

Order

Michigan Supreme Court
Lansing, Michigan

April 27, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2005-32

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Proposed Amendments of
Rules 2.101, 2.102, 2.113,
2.603, 3.101, and 8.119
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.101, 2.102, 2.113, 2.603, 3.101, and 8.119 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 proposed amendments or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted 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.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.101. Form and Commencement of Action.

- (A) [Unchanged.]
- (B) Commencement of Action. A civil action is commenced by filing a complaint with a court. Every civil complaint must be accompanied by a summons form approved by the state court administrator pursuant to the requirements of MCR 2.102(B). The clerk of the court shall review the summons and attached complaint in accordance with MCR 2.102(A).

Rule 2.102. Summons; Expiration of Summons; Dismissal of Action for Failure to Serve.

- (A) Issuance. On the filing of a complaint, the clerk of the court ~~clerk~~ shall issue a summons to be served as provided in MCR 2.103 and 2.105 if the summons form

and complaint completed by the plaintiff complies with the requirements of subrule (B) and MCR 8.119(C)(1). If the summons form and complaint completed by the plaintiff does not comply with subrule (B) and MCR 8.119(C)(1), the clerk of the court shall proceed in accordance with MCR 8.119(C)(2). A separate summons may issue against a particular defendant or group of defendants. A duplicate summons may be issued from time to time and is as valid as the original summons.

(B) Summons Form.

(1) Summons. A summons must be issued “In the name of the people of the State of Michigan,”; under the seal of the court that issued it. It must be directed to the defendant, and include

~~(1)~~(a) the name and address of the court,

~~(2)~~(b) the names of the parties,

~~(3)~~(c) the file number,

~~(4)~~(d) the name and address of the plaintiff’s attorney or the address of a plaintiff appearing without an attorney,

~~(5)~~(e) the defendant’s address, if known,

~~(6)~~(f) the name of the court clerk,

~~(7)~~(g) the date on which the summons was issued,

~~(8)~~(h) the last date on which the summons is valid,

~~(9)~~(i) a statement that the summons is invalid unless served on or before the last date on which it is valid,

~~(10)~~(j) the time within which the defendant is required to answer or take other action, and

~~(11)~~(k) a notice that if the defendant fails to answer or take other action within the time allowed, judgment may be entered against the defendant for the relief demanded in the complaint.

(2) Plaintiff’s Statements. The attorney for the plaintiff, or a plaintiff appearing without an attorney, must include on the summons form

- (a) either of the following statements:
- (i) There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint, or
 - (ii) A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in [this court]/[_____ Court], where it was given Docket Number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.
- (b) the following information for determining venue:
- (i) the plaintiff's residence,
 - (ii) the defendant's residence, and
 - (iii) the place of the transaction or occurrence alleged in the complaint.

(C)–(G)[Unchanged.]

Rule 2.113. Form of Pleadings and Other Papers.

(A)-(B)[Unchanged.]

(C) Captions.

- (1) The first part of every pleading must contain a caption stating
 - (a) the name of the court;
 - (b) the names of the parties or the title of the action, subject to subrule (D);
 - (c) the case number, including a prefix of the year filed and a two-letter suffix for the case-type code from a list provided by the ~~S~~state ~~C~~court ~~A~~administrator pursuant to MCR 8.117 according to the principal subject matter of the proceeding;
 - (d) the identification of the pleading (see MCR 2.110[A]);

- (e) the name, business address, telephone number, and state bar number of the pleading attorney;
 - (f) the name, address, and telephone number of a pleading party appearing without an attorney; and
 - (g) the name and state bar number of each other attorney who has appeared in the action.
- (2) ~~The caption of a complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney:~~
- (a) ~~There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.~~
 - (b) ~~A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in [this court]/[_____ Court], where it was given docket number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.~~
- (3) If an action has been assigned to a particular judge in a multijudge court, the name of that judge must be included in the caption of a pleading later filed with the court.

(D)-(G)[Unchanged.]

Rule 2.603. Default and Default Judgment.

(A) Entry of Default; Notice; Effect.

- (1) If a party against whom a judgment for affirmative relief is sought has been served with the summons and complaint in accordance with these rules and has failed to plead or otherwise defend as provided by these rules, and that fact is those facts are made to appear by affidavit or otherwise, the clerk must enter the default of that party if the requirements of MCR 8.119(D)(1) are met. A request for entry of a default as to the amount due must be supported by affidavit and filed on a form approved by the state court administrator. If the default is entered, the clerk shall proceed in accordance with subrule (B)(2).

(2)-(3) [Unchanged.]

(B) Default Judgment.

(1) [Unchanged.]

(2) Default Judgment Entered by Clerk. Upon entry of a default as to an amount due pursuant to subrule (A)(1) ~~On request of the plaintiff supported by an affidavit as to the amount due,~~ the clerk may sign and enter ~~athe~~ default judgment for that amount and costs against the defendant, if

- (a) the plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain;
- (b) the default was entered because the defendant failed to appear; ~~and~~
- (c) the defaulted defendant is not an infant or incompetent person;
- (d) the amount stated in the affidavit is not greater than the amount stated in the complaint;
- (e) the amounts (which may include damages, fees, and costs) stated in the default judgment appear to be correct; and
- (f) there are no orders or other actions precluding entry.

If the affidavit, default, and default judgment form is not completed in compliance with the above requirements, the clerk of the court shall proceed in accordance with MCR 8.119(D)(3).

(3)-(4)[Unchanged.]

(C)-(E)[Unchanged.]

Rule 3.101. Garnishment After Judgment.

(A)-(B)[Unchanged.]

(C) Forms. The state court administrator shall publish approved forms for use in garnishment proceedings. Separate forms shall be used for periodic, ~~and~~ nonperiodic, and income tax garnishments. Each form used in a garnishment proceeding may only name a single defendant.

- (1) The verified statement, and writ, and disclosure filed in garnishment proceedings must be substantially in the form approved by the state court administrator. The caption of the form must include the
- (a) defendant's name and address and,
 - (b) if known, the social security number, employee identification number, federal tax identification number, employer number, or account number, except that the social security number and account number shall not appear on the original or the proof of service copy filed with the court, but shall only appear on the plaintiff, defendant, and garnishee copies.
- (2) The disclosure filed in garnishment proceedings must be substantially in the form approved by the state court administrator. The disclosure filed with the court shall not contain the social security number or account number.
- (D) Request for and Issuance of Writ.
- (1) Requests for writs must be accompanied by a separate filing fee for each request.
- (2) ~~The clerk of the court that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, ~~complies~~ The request shall be made and filed by the plaintiff, or someone on the plaintiff's behalf, shall comply with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement shall be verified in the manner provided in MCR 2.114(A)(B) stating:~~
- ~~(1)~~(a) that a judgment has been entered against the defendant and remains unsatisfied;
 - ~~(2)~~(b) the amount of the judgment; the total amount of the postjudgment interest accrued to date; the total amount of the postjudgment costs accrued to date; the total amount of the postjudgment payments made to date, and the amount of the unsatisfied judgment now due (including interest and costs);
 - ~~(3)~~(c) that the person signing the verified statement knows or has good reason to believe that

~~(a)~~(i) a named person has control of property belonging to the defendant,

~~(b)~~(ii) a named person is indebted to the defendant, or

~~(c)~~(iii) a named person is obligated to make periodic payments to the defendant.

(3) The clerk of the court that entered the judgment shall accept the request for filing if it has been completed in accordance with subrule (D)(2) and MCR 8.119(C)(1). If the request does not comply with these provisions, the clerk shall proceed in accordance with MCR 8.119(C)(2).

(4) If the clerk accepts the request for filing, before issuing the writ, the clerk shall determine that:

(a) the request and writ form is completed in compliance with subrule (C),

(b) the request complies with the requirements of MCR 8.119(D)(1),

(c) a judgment has been entered for the plaintiff in the case,

(d) the judgment remains unsatisfied,

(e) the judgment has not expired,

(f) the amounts stated in the request appear to be correct, and

(g) there are no orders or other actions precluding issuance of a writ.

If the request does not comply with these requirements, the clerk of the court shall proceed in accordance with MCR 8.119(D)(3).

(E) Writ of Garnishment.

~~(1) The writ of garnishment must have attached or must include a copy of the verified statement requesting issuance of the writ, and must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.~~

~~(2)-(6)~~(1)-(5)[Renumbered, but otherwise unchanged.]

(F)-(T)[Unchanged.]

Rule 8.119. Court Records and Reports; Duties of Clerks.

(A) Applicability. This rule applies to all actions in every trial court except that subrule ~~(D)~~E(1) does not apply to civil infractions.

(B) [Unchanged.]

