

Order

Michigan Supreme Court
Lansing, Michigan

June 9, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-29

Proposed Amendment of
Rule 410 of the Michigan
Rules of Evidence

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 410 of the Michigan Rules of Evidence. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 410 Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) A plea of guilty which was later withdrawn or vacated;
- (2) [Unchanged.]
- (3) Any statement made in the course of any proceedings under MCR 6.302 or MCR 6.310 or comparable state or federal procedure regarding either of the foregoing pleas; or
- (4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn or vacated.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Staff Comment: The proposed amendments in this file would add vacated pleas to the list of guilty pleas that may not be used against defendant. Also, the proposed addition of a reference to MCR 6.310 in subsection (3) would add a prohibition on using a statement made during defendant's *withdrawal* of plea to the prohibition on using statements made under MCR 6.302 in *entering* a plea, which would make the rule more consistent with FRE 410.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-29. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 9, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk