

# Order

Michigan Supreme Court  
Lansing, Michigan

July 8, 2009

Marilyn Kelly,  
Chief Justice

ADM File No. 2008-09

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

Proposed Amendment of Rules 3.210  
and 3.211 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 3.210 and 3.211 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 also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://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 3.210 Hearings and Trials

- (A) In General.
  - (1) Proofs or testimony may not be taken in an action for divorce or separate maintenance until the expiration of the time prescribed by the applicable statute, except as otherwise provided by this rule.
  - (2) In cases of unusual hardship or compelling necessity, the court may, upon motion and proper showing, take testimony and render judgment at any time 60 days after the filing of the complaint.
  - (3) Testimony may be taken conditionally at any time for the purpose of perpetuating it.

- (4) Testimony must be taken in person, except that the court may allow testimony to be taken by telephone or other electronically reliable means, in extraordinary circumstances.
  - (5) A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course because the case is uncontested. Proofs in support of a judgment of divorce, separate maintenance, or annulment must be taken in open court, except as otherwise provided by statute or court rule.
  - (6) Proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been submitted to the court. If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it.
- (B) Default Cases Uncontested Cases.
- (1) Default cases are governed by MCR 2.603. The procedure in this subrule governs uncontested cases for an action listed in MCR 3.201(A). A case is uncontested if:
    - (a) a party fails to answer the complaint;
    - (b) the parties settle the case before trial; or
    - (c) a party fails to appear for a scheduled trial.
  - (2) A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on the default of the defendant because of failure to appear at the hearing or by consent. Every case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule. Unless the parties consent to entry of the proposed judgment, the party seeking entry of a judgment must serve a copy of the proposed judgment and any other required orders and papers on all other parties, with a notice to them that the proposed judgment will be submitted to the court for signing if no written objections to its entry are filed with the court clerk within 14 days after service of the notice. The party must file with the court clerk a copy of the proposed judgment and proof of its service on the other parties. If a party objects to entry of the proposed judgment or if the proposed judgment is a judgment of divorce, separate maintenance, or annulment, the court must hold a hearing or trial before it enters the judgment.

- (3) ~~If a party is in default, proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court. The court may take proofs in a summary manner. The court may consider verified pleadings, exhibits, and other evidence, including, unless a party objects, evidence that otherwise would not be admissible, and may consider any uncontradicted factual allegations of the complaint as admitted.~~
- (4) ~~If the court determines that the proposed judgment is inappropriate, the party who prepared it must, within 14 days, present a modified judgment in conformity with the court's opinion. If the terms of a proposed judgment appear to the court to unfairly favor one party, the court may require the party who submitted the proposed judgment to provide evidence that the judgment is equitable. The court may also appoint a guardian ad litem to investigate whether a nonparticipating party has the mental and physical capacity to participate in the proceedings.~~
- (5) ~~If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it that the proposed judgment is inappropriate, the party who prepared it must, within 14 days, present a modified judgment that conforms with the court's opinion.~~

(C)-(D) [Unchanged.]

#### Rule 3.211 Judgments and Orders

(A)-(E) [Unchanged.]

(F) Entry of Judgment or Order

- (1) ~~Unless the court has granted an extension, Within 21 within 14 days after the court renders an opinion following a hearing or trial, or after the settlement agreement is placed on the record, the moving party must submit a judgment, order, or a motion to settle the judgment or order, ~~unless the court has granted an extension.~~~~
- (2) ~~Unless the parties consent to entry of the judgment, the court may not enter a judgment in an uncontested case under MCR 3.210(B) unless the party seeking entry of the proposed judgment has served a copy of the proposed judgment and any other documents required to be served under this rule on all other parties at least 14 days before the judgment is presented to the court for entry. If no objection to the proposed judgment has been filed, the~~

parties consent to entry of the proposed judgment, or the court holds a trial or hearing, and the court is satisfied with the proposed judgment, the court may enter the judgment.

(2-53-6)[Renumbered, but otherwise unchanged.]