(C) Filing of ~~Papers~~Documents. ~~The clerk of the court shall endorse on the first page of every document the date on which it is filed.~~ PapersDocuments filed with the clerk of the court must comply with Michigan Court Rules and Michigan Supreme Court records standards.

(1) Minimum Filing Requirements. The clerk of the court may reject papers which do not conform to MCR 2.113(C)(1) and MCR 5.113(A)(1). Before accepting a document for filing, the clerk of the court shall determine that the document complies with the following minimum filing requirements:

(a) standards prescribed by MCR 1.109,

(b) legibility and language as prescribed by MCR 2.113(B) and MCR 5.113(A),

(c) captioning prescribed by MCR 2.113(C)(1) and MCR 5.113(A)(1),

(d) signature prescribed by MCR 2.114(C) and MCR 5.114(A),

(e) the filing fee is paid at the time of filing, unless waived or suspended by court order,

(f) documents are filed in the court of proper jurisdiction, and

(g) if applicable, proof of service is complete and verified in accordance with these court rules.

(2) Return of Documents. If the document does not comply with the minimum filing requirements in subrule (1), the clerk of the court shall reject the document for filing and promptly return it to the filing party, along with the filing fee, if any. The document shall be accompanied by a notice, substantially in the form approved by the state court administrator, that

states the reason for the return and, if applicable, the action the filing party may take to refile the document. The notice shall include the name and telephone number of the clerk who is returning the document and the date it is mailed. The court shall maintain a copy of each notice prepared under this subrule.

- (3) Filing Date. The clerk of the court shall endorse on the first page of every document the date on which it is received. The date of receipt is the filing date. If a document contains more than one date indicating receipt by the court, the latest date is the filing date.
 - (4) Submission to Judge. If the clerk of the court has other concerns with the accuracy of a document, it shall be submitted to the judge assigned to the case, the chief judge, or their designee judge for authorization to reject the pleading for filing and return of the document pursuant to subrule (2).
- (D) Documents Accepted for Filing; Clerk of the Court Review. The clerk of the court shall review documents that have been accepted for filing and take action in accordance with this subrule.
- (1) Review. The clerk of the court must determine that:
 - (a) the case number, petition number, and case caption on the document are accurate, and if not, the clerk may either correct any errors in that information when the correct information is adequately verified, or take action as required by subrule (2).
 - (b) any required notice to appear is accurate, and if not, the clerk must take action as required by subrule (2).
 - (c) the time for filing a document has been met, and if not, the clerk must take action as required by subrule (2).

The clerk of the court may not correct any other perceived errors.

- (2) Notification. The clerk shall promptly notify parties of the corrections made or of any action that must be taken by the parties to correct the errors. If the clerk returns a document for corrective action by a party, the document shall be accompanied by a notice substantially in the form approved by the state court administrator that states the reason for the return. The notice shall include the name and telephone number of the clerk who is returning the document and the date it is mailed. The court shall maintain a copy of each notice prepared under this subrule.

- (3) If the clerk of the court determines, after review, that an affidavit, default, and default judgment form does not comply with MCR 2.603(B)(2) or that a request for garnishment form does not comply with MCR 3.101(D)(4), the clerk shall not issue a default judgment or writ of garnishment, shall retain the filing fee, and shall either:
- (a) return the form to the filing party, accompanied by a notice substantially in the form approved by the state court administrator that states the reason for the return. The notice shall inform the party of the right to file a request for judicial review with no additional fee and that a new form may be filed along with the required filing fee. The notice shall include the name and telephone number of the clerk who is returning the document and the date it is mailed. The court shall maintain a copy of each notice prepared under this subrule.
 - (b) submit the document to the judge assigned to the case, the chief judge, or their designee judge for review.
- (4) If a party files a request for judicial review pursuant to subrule(3)(a) or a clerk submits a document for review pursuant to subrule (3)(b), upon review, the judge shall either allow the issuance of the default judgment or writ of garnishment or enter a written order stating the reasons for denying the issuance of a default judgment or writ of garnishment.

~~(D)~~(E)-~~(G)~~(H) [Relettered, but otherwise unchanged.]

Staff Comment: This proposal, recommended by a workgroup authorized by the Supreme Court, would establish specific rules for court clerks to screen documents that are submitted to a court for filing and return those documents that do not conform to certain minimum filing requirements.

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 August 1, 2010, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No.

2005-32. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.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.

April 27, 2010

Corbin R. Davis

Clerk