

Order

Michigan Supreme Court
Lansing, Michigan

December 15, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-07

Proposed Amendment of Rule
1.8 of the Michigan Rules of
Professional Conduct

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 1.8 of the Michigan Rules of Professional Conduct. 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 on the [Public Administrative Hearings](#) page.

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

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

Rule 1.8 Conflict of Interest: Prohibited Transactions.

(a)-(g) [Unchanged.]

(h) A lawyer shall not:

- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement;~~or~~
- (2) settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith;or
- (3) make an agreement that includes a lawyer-client arbitration provision unless the client is independently represented in reviewing the provision.

(i)-(j) [Unchanged.]

[Comment Section Unchanged.]

Staff Comment: The proposed amendment of MRPC 1.8 would clarify that the inclusion of an arbitration clause in an attorney-client agreement is prohibited unless the client is independently represented in reviewing the provision.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by April 1, 2022 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-07. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J., would decline to publish the proposed amendment for comment.



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.

December 15, 2021

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

Clerk