

MICHIGAN SUPREME COURT



Office of Public Information

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REQUIREMENT FOR PROSECUTORS TO PROVIDE EXCULPATORY EVIDENCE TO DEFENDANTS IN CRIMINAL CASES IS FOCUS OF PROPOSED COURT RULE; MICHIGAN SUPREME COURT TO HOLD MAY 21 PUBLIC HEARING ON POSSIBLE REVISION, OTHER PROPOSALS

LANSING, MI, May 16, 2008 – A proposed court rule change stating that prosecutors “must provide” exculpatory evidence regardless of whether the defendant requests it is on the agenda for a May 21 public hearing before the Michigan Supreme Court.

MCR 6.201 currently reads, “Upon request, the prosecuting attorney must provide each defendant ... any exculpatory information or evidence known to the prosecuting attorney” The proposed revision (**ADM 2007-38**) would eliminate the words “upon request.” A staff comment states that “This proposal ... clarifies that the prosecuting attorney is required to provide such information or evidence regardless of whether it is requested by the defendant.” Opponents of the rule change argue that attorney ethics rules already obligate prosecutors to share exculpatory evidence with the defense, and that the proposed rule does not define “exculpatory evidence” in keeping with U.S. Supreme Court precedent.

Another agenda item is a proposed amendment to MCR 2.504 (**ADM 2006-32**). The current rule allows a court to dismiss an action – on a defendant’s motion – if a plaintiff fails to comply with the court rules or a court order. The proposed change would allow any party to move for dismissal or default. In addition, the proposal would allow a judge, on his or her own motion, to enter a default against, or dismiss the action or claim of, a party who fails to comply with court rules or a court order. The proposal would also allow a judge to dismiss an action – without a motion from a party – if the judge finds, after the plaintiff presents the case, that the plaintiff has shown no right to relief on the law and the facts. Under the current rule, only the defendant can make such a motion. The proposal’s supporters include the Michigan Judges Association and the Michigan District Judges Association; the State Bar of Michigan opposes the change.

Also on the public hearing agenda is a recent change to MCR 5.125, which defines “interested persons” who are entitled to notice in petitions for the appointment of a guardian for an alleged incapacitated person. On January 8, 2008, the Court adopted an amendment (**ADM 2007-27**) of MCR 5.125(C)(22)(d), which formerly provided that persons entitled to notice included the parents of the alleged incapacitated individual – but not if the individual had adult children. The change, according to a staff comment, makes clear “that parents are interested persons entitled to notice in a petition for the appointment of a guardian of an alleged

incapacitated individual, regardless of whether the ... individual has living adult children.” The Court will consider whether to retain the amendment, which the Court adopted to conform the court rule to a provision in the Estates and Protected Individuals Code (MCL 700.5311).

These matters, other items on the May 21 agenda (see below) and other proposed and recently-adopted court rules are available on the Supreme Court’s web site 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 regarding any of the items on the agenda 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, May 19, 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; justices of the Court may have questions for speakers.

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

The May 21 agenda also includes proposals that would:

- Amend MCR 2.614, 7.101, 7.209, and 7.302 to automatically stay proceedings where a party seeks to appeal a trial court’s denial of the party’s governmental immunity claim. Under this proposed amendment, no order would be necessary for the stay to operate (**ADM 2006-11**).
- Require objections to be concise, nonargumentative, and nonsuggestive. Courts could sanction attorneys who fail to comply with the requirement. The proposed changes would be similar to federal court rules (**ADM 2007-09**).
- Allow out-of-state attorneys to be admitted to practice in Michigan temporarily, for no more than three cases in a year. Out-of-state lawyers admitted under this rule would pay a fee to support the State Bar’s Client Protection Fund and the state’s attorney discipline system (**ADM 2004-08**).
- Amend MCR 2.203 to replace the rule’s permissive counterclaim provision, which allows parties to bring a counterclaim, with a compulsory joinder requirement, similar to federal court rules (**ADM 2005-25**).
- Revise MCR 3.204 and MCR 3.212 to consolidate multiple actions involving more than one child of the same parents, so that support, custody, and parenting time issues can be addressed in a single action (**ADM 2006-04**).
- Clarify that a party who seeks to appeal to the Court of Appeals has 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed to file a claim of appeal or an application for leave to appeal, if the motion is filed within the initial 21-day appeal period. The proposal would also amend MCR

2.119 so that, for consistency, the time limit for filing a motion for rehearing or reconsideration under MCR 2.119(F)(1) would be increased from 14 to 21 days, and the phrase “or within further time the trial court may have allowed during that 21-day period” would be stricken from MCR 7.204(A)(1)(b) and 7.205(F)(3)(b) (**ADM 2005-36**).

- Require that, for a district court that serves two or more counties, jurors must be selected for district court attendance regardless of the county where the juror resides or the county where the case arose (**ADM 2007-21**).
- Mandate that all parties to a Judicial Tenure Commission proceeding exchange materials that they intend to introduce at a public hearing in the case, and give notice of any supplemental material at least 10 days before the hearing. The current rule places the disclosure requirement on the JTC only, not on the respondent judge (**ADM 2007-36**).
- Amend MCR 2.603 to require that only negotiable instruments be filed with the clerk for cancellation when applying for a default judgment (**ADM 2006-10**).

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