

Order

Michigan Supreme Court
Lansing, Michigan

September 11, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2020-08

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Amendments of Rules 3.904
and 6.425 of the Michigan
Court Rules

By order dated July 26, 2021, the Court adopted and simultaneously published for comment amendments of many rules, including Rules 3.904 and 6.425 of the Michigan Court Rules. On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the 2021 amendments are permanently incorporated into these two rules as reflected by the following further amendments of Rules 3.904 and 6.425 of the Michigan Court Rules, which are adopted, effective January 1, 2025.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 3.904 Use of Videoconferencing Technology

- (A) Delinquency, Designated, and Personal Protection Violation Proceedings. Courts may use videoconferencing technology in delinquency, designated, and personal protection violation proceedings as follows.
- (1) Preliminary Hearing, Preliminary Examination, Dispositional Hearing, and Postdispositional Progress Review~~Juvenile in the Courtroom or at a Separate Location.~~ Courts may use v~~Videoconferencing technology may be used between a courtroom and a facility~~ when conducting preliminary hearings under MCR 3.935(A)(1), preliminary examinations under MCR 3.953 and MCR 3.985, dispositional hearings, and postdispositional progress reviews;~~and dispositional hearings where the court does not order a more restrictive placement or more restrictive treatment.~~
 - (2) ~~Juvenile in the Courtroom~~ Other Proceedings. Except as otherwise provided in this rule, as long as the juvenile is either present in the courtroom or has waived the right to be present, on motion of either party showing good cause, the court may use videoconferencing technology to take testimony from an expert witness or a person at another location in any delinquency, designated, or personal protection violation proceeding under this subchapter.

- (3) ~~Trial. At~~ If the proceeding is a trial, the court may use videoconferencing technology with the consent of the parties. A party who does not consent to the use of videoconferencing technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.
- (3) ~~Notwithstanding any other provision of this rule, until further order of the Court, courts may use two way videoconferencing technology or other remote participation tools where the court orders a more restrictive placement or more restrictive treatment.~~

(B)-(C) [Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(E) [Unchanged.]

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

- (1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that
- (a)-(b) [Unchanged.]
- (c) ~~the defendant must file the request for a lawyer must be filed within 42 days after entry of the judgment of sentence if the defendant wants to appeal by rightsentencing.~~
the defendant must file the request for a lawyer must be filed within 42 days after entry of the judgment of sentence if the defendant wants to appeal by rightsentencing.
- (2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that
- (a)-(b) [Unchanged.]
- (c) ~~the defendant must file the request for a lawyer must be filed within 6 months42 days after entry of the judgment of sentenceing.~~
the defendant must file the request for a lawyer must be filed within 6 months42 days after entry of the judgment of sentenceing.
- (3) The court also must give the defendant a request for counsel form containing ~~the applicable an instructions and deadlines under this ruleinforming the defendant that the form must be completed and filed within 42 days after sentencing if the defendant wants the court to appoint a lawyer.~~ The court must give the defendant an opportunity to tender a completed request for counsel form at sentencing if the defendant wishes to do so.

(4)-(5) [Unchanged.]

(G) Appointment of Lawyer and Preparation of Transcript; Scope of Appellate Lawyer's Responsibilities.

(1) Appointment of Lawyer and Preparation of Transcript.

(a)-(c) [Unchanged.]

(d) Within 7 days after receiving a proposed order from MAACS, the trial court must rule on the request for a lawyer. If the defendant is indigent, the court must enter an order appointing a lawyer if the request for a lawyer is filed within 6 months~~42 days~~ after entry of the judgment of sentence or, if applicable, within the time for filing an appeal of right. ~~The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal.~~ An order denying a request for the appointment of appellate counsel must include a statement of reasons and must inform the defendant that the order denying the request may be appealed by filing an application for leave to appeal in the Court of Appeals in accordance with MCR 7.205.

(e)-(g) [Unchanged.]

(2) [Unchanged.]

(H) ~~Notwithstanding any other provision in this rule, until further order of the Court, if the defendant is indigent, a request for the appointment of appellate counsel under MCR 6.425(F)(3) must be granted if it is received by the trial court or the Michigan Appellate Assigned Counsel System (MAACS) within six months after sentencing. This provision applies to all cases in which sentencing took place on or after March 24, 2020.~~

Staff Comment (ADM File No. 2020-08): The amendments of MCR 3.904 and 6.425 permanently incorporate the amendments adopted and simultaneously published for comment on July 26, 2021, with minor revisions for better organization and clarity. The amendment of MCR 3.904(A) expands the use of videoconferencing technology in certain juvenile proceedings to include proceedings where a more restrictive treatment is ordered. The amendment of MCR 6.425 requires the court to advise defendants of the applicable deadline for requesting appointment of appellate counsel and requires the court to accept a request if it is filed within six months after entry of the judgment of sentence or, if applicable, within the time for filing an appeal of right.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

VIVIANO, J., would decline to retain the amendments of MCR 3.904 and 6.425.



I, Larry S. Royster, 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.

September 11, 2024

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk