



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: June 12, 2019

TO: Circuit and District Court Judges
cc: Circuit and District Court Administrators
Prosecuting Attorneys Association of Michigan

FROM: Julia Norton, Collections Management Analyst

RE: ADM File No. 2017-17 Ordering and Amending Restitution

On May 22, 2019, the Michigan Supreme Court issued an order on [ADM File No. 2017-17](#) adopting court rule amendments that cover ordering and modifying restitution in misdemeanor and felony matters. The amendments to MCR 6.001, 6.006, 6.425, 6.427, and 6.610, and the addition of MCR 6.430 are effective September 1, 2019. The rules require that judgments of sentence include dollar amounts of restitution; permit motions to amend restitution at any time based upon new or updated information about injury, damages or loss; and require the prosecuting attorney to notify the victim of a hearing on a motion to amend restitution.

Judgments of Sentence

The amendments provide that the dollar amount of restitution must be ordered in the judgment of sentence. If there is a dispute about the amount or type of restitution, it shall be resolved by a preponderance of the evidence and it is the prosecuting attorney's burden to demonstrate the amount of the victim's loss as a result of the offense. The amendments do not provide that sentencing be adjourned if restitution is unknown at the time of sentencing.

If, despite diligent efforts, restitution is still unknown at the time of sentencing, the court should not delay sentencing or order restitution "to be determined". Instead, the court should order whatever amount has been established (which may be zero dollars) and inform the parties and victim(s) that they may come back at any time on a motion to amend the restitution order based upon new or updated information, as provided in MCR 6.430.

Motion to Amend Restitution

A motion to amend restitution under MCR 6.430 provides that the prosecuting attorney, the victim, or the defendant may file a motion to amend restitution when there is new or updated information about the injury, damages, or loss for which restitution was ordered. There is no time limit when a motion to amend restitution must be filed.

The moving party is required to file the motion and a copy with the clerk of the court where the defendant was convicted and sentenced; the motion is filed under the same case number as the criminal case. If an appeal is pending when the motion is filed, the moving party must serve a copy of the motion on the appellate court.

MCR 6.430(C) addresses service of the motion to amend restitution, which will vary depending on the moving party. If the defendant files the motion, he/she shall serve the prosecuting attorney, and the prosecutor serves the victim with the motion and notice of filing. If the prosecutor is the moving party, he/she shall serve the defendant and the victim with the motion and notice of filing. If the victim is the moving party, he/she shall serve the defendant and prosecutor with the motion and notice of filing. If a victim's home address, phone number, work address, or work phone number are included on the motion, that information is nonpublic. The non-moving party may respond to the motion, but is not required to do so. MCR 2.119(C)(2) governs any response to the motion.

The court is required to provide notice of the hearing on the motion to amend restitution to the defendant and prosecutor. The prosecutor is required to serve notice of the hearing upon the victim. MCR 6.430(D) permits the court to allow the defendant to appear by video.

After the hearing, the court shall enter an order in writing disposing of the motion and, if the motion is granted, enter an order amending restitution. If an appeal was pending when the motion was filed, the moving party must provide a copy of the order to the appellate court.

These rules are effective September 1, 2019. If you have any questions, please contact Julia Norton at trialcourtservices@courts.mi.gov or (517) 373-8995.