appeals the lawyer deems appropriate, and
 - (c) responding to any preconviction appeals by the prosecutor. Unless an appellate lawyer has been appointed or retained, the defendant's trial lawyer must either:
 - (i) file a response to any application for leave to appeal, appellant's brief, or substantive motion; or
 - (ii) notify the Court of Appeals in writing that the defendant has knowingly elected not to file a response.
 - (2) Unless an appellate lawyer has been appointed or retained, or if retained trial counsel withdraws, the trial lawyer who represents the defendant is responsible for filing postconviction motions the lawyer deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing.
 - (3) When an appellate lawyer has been appointed or retained, the trial lawyer is responsible for promptly making the defendant's file, including all discovery material obtained and exhibits in the trial lawyer's possession, reasonably available upon request of the appellate lawyer. The trial lawyer must retain the materials in the defendant's file for at least five years after the case is disposed in the trial court.
- (I) Assistance of Lawyer at Grand Jury Proceedings.
- (1) A witness called before a grand jury or a grand juror is entitled to have a lawyer present in the hearing room while the witness gives testimony. A witness may not refuse to appear for reasons of unavailability of the lawyer for that witness. Except as otherwise provided by law, the lawyer may not participate in the proceedings other than to advise the witness.
 - (2) The prosecutor assisting the grand jury is responsible for ensuring that a witness is informed of the right to a lawyer's assistance during examination by written notice accompanying the subpoena to the witness and by personal advice immediately before the examination. The notice must include language informing the witness that if the witness is financially unable to retain a lawyer, the chief judge in the circuit court in which the grand jury is convened will on request refer the witness to the local indigent criminal defense system for appointment of an attorney at public expense.

Rule 6.006 Video and Audio Proceedings

(A) Generally.

- (1) Except as otherwise provided by this rule, the use of videoconferencing technology under this rule is subject to MCR 2.407.
- (2) A court may, at the request of any participant, or sua sponte, allow the use of videoconferencing technology by any participant in any criminal proceeding.
- (3) When determining whether to utilize videoconferencing technology, the court shall consider constitutional requirements, in addition to the factors contained in MCR 2.407.
- (4) This rule does not supersede a participant's ability to participate by telephonic means under MCR 2.402.

(B) Mode of Proceedings in Cases Cognizable in the Circuit Court

- (1) Generally. Circuit courts may use videoconferencing technology to conduct any non-evidentiary or trial proceeding.
- (2) Preferred Mode. The use of videoconferencing technology shall be preferred for the following proceedings:
 - (a) initial arraignments on the information;
 - (b) pretrial conferences;
 - (c) motions pursuant to MCR 2.119; and
 - (d) pleas.

As used in this subrule, "preferred" means scheduled to be conducted remotely subject to a request under MCR 2.407(B)(4) to appear in person by any participant, including a victim as defined by the William Van Regenmorter Crime Victim's Rights Act, MCL 780.751 *et seq.*, or a determination by the court that a case is not suited for videoconferencing under MCR 2.407(B)(5).

- (3) Presumed Mode. In all other proceedings, the in-person appearance of the parties, witnesses, and other participants is presumed.
- (4) Trials. Notwithstanding any other provisions of these rules, the use of videoconferencing technology shall not be used in bench or jury trials, or any proceeding wherein the testimony of witnesses or presentation of evidence may occur, except in the discretion of the court after all parties have had notice and an opportunity to be heard on the use of videoconferencing technology.
- (5) In-Person Demand. Nothing in this rule prevents a defendant, who otherwise has the right to appear in person, from demanding to physically appear in person for any proceeding. If there is a demand to appear in person, or a participant is found to be unable to adequately use the technology, to hear or understand or be heard or understood, the presiding judge and any attorney of record for said participant must appear in person with the participant for said proceeding. Subject to MCR

2.407(B)(5), the court must allow other participants to participate using videoconferencing technology.

(C) Mode of Proceedings in Cases Cognizable in the District and Municipal Court

- (1) Preferred Mode. The use of videoconferencing technology shall be the preferred mode for conducting arraignments and probable cause conferences for in-custody defendants. As used in this subrule, “preferred” means scheduled to be conducted remotely subject to a request under MCR 2.407(B)(4) to appear in person by any participant, including a victim as defined by the William Van Regenmorter Crime Victim’s Rights Act, MCL 780.751 *et seq.*, or a determination by the court that a case is not suited for videoconferencing under MCR 2.407(B)(5).
- (2) Presumed Mode. In all other criminal proceedings, the in-person appearance of parties, witnesses, and other participants is presumed.
- (3) Videoconferencing Technology Prohibited. Notwithstanding any other provision of these rules and subject to constitutional rights, the use of videoconferencing technology shall not be used in evidentiary hearings, bench trials or jury trials, or any criminal proceeding wherein the testimony of witnesses or presentation of evidence may occur, except in the discretion of the court.
- (4) Preliminary Examination. Notwithstanding anything herein to the contrary, as long as the defendant is either present in the courtroom or has waived the right to be present, district courts may use videoconferencing to take testimony from any witness in a preliminary examination.

(D) Mechanics of Use. The use of telephonic, voice, videoconferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

(E) Notwithstanding any other provision in this rule, until further order of the Court, AO No. 2012-7 is suspended.

Rule 6.007 Confidential Records

Records are public except as otherwise indicated in court rule or statute.

Rule 6.008 Criminal Jurisdiction

- (A) District Court. The district court has jurisdiction over all misdemeanors and all felonies through the preliminary examination and until the entry of an order to bind the defendant over to the circuit court.
- (B) Circuit Court. The circuit court has jurisdiction over all felonies from the bindover from the district court unless otherwise provided by law. The failure of the court to properly document the bindover decision shall not deprive the circuit court of jurisdiction. A party challenging a bindover decision must do so before any plea of guilty or no contest, or before trial.

- (C) Pleas and Verdicts in Circuit Court. The circuit court retains jurisdiction over any case in which a plea is entered or a verdict rendered to a charge that would normally be cognizable in the district court.
- (D) Sentencing Misdemeanors in Circuit Court. The circuit court shall sentence all defendants bound over to circuit court on a felony that either plead guilty to, or are found guilty of, a misdemeanor.
- (E) Concurrent Jurisdiction. As part of a concurrent jurisdiction plan, the circuit court and district court may enter into an agreement for district court probation officers to prepare the presentence investigation report and supervise on probation defendants who either plead guilty to, or are found guilty of, a misdemeanor in circuit court. The case remains under the jurisdiction of the circuit court.

Rule 6.009 Use of Restraints on a Defendant

- (A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a defendant during a court proceeding that is or could have been before a jury unless the court finds, using record evidence, that the use of restraints is necessary due to one of the following factors:
 - (1) Instruments of restraint are necessary to prevent physical harm to the defendant or another person.
 - (2) The defendant has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.
 - (3) There is a founded belief that the defendant presents a substantial risk of flight from the courtroom.
- (B) The court's determination that restraints are necessary must be made outside the presence of the jury. If restraints are ordered, the court shall state on the record or in writing its findings of fact in support of the order.
- (C) Any restraints used on a defendant in the courtroom must allow the defendant limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a defendant be restrained using fixed restraints to a wall, floor, or furniture.
- (D) If the court determines restraints are needed, the court must order restraints that reflect the least restrictive means necessary to maintain the security of the courtroom. A court should consider the visibility of a given restraint and the degree to which it affects an individual's range of movement. A court may consider, but is not limited to considering, participation by video or other electronic means; the presence of court personnel, law enforcement officers, or bailiffs; or unobtrusive stun devices.

Subchapter 6.100 Preliminary Proceedings

Rule 6.101 Complaint

- (A) **Definition and Form.** A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense. At the time of filing, specified case initiation information shall be provided in the form and manner approved by the State Court Administrative Office.
- (B) **Signature and Oath.** The complaint must be signed and verified under MCR 1.109(D)(3). Any requirement of law that a complaint filed with the court must be sworn is met by this verification.
- (C) **Prosecutor's Approval or Posting of Security.** A complaint may not be filed without a prosecutor's written approval endorsed on the complaint or attached to it, or unless security for costs is filed with the court.

Rule 6.102 Warrants and Summonses

- (A) **Issuance of Summons; Warrant.** A court must issue an arrest warrant or a summons as provided in this rule if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.
- (B) **Probable Cause Determination.** A finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.
- (C) **Summons.** A court must issue a summons unless otherwise provided in subrule (D).
 - (1) **Form.** A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.
 - (2) **Service and Return of Summons.** A summons may be served by the court or prosecuting attorney by
 - (a) delivering a copy to the named individual; or
 - (b) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or
 - (c) mailing a copy to the individual's last known address.Service should be made promptly to give the accused adequate notice of the appearance date. Unless service is made by the court, the person serving the summons must make a return to the court before the person is summoned to appear.
 - (3) If the accused fails to appear in response to a summons, the court may issue a bench warrant pursuant to MCR 6.103.

- (D) Arrest Warrant. A court may issue an arrest warrant, rather than a summons, if any of the following circumstance apply
- (1) the complaint is for an assaultive crime or an offense involving domestic violence, as defined in MCL 764.1a.
 - (2) there is reason to believe from the complaint that the person against whom the complaint is made will not appear upon a summons.
 - (3) the issuance of a summons poses a risk to public safety.
 - (4) the prosecutor has requested an arrest warrant.
- (E) Contents of Warrant; Court's Subscription. A warrant must
- (1) contain the accused's name, if known, or an identifying name or description;
 - (2) describe the offense charged in the complaint;
 - (3) command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer of the judicial district in which the offense allegedly was committed or some other designated court; and
 - (4) be signed by the court.
- (F) Warrant Specification of Interim Bail. Where permitted by law, the court may specify on the warrant the bail that an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant.
- (G) Execution and Return of Warrant. Only a peace officer or other person authorized by law may execute an arrest warrant. On execution or attempted execution of the warrant, the officer must make a return on the warrant and deliver it to the court before which the arrested person is to be taken.
- (H) Release on Interim Bail. If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. The accused may obtain release by posting the bail on the warrant and by submitting a recognizance to appear before a specified court at a specified date and time, provided that
- (1) the accused is arrested prior to the expiration date, if any, of the bail provision;
 - (2) the accused is arrested in the county in which the warrant was issued, or in which the accused resides or is employed, and the accused is not wanted on another charge;
 - (3) the accused is not under the influence of liquor or controlled substance; and
 - (4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail.

Rule 6.103 Failure to Appear

- (A) In General. Except as provided in MCR 6.615(B), if a defendant fails to appear in court, the court must wait 48 hours, excluding weekends and holidays if the court is closed to the public, before issuing a bench warrant to allow the defendant an opportunity to voluntarily appear before the court.
- (1) This rule does not apply if the case is for an assaultive crime or domestic violence offense, as defined in MCL 764.3, or if the defendant previously failed to appear in the case.
 - (2) If this rule does apply, the court may immediately issue a bench warrant only if the court has a specific articulable reason, stated on the record, to suspect any of the following apply:
 - (a) the defendant has committed a new crime.
 - (b) a person or property will be endangered if a bench warrant is not issued.
 - (c) prosecution witnesses have been summoned and are present for the proceeding.
 - (d) the proceeding is to impose a sentence for the crime.
 - (e) there are other compelling circumstances that require the immediate issuance of a bench warrant.
 - (3) If the defendant does not appear within 48 hours, the court must issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing.
- (B) Show Cause. This rule does not abridge a court's authority to issue an order to show cause, instead of a bench warrant, if a defendant fails to appear in court.
- (C) Release Order. The court must not revoke a defendant's release order or forfeit bond during the 48-hour period of delay before a warrant is issued.

Rule 6.104 Arraignment on the Warrant or Complaint

- (A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with MCR 6.006(A). The arrested person is entitled to the assistance of an attorney at arraignment unless
- (1) the arrested person makes an informed waiver of counsel or
 - (2) the court issues a personal bond and will not accept a plea of guilty or no contest at arraignment.
- (B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. An accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside

the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with subrule (C). In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with MCR 6.006(A).

- (C) Preliminary Appearance Outside County of Offense. When, under subrule (B), an accused is taken before a court outside the county of the alleged offense either in person or by way of two-way interactive video technology, the court must advise the accused of the rights specified in subrule (E)(2) and determine what form of pretrial release, if any, is appropriate. To be released, the accused must submit a recognizance for appearance within the next 14 days before a court specified in the arrest warrant or, in a case involving an arrest without a warrant, before either a court in the judicial district in which the offense allegedly occurred or some other court designated by that court. The court must certify the recognizance and have it delivered or sent without delay to the appropriate court. If the accused is not released, the arresting agency must arrange prompt transportation to the judicial district of the offense. In all cases, the arraignment is then to continue under subrule (D), if applicable, and subrule (E) either in the judicial district of the alleged offense or in such court as otherwise is designated.
- (D) Arrest Without Warrant. If an accused is arrested without a warrant, a complaint complying with MCR 6.101 must be filed at or before the time of arraignment. On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint as provided in MCL 764.1c. Arraignment of the accused may then proceed in accordance with subrule (E).
- (E) Arraignment Procedure; Judicial Responsibilities. The court at the arraignment must
 - (1) inform the accused of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law;
 - (2) if the accused is not represented by a lawyer at the arraignment, advise the accused that
 - (a) the accused has a right to remain silent,
 - (b) anything the accused says orally or in writing can be used against the accused in court,
 - (c) the accused has a right to have a lawyer present during any questioning consented to, and
 - (d) if the accused does not have the money to hire a lawyer, the local indigent criminal defense system will appoint a lawyer for the accused;
 - (3) advise the accused of the right to a lawyer at all court proceedings;

- (4) set a date for a probable cause conference not less than 7 days or more than 14 days after the date of the arraignment and set a date for preliminary examination not less than 5 days or more than 7 days after the date of the probable cause conference;
- (5) determine what form of pretrial release, if any, is appropriate; and
- (6) ensure that the accused has had biometric data collected as required by law.

The court may not question the accused about the alleged offense or request that the accused enter a plea.

- (F) Arraignment Procedure; Recording. A verbatim record must be made of the arraignment.
- (G) Plan for Judicial Availability. In each county, the court with trial jurisdiction over felony cases must adopt and file with the state court administrator a plan for judicial availability. The plan shall
 - (1) make a judicial officer available for arraignments each day of the year, or
 - (2) make a judicial officer available for setting bail for every person arrested for commission of a felony each day of the year conditioned upon
 - (a) the judicial officer being presented a proper complaint and finding probable cause pursuant to MCR 6.102(A), and
 - (b) the judicial officer having available information to set bail.

This portion of the plan must provide that the judicial officer shall order the arresting officials to arrange prompt transportation of any accused unable to post bond to the judicial district of the offense for arraignment not later than the next regular business day.

Rule 6.105 Voluntary Appearance

- (A) In General. If a defendant, wanted on a bench or arrest warrant, voluntarily presents himself or herself to the court that issued the warrant within one year of the warrant issuance, the court must either
 - (1) arraign the defendant, if the court is available to do so within two hours of the defendant presenting himself or herself to the court; or
 - (2) recall the warrant and schedule the case for a future appearance.

It is presumed the defendant is not a flight risk when the court sets bond or other conditions of release at an arraignment under this rule.

- (B) Exceptions. This rule does not apply to assaultive crimes or domestic violence offenses, as defined in MCL 762.10d, or to defendants who have previously benefited from this rule on any pending criminal charge.

Rule 6.106 Pretrial Release

- (A) In General. At the defendant's arraignment on the complaint and/or warrant, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be
- (1) held in custody as provided in subrule (B);
 - (2) released on personal recognizance or an unsecured appearance bond; or
 - (3) released conditionally, with or without money bail (ten percent, cash or surety).
- (B) Pretrial Release/Custody Order Under Const 1963, art 1, § 15.
- (1) The court may deny pretrial release to
 - (a) a defendant charged with
 - (i) murder or treason, or
 - (ii) committing a violent felony and
 - (A) at the time of the commission of the violent felony, the defendant was on probation, parole, or released pending trial for another violent felony, or
 - (B) during the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more violent felonies under the laws of this state or substantially similar laws of the United States or another state arising out of separate incidents, if the court finds that proof of the defendant's guilt is evident or the presumption great;
 - (b) a defendant charged with criminal sexual conduct in the first degree, armed robbery, or kidnapping with the intent to extort money or other valuable thing thereby, if the court finds that proof of the defendant's guilt is evident or the presumption great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person.
 - (2) A "violent felony" within the meaning of subrule (B)(1) is a felony, an element of which involves a violent act or threat of a violent act against any other person.
 - (3) If the court determines as provided in subrule (B)(1) that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order, excluding delays attributable to the defense, within which trial must begin or the court must immediately schedule a hearing and set the amount of bail.
 - (4) The court must state the reasons for an order of custody on the record and on a form approved by the State Court Administrator's Office entitled "Custody Order." The completed form must be placed in the court file.
 - (5) The court may, in its custody order, place conditions on the defendant, including but not limited to restricting or prohibiting defendant's contact with any other named

person or persons, if the court determines the conditions are reasonably necessary to maintain the integrity of the judicial proceedings or are reasonably necessary for the protection of one or more named persons. If an order under this paragraph is in conflict with another court order, the most restrictive provisions of the orders shall take precedence until the conflict is resolved.

- (6) Nothing in this rule limits the ability of a jail to impose restrictions on detainee contact as an appropriate means of furthering penological goals.
- (C) Release on Personal Recognizance. If the defendant is not ordered held in custody pursuant to subrule (B), the court must order the pretrial release of the defendant on personal recognizance, or on an unsecured appearance bond, subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public.
- (D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate including
 - (1) that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, and
 - (2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to
 - (a) make reports to a court agency as are specified by the court or the agency;
 - (b) not use alcohol or illicitly use any controlled substance;
 - (c) participate in a substance abuse testing or monitoring program;
 - (d) participate in a specified treatment program for any physical or mental condition, including substance abuse;
 - (e) comply with restrictions on personal associations, place of residence, place of employment, or travel;
 - (f) surrender driver's license or passport;
 - (g) comply with a specified curfew;
 - (h) continue to seek employment;
 - (i) continue or begin an educational program;
 - (j) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;
 - (k) not possess a firearm or other dangerous weapon;

- (l) not enter specified premises or areas and not assault, beat, molest or wound a named person or persons;
 - (m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of the orders shall take precedence until the conflict is resolved. The court may make this condition effective immediately on entry of a pretrial release order and while defendant remains in custody if the court determines it is reasonably necessary to maintain the integrity of the judicial proceeding or it is reasonably necessary for the protection of one or more named persons.
 - (n) satisfy any injunctive order made a condition of release; or
 - (o) comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.
- (E) Money Bail. If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.
- (1) The court may require the defendant to
 - (a) post, at the defendant's option,
 - (i) a surety bond that is executed by a surety approved by the court in an amount equal to 1/4 of the full bail amount, or
 - (ii) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by
 - (A) a cash deposit, or its equivalent, for the full bail amount, or
 - (B) a cash deposit of 10 percent of the full bail amount, or, with the court's consent,
 - (C) designated real property; or
 - (b) post, at the defendant's option,
 - (i) a surety bond that is executed by a surety approved by the court in an amount equal to the full bail amount, or
 - (ii) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by
 - (A) a cash deposit, or its equivalent, for the full bail amount, or, with the court's consent,
 - (B) designated real property.

- (2) The court may require satisfactory proof of value and interest in property if the court consents to the posting of a bond secured by designated real property.

(F) Decision; Statement of Reasons.

- (1) In deciding which release to use and what terms and conditions to impose, the court is to consider relevant information, including
 - (a) defendant's prior criminal record, including juvenile offenses;
 - (b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution;
 - (c) defendant's history of substance abuse or addiction;
 - (d) defendant's mental condition, including character and reputation for dangerousness;
 - (e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;
 - (f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;
 - (g) the availability of responsible members of the community who would vouch for or monitor the defendant;
 - (h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and
 - (i) any other facts bearing on the risk of nonappearance or danger to the public.
- (2) If the court orders the defendant held in custody pursuant to subrule (B) or released on conditions in subrule (D) that include money bail, the court must state the reasons for its decision on the record. The court need not make a finding on each of the enumerated factors.
- (3) Nothing in subrules (C) through (F) may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria.

(G) Custody Hearing.

- (1) Entitlement to Hearing. A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to subrule (B) and a custody hearing is requested by either the defendant or the prosecutor. The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to subrule (B).
- (2) Hearing Procedure.
 - (a) At the custody hearing, the defendant is entitled to be present and to be represented by a lawyer, and the defendant and the prosecutor are entitled to present witnesses and evidence, to proffer information, and to cross-examine each other's witnesses.

- (b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes the findings required to enter an order under subrule (B)(1), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

(H) Appeals; Modification of Release Decision.

- (1) Appeals. A party seeking review of a release decision may file a motion in the court having appellate jurisdiction over the court that made the release decision. There is no fee for filing the motion. The reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion.
- (2) Modification of Release Decision.
 - (a) Prior to Arraignment on the Information. Prior to the defendant's arraignment on the information, any court before which proceedings against the defendant are pending may, on the motion of a party or its own initiative and on finding that there is a substantial reason for doing so, modify a prior release decision or reopen a prior custody hearing.
 - (b) Arraignment on Information and Afterwards. At the defendant's arraignment on the information and afterwards, the court having jurisdiction of the defendant may, on the motion of a party or its own initiative, make a de novo determination and modify a prior release decision or reopen a prior custody hearing.
 - (c) Burden of Going Forward. The party seeking modification of a release decision has the burden of going forward.
- (3) Emergency Release. If a defendant being held in pretrial custody under this rule is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the defendant's release may, if appropriate, impose conditions of release in accordance with this rule to ensure the appearance of the defendant as required and to protect the public. If such conditions of release are imposed, the court must inform the defendant of the conditions on the record or by furnishing to the defendant or the defendant's lawyer a copy of the release order setting forth the conditions.

(I) Termination of Release Order.

- (1) Except as otherwise provided in this subrule, if the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bail or bond, and, return the cash (or its equivalent) posted in the full amount of the bail, or, if there has been a deposit of 10 percent of the full bail amount for a crime governed by MCL 780.66, return 90 percent of the deposited money and retain 10 percent. If the accused deposited 10 percent of the full bail amount for a crime governed by MCL 780.66, is discharged from all obligations in the case, and has not been convicted of the charged crime, the court must return to the defendant the entire deposited amount.

- (2) If the defendant has failed to comply with the conditions of release, the court may, pursuant to MCR 6.103, issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.
 - (a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond.
 - (b) If the defendant does not appear and surrender to the court within 28 days after the revocation date, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, and costs of the court proceedings, or if a surety bond was posted, an amount not to exceed the full amount of the surety bond. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court. If the defendant does not within that period satisfy the court that there was compliance with the conditions of release other than appearance or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant alone for an amount not to exceed the full amount of the bond, and costs of the court proceedings.
 - (c) The 10 percent bail deposit made under subrule (E)(1)(a)(ii)[B] must be applied to the costs and, if any remains, to the balance of the judgment. The amount applied to the judgment must be transferred to the county treasury for a circuit court case, to the treasuries of the governments contributing to the district control unit for a district court case, or to the treasury of the appropriate municipal government for a municipal court case. The balance of the judgment may be enforced and collected as a judgment entered in a civil case.
- (3) If money was deposited on a bail or bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned, subject to subrule (I)(1).

Rule 6.107 Grand Jury Proceedings

- (A) Right to Grand Jury Records. Whenever an indictment is returned by a grand jury or a grand juror, the person accused in the indictment is entitled to the part of the record, including a transcript of the part of the testimony of all witnesses appearing before the grand jury or grand juror, that touches on the guilt or innocence of the accused of the charge contained in the indictment.
- (B) Procedure to Obtain Records.
 - (1) To obtain the part of the record and transcripts specified in subrule (A), a motion must be addressed to the chief judge of the circuit court in the county in which the grand jury issuing the indictment was convened.

- (2) The motion must be filed within 14 days after arraignment on the indictment or at a reasonable time thereafter as the court may permit on a showing of good cause and a finding that the interests of justice will be served.
- (3) On receipt of the motion, the chief judge shall order the entire record and transcript of testimony taken before the grand jury to be delivered to the chief judge by the person having custody of it for an in-camera inspection by the chief judge.
- (4) Following the in-camera inspection, the chief judge shall certify the parts of the record, including the testimony of all grand jury witnesses that touches on the guilt or innocence of the accused, as being all of the evidence bearing on that issue contained in the record, and have two copies of it prepared, one to be delivered to the attorney for the accused, or to the accused if not represented by an attorney, and one to the attorney charged with the responsibility for prosecuting the indictment.
- (5) The chief judge shall then have the record and transcript of all testimony of grand jury witnesses returned to the person from whom it was received for disposition according to law.

Rule 6.108 The Probable Cause Conference

- (A) Right to a probable Cause Conference. The state and the defendant are entitled to a probable cause conference, unless waived by both parties. If the probable cause conference is waived, the parties shall provide written notice to the court and indicate whether the parties will be conducting a preliminary examination, waiving the examination, or entering a plea.
- (B) A district court magistrate may conduct probable cause conferences when authorized to do so by the chief district judge and may conduct all matters allowed at the probable cause conference, except taking pleas and imposing sentences unless permitted by statute to take pleas or impose sentences.
- (C) The probable cause conference shall include discussions regarding a possible plea agreement and other pretrial matters, including bail and bond modification.
- (D) The district court judge must be available during the probable cause conference to take pleas, consider requests for modification of bond, and if requested by the prosecutor, take the testimony of a victim.
- (E) The probable cause conference for codefendants who are arraigned at least 72 hours before the probable cause conference shall be consolidated and only one joint probable cause conference shall be held unless the prosecuting attorney consents to the severance, a defendant seeks severance by motion and it is granted, or one of the defendants is unavailable and does not appear at the hearing.

Rule 6.110 The Preliminary Examination

- (A) Right to Preliminary Examination. Where a preliminary examination is permitted by law, the people and the defendant are entitled to a prompt preliminary examination. The defendant may waive the preliminary examination with the consent of the prosecuting

attorney. Upon waiver of the preliminary examination, the court must bind the defendant over for trial on the charge set forth in the complaint or any amended complaint. The preliminary examination for codefendants shall be consolidated and only one joint preliminary examination shall be held unless the prosecuting attorney consents to the severance, a defendant seeks severance by motion and it is granted, or one of the defendants is unavailable and does not appear at the hearing.

(B) Time of Examination; Remedy.

- (1) Unless adjourned by the court, the preliminary examination must be held on the date specified by the court at the arraignment on the warrant or complaint. If the parties consent, the court may adjourn the preliminary examination for a reasonable time. If a party objects, the court may not adjourn a preliminary examination unless it makes a finding on the record of good cause shown for the adjournment. A violation of this subrule is deemed to be harmless error unless the defendant demonstrates actual prejudice.
- (2) Upon the request of the prosecuting attorney, the preliminary examination shall commence immediately at the date and time set for the probable cause conference for the sole purpose of taking and preserving the testimony of the victim, if the victim is present, as long as the defendant is either present in the courtroom or has waived the right to be present. If victim testimony is taken as provided under this rule, the preliminary examination will be continued at the date originally set for that event.

(C) Conduct of Examination. A verbatim record must be made of the preliminary examination. The court shall allow the prosecutor and the defendant to subpoena and call witnesses, offer proofs, and examine and cross-examine witnesses at the preliminary examination. The court must conduct the examination in accordance with the Michigan Rules of Evidence.

(D) Exclusionary Rules.

- (1) The court shall allow the prosecutor and defendant to subpoena and call witnesses from whom hearsay testimony was introduced on a satisfactory showing that live testimony will be relevant.
- (2) If, during the preliminary examination, the court determines that evidence being offered is excludable, it must, on motion or objection, exclude the evidence. If, however, there has been a preliminary showing that the evidence is admissible, the court need not hold a separate evidentiary hearing on the question of whether the evidence should be excluded. The decision to admit or exclude evidence, with or without an evidentiary hearing, does not preclude a party from moving for and obtaining a determination of the question in the trial court on the basis of
 - (a) a prior evidentiary hearing, or
 - (b) a prior evidentiary hearing supplemented with a hearing before the trial court, or
 - (c) if there was no prior evidentiary hearing, a new evidentiary hearing.

- (E) Probable Cause Finding. If, after considering the evidence, the court determines that probable cause exists to believe both that an offense not cognizable by the district court has been committed and that the defendant committed it, the court must bind the defendant over for trial. If the court finds probable cause to believe that the defendant has committed an offense cognizable by the district court, it must proceed thereafter as if the defendant initially had been charged with that offense.
- (F) Discharge of Defendant. No Finding of Probable Cause. If, after considering the evidence, the court determines that probable cause does not exist to believe either that an offense has been committed or that the defendant committed it, the court must discharge the defendant without prejudice to the prosecutor initiating a subsequent prosecution for the same offense or reduce the charge to an offense that is not a felony. Except as provided in MCR 8.111(C), the subsequent preliminary examination must be held before the same judicial officer and the prosecutor must present additional evidence to support the charge.
- (G) Return of Examination. Immediately on concluding the examination, the court must certify and transmit to the court before which the defendant is bound to appear the case file, any recognizances received, and a copy of the register of actions.
 - (i) The court need not transmit recordings of any proceedings to the circuit court.
 - (ii) If an interested party requests a transcript of a district or municipal court proceeding after the case is bound over, the circuit court shall forward that request to the district or municipal court for transcription as provided in MCR 8.108. The circuit court shall forward this request only if the circuit court case record is publicly-accessible.
- (H) Motion to Dismiss. If, on proper motion, the trial court finds a violation of subrule (C), (D), (E), or (F), it must either dismiss the information or remand the case to the district court for further proceedings.
- (I) Scheduling the Arraignment. Unless the trial court does the scheduling of the arraignment on the information, the district court must do so in accordance with the administrative orders of the trial court.
- (J) Remand. If the circuit court remands the case to the district or municipal court for further proceedings, the circuit court must transmit to the court where the case has been remanded the case file, any recognizances received, and a copy of the register of actions.
 - (i) The circuit court need not transmit recordings of any proceedings to the district or municipal court.
 - (ii) If an interested party requests a transcript of a circuit court proceeding after the case is remanded, the district or municipal court shall forward that request to the circuit court for transcription as provided in MCR 8.108. The district or municipal court shall forward this request only if the district or municipal court case record is publicly-accessible.

Rule 6.111 Circuit Court Arraignment in District Court

- (A) The circuit court arraignment may be conducted by a district judge in criminal cases cognizable in the circuit court immediately after the bindover of the defendant. A district court judge shall take a felony plea as provided by court rule if a plea agreement is reached between the parties. Following a plea, the case shall be transferred to the circuit court where the circuit judge shall preside over further proceedings, including sentencing. The circuit court judge's name shall be available to the litigants before the plea is taken.
- (B) Arraignments conducted pursuant to this rule shall be conducted in conformity with MCR 6.113.
- (C) Pleas taken pursuant to this rule shall be taken in conformity with MCR 6.301, 6.302, 6.303, and 6.304, as applicable, and, once taken, shall be governed by MCR 6.310.

Rule 6.112 The Information or Indictment

- (A) Informations and Indictments; Similar Treatment. Except as otherwise provided in these rules or elsewhere, the law and rules that apply to informations and prosecutions on informations apply to indictments and prosecutions on indictments.
- (B) Use of Information or Indictment. A prosecution must be based on an information or an indictment. Unless the defendant is a fugitive from justice, the prosecutor may not file an information until the defendant has had or waives a preliminary examination. An indictment is returned and filed without a preliminary examination. When this occurs, the indictment shall commence judicial proceedings.
- (C) Time of Filing Information or Indictment. The prosecutor must file the information or indictment on or before the date set for the arraignment.
- (D) Information; Nature and Contents; Attachments. The information must set forth the substance of the accusation against the defendant and the name, statutory citation, and penalty of the offense allegedly committed. If applicable, the information must also set forth the notice required by MCL 767.45, and the defendant's Michigan driver's license number. To the extent possible, the information should specify the time and place of the alleged offense. Allegations relating to conduct, the method of committing the offense, mental state, and the consequences of conduct may be stated in the alternative. A list of all witnesses known to the prosecutor who may be called at trial and all res gestae witnesses known to the prosecutor or investigating law enforcement officers must be attached to the information. A prosecutor must sign the information.
- (E) Bill of Particulars. The court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense.
- (F) Notice of Intent to Seek Enhanced Sentence. A notice of intent to seek an enhanced sentence pursuant to MCL 769.13 must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must contain, if applicable, any mandatory minimum sentence required by law as a result of the sentence enhancement. The notice must be filed within 21 days after the defendant's arraignment on the

information charging the underlying offense or, if arraignment is waived or eliminated as allowed under MCR 6.113(E), within 21 days after the filing of the information charging the underlying offense.

- (G) Harmless Error. Absent a timely objection and a showing of prejudice, a court may not dismiss an information or reverse a conviction because of an untimely filing or because of an incorrectly cited statute or a variance between the information and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense.
- (H) Amendment of Information or Notice of Intent to Seek Enhanced Sentence. The court before, during, or after trial may permit the prosecutor to amend the information or the notice of intent to seek enhanced sentence unless the proposed amendment would unfairly surprise or prejudice the defendant. On motion, the court must strike unnecessary allegations from the information.

Rule 6.113 The Arraignment on the Indictment or Information

- (A) Time of Conducting. Unless the defendant waives arraignment or the court for good cause orders a delay, or as otherwise permitted by these rules, the court with trial jurisdiction must arraign the defendant on the scheduled date. The court may hold the arraignment before the preliminary examination transcript has been prepared and filed. Unless the defendant demonstrates actual prejudice, failure to hold the arraignment on the scheduled date is to be deemed harmless error.
- (B) Arraignment Procedure. The prosecutor must give a copy of the information to the defendant before the defendant is asked to plead. Unless waived by the defendant, the court must either state to the defendant the substance of the charge contained in the information or require the information to be read to the defendant. If the defendant has waived legal representation, the court must advise the defendant of the pleading options. If the defendant offers a plea other than not guilty, the court must proceed in accordance with the rules in subchapter 6.300. Otherwise, the court must enter a plea of not guilty on the record. A verbatim record must be made of the arraignment.
- (C) Waiver. A defendant represented by a lawyer may, as a matter of right, enter a plea of not guilty or stand mute without arraignment by filing, at or before the time set for the arraignment, a written statement signed by the defendant and the defendant's lawyer acknowledging that the defendant has received a copy of the information, has read or had it read or explained, understands the substance of the charge, waives arraignment in open court, and pleads not guilty to the charge or stands mute.
- (D) Preliminary Examination Transcript. The court reporter shall transcribe and file the record of the preliminary examination if such is demanded or ordered pursuant to MCL 766.15.
- (E) Elimination of Arraignments. A circuit court may submit to the State Court Administrator pursuant to MCR 8.112(B) a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are

made to give the defendant a copy of the information and any notice of intent to seek an enhanced sentence, as provided in MCR 6.112(F).

Rule 6.120 Joinder and Severance; Single Defendant

- (A) Charging Joinder. The prosecuting attorney may file an information or indictment that charges a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more informations or indictments against a single defendant may be consolidated for a single trial.
- (B) Postcharging Permissive Joinder or Severance. On its own initiative, the motion of a party, or the stipulation of all parties, except as provided in subrule (C), the court may join offenses charged in two or more informations or indictments against a single defendant, or sever offenses charged in a single information or indictment against a single defendant, when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense.
 - (1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on
 - (a) the same conduct or transaction, or
 - (b) a series of connected acts, or
 - (c) a series of acts constituting parts of a single scheme or plan.
 - (2) Other relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial.
 - (3) If the court acts on its own initiative, it must provide the parties an opportunity to be heard.
- (C) Right of Severance; Unrelated Offenses. On the defendant's motion, the court must sever for separate trials offenses that are not related as defined in subrule (B)(1).

Rule 6.121 Joinder and Severance; Multiple Defendants

- (A) Permissive Joinder. An information or indictment may charge two or more defendants with the same offense. It may charge two or more defendants with two or more offenses when
 - (1) each defendant is charged with accountability for each offense, or
 - (2) the offenses are related as defined in MCR 6.120(B).

When more than one offense is alleged, each offense must be stated in a separate count. Two or more informations or indictments against different defendants may be consolidated for a single trial whenever the defendants could be charged in the same information or indictment under this rule.

- (B) Right of Severance; Unrelated Offenses. On a defendant's motion, the court must sever offenses that are not related as defined in MCR 6.120(B).
- (C) Right of Severance; Related Offenses. On a defendant's motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant.
- (D) Discretionary Severance. On the motion of any party, the court may sever the trial of defendants on the ground that severance is appropriate to promote fairness to the parties and a fair determination of the guilt or innocence of one or more of the defendants. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of defendants or the complexity or nature of the evidence, the convenience of witnesses, and the parties' readiness for trial.

Rule 6.125 Mental Competency Hearing

- (A) Applicable Provisions. Except as provided in these rules, a mental competency hearing in a criminal case is governed by MCL 330.2020 *et seq.*
- (B) Time and Form of Motion. The issue of the defendant's competence to stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against the defendant. The issue may be raised by the court before which such proceedings are pending or being held, or by motion of a party. Unless the issue of defendant's competence arises during the course of proceedings, a motion raising the issue of defendant's competence must be in writing. If the competency issue arises during the course of proceedings, the court may adjourn the proceeding or, if the proceeding is defendant's trial, the court may, consonant with double jeopardy considerations, declare a mistrial.
- (C) Order for Examination.
 - (1) On a showing that the defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of the center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of competence to stand trial.
 - (2) The defendant must appear for the examination as required by the court.
 - (3) If the defendant is held in detention pending trial, the examination may be performed in the place of detention or the defendant may be transported by the sheriff to the diagnostic facility for examination.
 - (4) The court may order commitment to a diagnostic facility for examination if the defendant fails to appear for the examination as required or if commitment is necessary for the performance of the examination.
 - (5) The defendant must be released from the facility on completion of the examination and, if (3) is applicable, returned to the place of detention.

- (D) Independent Examination. On a showing of good cause by either party, the court may order an independent examination of the defendant relating to the issue of competence to stand trial.
- (E) Hearing. A competency hearing must be held within 5 days of receipt of the report required by MCL 330.2028 or on conclusion of the proceedings then before the court, whichever is sooner, unless the court, on a showing of good cause, grants an adjournment.
- (F) Motions; Testimony.
 - (1) A motion made while a defendant is incompetent to stand trial must be heard and decided if the presence of the defendant is not essential for a fair hearing and decision on the motion.
 - (2) Testimony may be presented on a pretrial defense motion if the defendant's presence could not assist the defense.

Rule 6.126 Decision on Admissibility of Evidence

Where the court makes a decision on the admissibility of evidence and the prosecutor or the defendant files an interlocutory application for leave to appeal seeking to reverse that decision, the court shall stay proceedings pending resolution of the application in the Court of Appeals, unless the court makes findings that the evidence is clearly cumulative or that an appeal is frivolous because legal precedent is clearly against the party's position. If the application for leave to appeal is filed by the prosecutor and the defendant is incarcerated, the defendant may request that the court reconsider whether pretrial release is appropriate.

Subchapter 6.200 Discovery

Rule 6.201 Discovery

- (A) Mandatory Disclosure. In addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties:
 - (1) the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview; the witness list may be amended without leave of the court no later than 28 days before trial;
 - (2) any written or recorded statement, including electronically recorded statements, pertaining to the case by a lay witness whom the party may call at trial, except that a defendant is not obliged to provide the defendant's own statement;
 - (3) the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion;
 - (4) any criminal record that the party may use at trial to impeach a witness;

- (5) a description or list of criminal convictions, known to the defense attorney or prosecuting attorney, of any witness whom the party may call at trial; and
 - (6) a description of and an opportunity to inspect any tangible physical evidence that the party may introduce at trial, including any document, photograph, or other paper, with copies to be provided on request. A party may request a hearing regarding any question of costs of reproduction, including the cost of providing copies of electronically recorded statements. On good cause shown, the court may order that a party be given the opportunity to test without destruction any tangible physical evidence.
- (B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:
- (1) any exculpatory information or evidence known to the prosecuting attorney;
 - (2) any police report and interrogation records concerning the case, except so much of a report as:
 - (a) concerns a continuing investigation;
 - (b) contains a social security number, driver's license number or state-issued personal identification card number, passport number, or financial account number, which may be redacted;
 - (c) contains information otherwise protected under MCR 6.201, which may be redacted.
 - (3) any written or recorded statements, including electronically recorded statements, by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;
 - (4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and
 - (5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.
- (C) Prohibited Discovery.
- (1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is protected from disclosure by constitution, statute, or privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).
 - (2) If a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in camera inspection of the records.
 - (a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to permit an in camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

- (b) If the court is satisfied, following an in camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony.
 - (c) Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review.
 - (d) The court shall seal and preserve the records for review in the event of an appeal
 - (i) by the defendant, on an interlocutory basis or following conviction, if the court determines that the records should not be made available to the defense, or
 - (ii) by the prosecution, on an interlocutory basis, if the court determines that the records should be made available to the defense.
 - (e) Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.
- (D) Excision. When some parts of material or information are discoverable and other parts are not discoverable, the party must disclose the discoverable parts and may excise the remainder. The party must inform the other party that nondiscoverable information has been excised and withheld. On motion, the court must conduct a hearing in camera to determine whether the reasons for excision are justifiable. If the court upholds the excision, it must seal and preserve the record of the hearing for review in the event of an appeal.
- (E) Protective Orders. On motion and a showing of good cause, the court may enter an appropriate protective order. In considering whether good cause exists, the court shall consider the parties' interests in a fair trial; the risk to any person of harm, undue annoyance, intimidation, embarrassment, or threats; the risk that evidence will be fabricated; and the need for secrecy regarding the identity of informants or other law enforcement matters. On motion, with notice to the other party, the court may permit the showing of good cause for a protective order to be made in camera. If the court grants a protective order, it must seal and preserve the record of the hearing for review in the event of an appeal.
- (F) Timing of Discovery. Unless otherwise ordered by the court, the prosecuting attorney must comply with the requirements of this rule within 21 days of a request under this rule and a defendant must comply with the requirements of this rule within 21 days of a request under this rule.
- (G) Copies. Except as ordered by the court on good cause shown, a party's obligation to provide a photograph or paper of any kind is satisfied by providing a clear copy.

- (H) Continuing Duty to Disclose. If at any time a party discovers additional information or material subject to disclosure under this rule, the party, without further request, must promptly notify the other party.
- (I) Modification. On good cause shown, the court may order a modification of the requirements and prohibitions of this rule.
- (J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. Parties are encouraged to bring questions of noncompliance before the court at the earliest opportunity. Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court. An order of the court under this section is reviewable only for abuse of discretion.
- (K) Except as otherwise provided in MCR 2.302(B)(6), electronic materials are to be treated in the same manner as nonelectronic materials under this rule. Nothing in this rule shall be construed to conflict with MCL 600.2163a.

Rule 6.202. Disclosure of Forensic Laboratory Report and Certificate; Applicability; Admissibility of Report and Certificate; Extension of Time; Adjournment

- (A) This rule shall apply to criminal trials in the district and circuit courts.
- (B) Disclosure. Upon receipt of a forensic laboratory report and certificate, if applicable, by the examining expert, the prosecutor shall serve a copy of the laboratory report and certificate on the opposing party's attorney or party, if not represented by an attorney, within 14 days after receipt of the laboratory report and certificate. A proof of service of the report and certificate, if applicable, on the opposing party's attorney or party, if not represented by an attorney, shall be filed with the court.
- (C) Notice and Demand.
 - (1) Notice. If a party intends to offer the report described in subsection (B) as evidence at trial, the party's attorney or party, if not represented by an attorney, shall provide the opposing party's attorney or party, if not represented by an attorney, with notice of that fact in writing. If the prosecuting attorney intends to offer the report as evidence at trial, notice to the defendant's attorney or the defendant, if not represented by an attorney, shall be included with the report. If the defendant intends to offer the report as evidence at trial, notice to the prosecuting attorney shall be provided within 14 days after receipt of the report. Except as provided in subrule (C)(2), the report and certification, if applicable, is admissible in evidence to the same effect as if the person who performed the analysis or examination had personally testified.
 - (2) Demand. Upon receipt of a copy of the laboratory report and certificate, if applicable, the opposing party's attorney or party, if not represented by an attorney, may file a written objection to the use of the laboratory report and certificate. The written objection shall be filed with the court in which the matter is pending, and

shall be served on the opposing party's attorney or party, if not represented by an attorney, within 14 days of receipt of the notice. If a written objection is filed, the report and certificate are not admissible under subrule (C)(1). If no objection is made to the use of the laboratory report and certificate within the time allowed by this section, the report and certificate are admissible in evidence as provided in subrule (C)(1).

- (3) For good cause the court shall extend the time period of filing a written objection.
 - (4) Adjournment. Compliance with this court rule shall be good cause for an adjournment of the trial.
- (D) Certification. Except as otherwise provided, the analyst who conducts the analysis on the forensic sample and signs the report shall complete a certificate on which the analyst shall state (i) that he or she is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, (iii) that performing the analysis is part of his or her regular duties, and (iv) that the tests were performed under industry-approved procedures or standards and the report accurately reflects the analyst's findings and opinions regarding the results of those tests or analysis. A report submitted by an analyst who is employed by a laboratory that is accredited by a national or international accreditation entity that substantially meets the certification requirements described above may provide proof of the laboratory's accreditation certificate in lieu of a separate certificate.

Subchapter 6.300 Pleas

Rule 6.301 Available Pleas

- (A) Possible Pleas. Subject to the rules in this subchapter, a defendant may plead not guilty, guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity. If the defendant refuses to plead or stands mute, or the court, pursuant to the rules, refuses to accept the defendant's plea, the court must enter a not guilty plea on the record. A plea of not guilty places in issue every material allegation in the information and permits the defendant to raise any defense not otherwise waived.
- (B) Pleas That Require the Court's Consent. A defendant may enter a plea of nolo contendere only with the consent of the court.
- (C) Pleas That Require the Consent of the Court and the Prosecutor. A defendant may enter the following pleas only with the consent of the court and the prosecutor:
 - (1) A defendant who has asserted an insanity defense may enter a plea of guilty but mentally ill or a plea of not guilty by reason of insanity. Before such a plea may be entered, the defendant must comply with the examination required by law.
 - (2) A defendant may enter a conditional plea of guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity. A conditional plea preserves for appeal a specified pretrial ruling or rulings notwithstanding the plea-based judgment and entitles the defendant to withdraw the plea if a specified pretrial ruling is

overturned on appeal. The ruling or rulings as to which the defendant reserves the right to appeal must be specified orally on the record or in a writing made a part of the record. The appeal is by application for leave to appeal only.

- (D) Pleas to Lesser Charges. The court may not accept a plea to an offense other than the one charged without the consent of the prosecutor.

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, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c;
 - (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) if the plea is accepted, the defendant may be giving up the right to appeal issues that would otherwise be appealable if she or he were convicted at trial. Further, 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) A Voluntary Plea.

- (1) The court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement. If they have made a plea agreement, which may include an agreement to a sentence to a specific term or within a specific range, the agreement must be stated on the record or reduced to writing and signed by the parties. The parties may memorialize their agreement on a form substantially approved by the SCAO. The written agreement shall be made part of the case file.
- (2) If the plea involves a statement by the court that it will sentence to a specified term or within a specified range, the court must:
 - (a) state that any sentencing guidelines range discussed at the plea hearing is a preliminary estimate and that the final sentencing guidelines range determined by the court may differ,
 - (b) advise the defendant whether any sentencing guidelines range discussed at the plea hearing is part of the plea such that they have a right to withdraw their plea under MCR 6.310(B) if the final sentencing guidelines range determined by the court at sentencing is different, and
 - (c) provide a numerically quantifiable sentence term or range. A quantifiable sentence range includes language such as "lower/upper half" or "lower/upper quarter."
- (3) If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant.
- (4) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a sentence to a specified term or within a specified range or a prosecutorial sentence recommendation, the court may
 - (a) reject the agreement; or
 - (b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to a specified term or within a specified range as agreed to; or
 - (c) accept the agreement without having considered the presentence report; or
 - (d) take the plea agreement under advisement.

If the court accepts the agreement without having considered the presentence report or takes the plea agreement under advisement, it must explain to the defendant that

the court is not bound to follow an agreement to a sentence for a specified term or within a specified range or a recommendation agreed to by the prosecutor, and that if the court chooses not to follow an agreement to a sentence for a specified term or within a specified range, the defendant will be allowed to withdraw from the plea agreement. A judge's decision not to follow the sentence recommendation does not entitle the defendant to withdraw the defendant's plea.

- (5) The court must ask the defendant:
 - (a) (if there is no plea agreement) whether anyone has promised the defendant anything, or (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;
 - (b) whether anyone has threatened the defendant; and
 - (c) whether it is the defendant's own choice to plead guilty.

(D) An Accurate Plea.

- (1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.
- (2) If the defendant pleads nolo contendere, the court may not question the defendant about participation in the crime. The court must:
 - (a) state why a plea of nolo contendere is appropriate; and
 - (b) hold a hearing, unless there has been one, that establishes support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.

(E) Additional Inquiries. On completing the colloquy with the defendant, the court must:

- (1) Ask the prosecutor and the defendant's lawyer whether either is aware of any promises, threats, or inducements other than those already disclosed on the record, and whether the court has complied with subrules (B)-(D). If it appears to the court that it has failed to comply with subrules (B)-(D), the court may not accept the defendant's plea until the deficiency is corrected.
- (2) Advise the defendant on the record and in writing on the form approved by the state court administrator that if the plea is accepted and the defendant engages in misconduct, as that term is defined in MCR 6.310, before sentencing, the court will not be bound by any sentencing agreement or evaluation.

(F) Plea Under Advisement; Plea Record. The court may take the plea under advisement. A verbatim record must be made of the plea proceeding.

Rule 6.303 Plea of Guilty but Mentally Ill

Before accepting a plea of guilty but mentally ill, the court must comply with the requirements of MCR 6.302. In addition to establishing a factual basis for the plea pursuant to MCR 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold

a hearing that establishes support for a finding that the defendant was mentally ill, at the time of the offense to which the plea is entered. The reports must be made a part of the record.

Rule 6.304 Plea of Not Guilty by Reason of Insanity

- (A) Advice to Defendant. Before accepting a plea of not guilty by reason of insanity, the court must comply with the requirements of MCR 6.302 except that subrule (C) of this rule, rather than MCR 6.302(D), governs the manner of determining the accuracy of the plea.
- (B) Additional Advice Required. After complying with the applicable requirements of MCR 6.302, the court must advise the defendant, and determine whether the defendant understands, that the plea will result in the defendant's commitment for diagnostic examination at the center for forensic psychiatry for up to 60 days, and that after the examination, the probate court may order the defendant to be committed for an indefinite period of time.
- (C) Factual Basis. Before accepting a plea of not guilty by reason of insanity, the court must examine the psychiatric reports prepared and hold a hearing that establishes support for findings that
 - (1) the defendant committed the acts charged, and
 - (2) that, by a preponderance of the evidence, the defendant was legally insane at the time of the offense.
- (D) Report of Plea. After accepting the defendant's plea, the court must forward to the center for forensic psychiatry a full report, in the form of a settled record, of the facts concerning the crime to which the defendant pleaded and the defendant's mental state at the time of the crime.

Rule 6.310 Withdrawal or Vacation of Plea

- (A) Withdrawal Before Acceptance. The defendant has a right to withdraw any plea until the court accepts it on the record.
- (B) Withdrawal After Acceptance but Before Sentence. Except as provided in subsection (3), after acceptance but before sentence,
 - (1) a plea may be withdrawn on the defendant's motion or with the defendant's consent, only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by subrule (C).
 - (2) the defendant is entitled to withdraw the plea if
 - (a) the plea involves an agreement for a sentence for a specified term or within a specified range, and the court states that it is unable to follow the agreement; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or

- (b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose; or
 - (c) a consecutive sentence will be imposed and the defendant was not advised at the time of his or her plea that the law permits or requires consecutive sentencing in his or her case.
- (3) Except as allowed by the trial court for good cause, a defendant is not entitled to withdraw a plea under subsection (2)(a) or (2)(b) if the defendant commits misconduct after the plea is accepted but before sentencing. For purposes of this rule, misconduct is defined to include, but is not limited to: absconding or failing to appear for sentencing, violating terms of conditions on bond or the terms of any sentencing or plea agreement, or otherwise failing to comply with an order of the court pending sentencing.
- (C) Motion to Withdraw Plea After Sentence.
- (1) The defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.205(A)(2)(a) and (b)(i)-(iii).
 - (2) Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500.
 - (3) If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.
- (D) Preservation of Issues. A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.
- (E) Vacation of Plea on Prosecutor's Motion. On the prosecutor's motion, the court may vacate a plea if the defendant has failed to comply with the terms of a plea agreement.

Rule 6.312 Effect of Withdrawal or Vacation of Plea

If a plea is withdrawn by the defendant or vacated by the trial court or an appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered.

Subchapter 6.400 Trials

Rule 6.401 Right to Trial by Jury or by the Court

The defendant has the right to be tried by a jury, or may, with the consent of the prosecutor and approval by the court, elect to waive that right and be tried before the court without a jury.

Rule 6.402 Waiver of Jury Trial by the Defendant

- (A) **Time of Waiver.** The court may not accept a waiver of trial by jury until after the defendant has been arraigned or has waived an arraignment on the information, or, in a court where arraignment on the information has been eliminated under MCR 6.113(E), after the defendant has otherwise been provided with a copy of the information, and has been offered an opportunity to consult with a lawyer.
- (B) **Waiver and Record Requirements.** Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Rule 6.403 Trial by the Judge in Waiver Cases

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 6.410 Jury Trial; Number of Jurors; Unanimous Verdict

- (A) **Number of Jurors.** Except as provided in this rule, a jury that decides a case must consist of 12 jurors. At any time before a verdict is returned, the parties may stipulate with the court's consent to have the case decided by a jury consisting of a specified number of jurors less than 12. On being informed of the parties' willingness to stipulate, the court must personally advise the defendant of the right to have the case decided by a jury consisting of 12 jurors. By addressing the defendant personally, the court must ascertain that the defendant understands the right and that the defendant voluntarily chooses to give up that right as provided in the stipulation. If the court finds that the requirements for a valid waiver have been satisfied, the court may accept the stipulation. Even if the requirements for a valid waiver have been satisfied, the court may, in the interest of justice, refuse to accept a stipulation, but it must state its reasons for doing so on the record. The stipulation and procedure described in this subrule must take place in open court and a verbatim record must be made.
- (B) **Unanimous Verdicts.** A jury verdict must be unanimous.

Rule 6.411 Additional Jurors

The court may impanel more than 12 jurors. If more than the number of jurors required to decide the case are left on the jury before deliberations are to begin, the names of the jurors must be placed in a container and names drawn from it to reduce the number of jurors to the number required to decide the case. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

Rule 6.412 Selection of the Jury

- (A) **Selecting and Impaneling the Jury.** Except as otherwise provided by the rules in this subchapter, MCR 2.510 and 2.511 govern the procedure for selecting and impaneling the jury.
- (B) **Instructions and Oath Before Selection.** Before beginning the jury selection process, the court should give the prospective jurors appropriate preliminary instructions and must have them sworn.
- (C) **Voir Dire of Prospective Jurors.**
 - (1) **Scope and Purpose.** The scope of voir dire examination of prospective jurors is within the discretion of the court. It should be conducted for the purposes of discovering grounds for challenges for cause and of gaining knowledge to facilitate an intelligent exercise of peremptory challenges. The court should confine the examination to these purposes and prevent abuse of the examination process.
 - (2) **Conduct of the Examination.** The court may examine prospective jurors or permit the attorneys for the parties to do so. If the court examines the prospective jurors, it must permit the attorneys for the parties to
 - (a) ask further questions that the court considers proper, or
 - (b) submit further questions that the court may ask if it considers them proper.On its own initiative or on the motion of a party, the court may provide for a prospective juror or jurors to be questioned out of the presence of the other jurors.
- (D) **Challenges for Cause.**
 - (1) **Grounds.** A prospective juror is subject to challenge for cause on any ground set forth in MCR 2.511(E) or for any other reason recognized by law.
 - (2) **Procedure.** If, after the examination of any juror, the court finds that a ground for challenging a juror for cause is present, the court on its own initiative should, or on motion of either party must, excuse the juror from the panel.
- (E) **Peremptory Challenges.**
 - (1) **Challenges by Right.** Each defendant is entitled to 5 peremptory challenges unless an offense charged is punishable by life imprisonment, in which case a defendant

being tried alone is entitled to 12 peremptory challenges, 2 defendants being tried jointly are each entitled to 10 peremptory challenges, 3 defendants being tried jointly are each entitled to 9 peremptory challenges, 4 defendants being tried jointly are each entitled to 8 peremptory challenges, and 5 or more defendants being tried jointly are each entitled to 7 peremptory challenges. The prosecutor is entitled to the same number of peremptory challenges as a defendant being tried alone, or, in the case of jointly tried defendants, the total number of peremptory challenges to which all the defendants are entitled.

- (2) Additional Challenges. On a showing of good cause, the court may grant one or more of the parties an increased number of peremptory challenges. The additional challenges granted by the court need not be equal for each party.
- (F) Oath After Selection. After the jury is selected and before trial begins, the court must have the jurors sworn.

Rule 6.416 Presentation of Evidence

Subject to the rules in this chapter and to the Michigan rules of evidence, each party has discretion in deciding what witnesses and evidence to present.

Rule 6.417 Mistrial

Before ordering a mistrial, the court must, on the record, give each defendant and the prosecutor an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

Rule 6.419 Motion for Directed Verdict of Acquittal

- (A) Before Submission to the Jury. After the prosecutor has rested the prosecution's case-in-chief or after the close of all the evidence, the court on the defendant's motion must direct a verdict of acquittal on any charged offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.
- (B) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.
- (C) After Jury Verdict. After a jury verdict, the defendant may file an original or renewed motion for directed verdict of acquittal in the same manner as provided by MCR 6.431(A) for filing a motion for a new trial.

