

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-31

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly

Proposed Amendments
of Rule 3.602 of the
Michigan Court Rules

Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, this is to advise that the Court is considering amending Rule 3.602 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at www.courts.michigan.gov/supremecourt.

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.

[The present language would be amended as indicated below
by strikeouts and underlining.]

Rule 3.602 Arbitration

(A) [Unchanged.]

(B) Proceedings to Compel or to Stay Arbitration.

- (1) ~~In a pending action an application to the court for an order~~ A request for an order to compel or to stay arbitration or for another order under this rule must be by motion, which shall be heard in the manner and on the notice provided by these rules for motions. An initial application for an order under this rule, other than in a pending action, must be made by filing a complaint as in other civil actions. ~~If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions.~~

- (2) On ~~application~~motion of a party showing an agreement to arbitrate that conforms to the arbitration statute, and the opposing party's refusal to arbitrate, the court may order the parties to proceed with arbitration and to take other steps necessary to carry out the arbitration agreement and the arbitration statute. If the opposing party denies the existence of an agreement to arbitrate, the court shall summarily determine the issues and may order arbitration or deny the ~~application~~motion.
- (3) On ~~application~~motion, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. If there is a substantial and good-faith dispute, the court shall summarily try the issue and may enter a stay or direct the parties to proceed to arbitration.
- (4) An ~~application~~motion to compel arbitration may not be denied on the ground that the claim sought to be arbitrated lacks merit or is not filed in good faith, or because fault or grounds for the claim have not been shown.
- (C) Action Involving Issues Subject to Arbitration; Stay. Subject to MCR 3.310(E), an action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or an ~~application~~motion for such an order has been made under this rule. If the issue subject to arbitration is severable, the stay may be limited to that issue. If an ~~application~~motion for an order compelling arbitration is made in the action or proceeding in which the issue is raised, an order for arbitration must include a stay.

(D)-(I)[Unchanged.]

(J) Vacating Award.

(1) A request for an order to vacate an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to vacate an arbitration award must be filed no later than 21 days after the date of the arbitration award.

(+2) On ~~application~~motion of a party, the court shall vacate an award if:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

- (c) the arbitrator exceeded his or her powers; or
- (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

- (23) ~~An application~~ motion to vacate an award must be ~~made~~ filed within ~~21~~ 91 days after ~~delivery of a copy~~ the date of the award ~~to the applicant~~, except that if it is predicated on corruption, fraud, or other undue means, it must be ~~made~~ filed within 21 days after the grounds are known or should have been known.
- (34) In vacating the award, the court may order a rehearing before a new arbitrator chosen as provided in the agreement, or, if there is no such provision, by the court. If the award is vacated on grounds stated in subrule (J)(1)(c) or (d), the court may order a rehearing before the arbitrator who made the award. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.
- (45) If the ~~application~~ motion to vacate is denied and there is no motion to modify or correct the award pending, the court shall confirm the award.

(K) Modification or Correction of Award.

- (1) A request for an order to modify or correct an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to correct or modify an arbitration award must be filed no later than 21 days after the date of the arbitration award.
- (12) On ~~application~~ made motion of a party filed within ~~21~~ 91 days after ~~delivery of a copy of the date of the award to the applicant~~, the court shall modify or correct the award if:

- (a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;
 - (b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or
 - (c) the award is imperfect in a matter of form, not affecting the merits of the controversy.
- (23) If the ~~application~~-motion is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.
- (34) An ~~application~~-motion to modify or correct an award may be joined in the alternative with an ~~application~~-motion to vacate the award.

(L)-(N)[Unchanged.]

Staff Comment: The proposed amendments from the State Bar of Michigan contain two material revisions. First, the proposed changes eliminate the term “application,” and substitute the word “motion” or “complaint,” depending on whether there is a pending action. “Application” is not a defined term within the Michigan Court Rules or in the Michigan arbitration act, MCL 600.5001-600.5035.

Second, the proposed revision clarifies that a complaint to stay or compel arbitration, or to vacate, modify, or correct an award must first be filed, and then a motion, consistent with the spirit of MCR 3.602(B)(1), must be filed. The amendment also sets timing deadlines consistent with the time frame allowed under the federal arbitration act, 9 USC 1 *et seq.* Under the proposal, a motion to vacate, modify, or correct an award would have to be filed within 91 days (except for claims that an award is based on corruption, fraud, or other undue means, in which case the current 21-day filing period after the grounds were known or should have been known would apply). Three months is the period allowed under the federal arbitration act for a party to bring a motion to vacate, modify, or correct an arbitration award. The proponents assert that the three-month period under the federal act and the 21-day period in MCR 3.602(J)-(K) create confusion with regard to the applicable period in cases that may start as state actions but eventually be removed to federal court on petition of one of the parties.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-31. Your comment and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 27, 2007

Corbin R. Davis

Clerk