

MICHIGAN SUPREME COURT



Office of Public Information

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COURTS' INVOLVEMENT IN PLEA DEAL DISCUSSIONS WOULD BE BARRED UNDER PROPOSED COURT RULE; SUPREME COURT TO HEAR COMMENTS ON PROPOSAL DURING SEPTEMBER 24 PUBLIC HEARING

Ability of defendants to withdraw guilty pleas also addressed in proposed changes

LANSING, MI, September 19, 2008 – Judges could not get involved in plea deal negotiations in criminal cases under a proposed court rule change on the agenda for the Michigan Supreme Court's Sept. 24 public hearing in Lansing.

Another part of the proposal provides that a defendant who pleads guilty as part of a plea bargain may withdraw the plea later if the judge rejects the sentence that the prosecutor and defendant agreed to as part of the bargain. In cases where the plea deal involves a prosecutor's sentence recommendation – rather than an agreement between the parties – the judge must explain to the defendant that the judge is not bound by the prosecutor's recommendation. A staff comment to the proposal states that the proposed changes are consistent with federal court rules, "which preclude judicial involvement in negotiating plea agreements and limit the ability of defendants to withdraw guilty pleas." ([ADM 2006-16](#))

Also on the Sept. 24 agenda are proposed rules concerning discovery of electronically stored information in civil cases ([ADM 2007-24](#)). A party to litigation would be required to preserve electronically stored information if the party knows or reasonably should know that the information "may lead to the discovery of admissible evidence." Companion changes would update other civil discovery rules to provide for the exchange of electronically stored information between parties; the proposed revisions are consistent with federal court rules, a staff comment to the proposal notes.

Other items on the Court's public hearing agenda would, if adopted:

- Clarify that, where a trial court denies a motion for summary disposition under MCR 2.116(C)(7) or MCR 2.116(C)(10) based on a claim of governmental immunity, the party that asserted the claim may appeal by right to the Michigan Court of Appeals. ([ADM 2006-09](#))
- Retain a recent revision to juvenile proceeding rules that increases the maximum penalty for criminal contempt of court from 30 days to 90 days in jail. The change, which was adopted to conform to a 2007 statutory amendment, applies to juveniles who were 17 years of age or older at the time of the contempt. ([ADM 2008-19](#))
- Allow a trial court to impose a requirement for electronic service of "any required notice or document" on a party, "unless the party or the party's attorney has notified the court in writing that he or she elects for good cause [such as not having ready access to a fax machine or e-mail] not to receive service in such a manner." ([ADM 2007-30](#))

- Establish a procedure in juvenile proceedings, similar to other types of proceedings that require parties to retrieve exhibits at the conclusion of the trial or hearing. If the parties do not retrieve the exhibits within 56 days, the court may destroy the exhibits. The rule also clarifies that exhibits defined as confidential under MCR 3.903 must be maintained “in a confidential manner,” regardless if they were admitted as exhibits. [\(ADM 2007-28\)](#)
- Require courts in juvenile proceedings to keep in a confidential file a proof of service that gives the name or location of a foster parent, preadoptive parent, or relative caregiver. The change would “clarify that information regarding the identity or location of a foster parent, preadoptive parent, or relative caregiver is part of the confidential file,” according to the staff comment. [\(ADM 2008-22\)](#)
- Clarify that service of process on a defendant in a landlord-tenant proceeding for a money claim must be made according to Michigan Court Rule 2.105; “otherwise, if the defendant does not appear or file an answer to the complaint, a money claim must be dismissed without prejudice, or adjourned until service of process is complete,” the staff comment states. [\(ADM 2007-31\)](#)
- Increase application fees for the bar examination from \$300 to \$340 beginning with the exam scheduled for February 2009; the fee for reexamination would be raised from \$200 to \$240. The Board of Law Examiners is changing its policy to grade essay answers on all exams, regardless of the applicant’s score on the Multistate Bar Examination, and the increased fees would cover those additional grading expenses. [\(ADM 2008-20\)](#)

These and other proposed or recently-adopted court rules may be viewed at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/#proposed>.

The hearing will start at 9:30 a.m. in the Supreme Court courtroom on the 6th floor of the Michigan Hall of Justice; the hearing will adjourn no later than 11:30 a.m.

The Court regularly holds hearings as part of its public comment process for proposed court rules and other administrative matters, and invites members of the public to share their views on agenda items. Those wishing to speak at the hearing should contact the Clerk of the Court at P.O. Box 30052, Lansing, Michigan 48909 or by e-mail at MSC_clerk@courts.mi.gov, no later than **Monday, Sept. 22**, and should reference the ADM file number for the items on which they wish to address the Court. Speakers will have three minutes each to present their views; Supreme Court Justices may ask questions of the speakers.

A schedule of the Court’s public hearing is available online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm>.

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