Order

Michigan Supreme Court
Lansing, Michigan

December 14, 2005

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2003-04

Amendment of Rules 6.001,
6.006, 6.302, and 6.425
of the Michigan Court Rules

On order of the Court, upon reconsideration of the July 13, 2005, amendments of Rules 6.001, 6.006, 6.302, and 6.425 of the Michigan Court Rules, the Court adopts additional amendments of Rules 6.001, 6.006, 6.302, and 6.425 to provide technical corrections and clarity as recommended by the Committee on the Rules of Criminal Procedure and staff. The effective date of this amendment is January 1, 2006.

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

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.006, 6.102(D) and (F), 6.106, 6.125, 6.427, 6.445(A)-(G), and the rules in subchapters 6.600-6.800 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E)[Unchanged.]

Rule 6.006 Video and Audio Proceedings

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, arraignments on the information, pretrials conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic

determination of competency, and waivers and adjournments of preliminary examinations.

(B)-(D)[Unchanged.]

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A) [Unchanged.]

(B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:

(1)-(3)[Unchanged.]

~~The requirements of this section may be satisfied by a writing on a form approved by the State Court Administrator. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.~~

(4)-(5)[Unchanged.]

The requirements of subrules (B)(3) and (B)(5) may be satisfied by a writing on a form approved by the State Court Administrative Office. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(C)-(F)[Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(E)[Unchanged.]

(F) Advice Concerning the Right to Appeal; Appointment of Counsel.

(1) [Unchanged.]

(2) [Unchanged.]

(a) [Unchanged.]

(b) if the defendant is financially unable to retain a lawyer, the ~~defendant may request appointment of~~ court will appoint a lawyer to represent the defendant on appeal, and

(c) [Unchanged.]

(3)-(4)[Unchanged.]

(G) Appointment of Lawyer; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of Lawyer.

(a)-(b) [Unchanged.]

(c) In a case involving a conviction following a plea of guilty or nolo contendere, if the defendant is indigent, the court ~~should liberally grant the request if it~~ must enter an order appointing a lawyer if the request is filed within 42 days after sentencing.

(d) [Unchanged.]

(2)-(3)[Unchanged.]

Staff Comment: The amendment of MCR 6.001 corrects a drafting error in the Court's order of July 13, 2005.

On July 13, 2005, the Court issued an order adding MCR 6.006(A) as recommended by the Committee on the Rules of Criminal Procedure. The amendment of MCR 6.006(A) clarifies the Court's order of July 13, 2005, that the rule is also applicable if the defendant is in the courtroom. The amendment also makes the language of the rule consistent with other rules.

The amendment of MCR 6.302(B) was recommended by the Committee on the Rules of Criminal Procedure after the Court issued its order of July 13, 2005. It clarifies that, in addition to the trial rights the defendant gives up if the plea is accepted, the defendant may also be advised in writing that any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right.

The amendment of MCR 6.425 was made to more accurately reflect the holding of the United States Supreme Court in *Halbert v Michigan*, 545 US ___; 205 WL 1469183 (June 23, 2005).

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

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.

December 14, 2005

Corbin R. Davis

Clerk