(7) A nonmilitary affidavit required by law must be filed before a judgment is entered in an action in which a party has failed to appear.

(G) [Unchanged.]

(H) Service of Judgment or Order.

(1) When a judgment or order is obtained for temporary or permanent spousal support, child support, or separate maintenance, the prevailing party must immediately deliver one copy to the court clerk. The court clerk must ~~write or stamp "true copy" on file~~ the order or judgment ~~and file it~~ with the friend of the court.

(2) The party securing entry of a judgment or order ~~that provides for child support or spousal support~~ must serve a copy ~~on the party ordered to pay the support, as provided in MCR 2.602(D)(1), even if that party is in default.~~ on all other parties within 7 days after entry, and file a proof of service with the court clerk.

(3) [Unchanged.]

CORRIGAN, J. (*concurring*): While I generally agree with the Court's decision to publish this proposed amendment of MCR 3.210 for comment, I have three concerns about the proposal.

First, I do not think the case has been made, apart from the child support context, for relaxing the rules of evidence in domestic relations cases. Proposed MCR 3.210(B)(3) would allow trial courts to "consider verified pleadings, exhibits, and other evidence, including evidence that would not otherwise be admissible, and may consider any uncontradicted factual allegations of the complaint as admitted." I support the relaxation of the rules of evidence with respect to entry of child support orders. According to the Michigan Office of Child Support, there were 934,075 open cases in the Michigan child support system, 754,301 with court orders, as of the second quarter of fiscal year 2009. Neither the State Court Administrative Office nor local courts track the numbers of support orders that arise from default judgments. Courts currently impute income to obligors on the basis of local policy or accept default amounts when an obligor fails to appear in court or answer pleadings. There is no uniform statewide practice. The

proposed amendment would allow trial courts to consider evidence that would not normally be admissible, such as notes from interviews with the parties, statements from employers, and income forms the parties have filled out. This would allow the court to more accurately determine income. Outside the child support context, however, the case has not been made for relaxing the rules of evidence. I would ask the Michigan Judges Association to explain the need for this change.

Second, I question the inclusion in proposed MCR 3.210(B)(4) of a provision that would allow the trial court to “appoint a guardian ad litem to investigate whether a nonparticipating party has the mental and physical capacity to participate in the proceedings.” The Michigan Judges Association has not addressed why this provision is needed. Moreover, it is not clear who would pay the cost of a guardian ad litem appointed under this provision.

Third, proposed MCR 3.210(A)(6)—like current MCR 3.210(B)(5)—requires the court to “direct that the judgment fee be returned to the person who deposited it” if the court decides not to enter the judgment. The obligation to refund fees imposes an unnecessary burden on courts. This issue warrants legislative attention because the court rule stems from MCL 600.2529(d),<sup>1</sup> which imposes a fee for the entry of a judgment in a domestic relations case but does not address what is to be done with the fee if the court decides not to enter the judgment. The Legislature should consider requiring a standard fee upfront, rather than a specific domestic relations judgment fee.

MARKMAN and YOUNG, JJ., concur with CORRIGAN, J.

Staff Comment: This proposal, submitted by the Michigan Judges Association, is intended to clarify and simplify the procedures courts use to grant judgments in domestic relations cases.

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

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<sup>1</sup> MCL 600.2529(d) provides:

Before entry of a final judgment or order in an action in which the custody, support, or parenting time of minor children is determined or modified, the party submitting the judgment or order shall pay 1 of the following fees, which shall be deposited by the county treasurer as provided in [MCL 600. 2530]:

(i) In an action in which the custody or parenting time of minor children is determined, \$80.00.

(ii) In an action in which the support of minor children is determined or modified, \$40.00. This fee does not apply when a fee is paid under subparagraph (i). The court may order a party to reimburse to the other party all or a portion of the fee paid by that other party.

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 November 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2008-09. Your comments and the comments of others will be posted at the following address: [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://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.

July 8, 2009

*Corbin R. Davis*

Clerk