



Prosecuting Attorneys Association of Michigan

116 W. Ottawa Street – Suite 200
Lansing, Michigan 48913
(517) 334-5050 – Fax (517) 334-6351
www.michiganprosecutor.org

2018 - 2019 OFFICERS

President
D. J. Hilson
Muskegon

President-Elect
William J. Vaillencourt
Livingston

Vice President
Matthew J. Wiese
Marquette

Secretary-Treasurer
Douglas R. Lloyd
Eaton

**Immediate Past
President**
Melissa A. Powell
Iron

BOARD OF DIRECTORS Elected Directors

Michael J. Bedford
Van Buren

K. Edward Black
Alpena

J. Dee Brooks
Midland

Jeffrey S. Getting
Kalamazoo

Joseph T. Hubbell
Leelanau

Jerard M. Jarzynka
Jackson

Andrea S. Krause
Montcalm

James L. Rossiter
Antrim

Timothy J. Rutkowski
Huron

Eric J. Smith
Macomb

Paul R. Spaniola
Mason

Thomas J. Weichel
Alcona

Active Past Presidents

Victor A. Fitz
Cass

Ronald J. Frantz
Ottawa

David S. Leyton
Genesee

Brian L. Mackie
Washtenaw

Mark E. Reene
Tuscola

Charles D. Sherman
Clinton

Michael D. Wendling
St. Clair

Kym L. Worthy
Wayne

Attorney General
Dana M. Nessel

NDAA Representative
David S. Leyton

March 1, 2019

Justices of the Michigan Supreme Court
Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2017-17
**Proposed Amendments of Rules 6.001, 6.006, 6.425, 6.610,
7.202 and 7.208 and Proposed Addition of Rule 6.430 of the
Michigan Court Rules**

Dear Justices,

The Prosecuting Attorneys Association of Michigan supports this Court's desire to make crime victims whole by ensuring that restitution is ordered as mandated by the Michigan Constitution and the Crime Victim Rights Act. Accordingly, we support most of the changes suggested by ADM File No. 2017-17, but request a few amendments to ensure protection of those rights as well as a process that is fair to both victims and defendants.

As proposed, MCR 6.430(A) currently provides:

The court may amend an order of restitution entered under this section on a motion filed by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.

The main concern with this section relates to the language requiring "new information". This phrase is not defined and could be interpreted to exclude updated information that is subsequently obtained. For example, if a victim sustains injuries requiring medical treatment, is billed for that treatment, but later receives a revised statement, it is unclear whether the latter would qualify as 'new information' under the current proposal. While we agree that there should not be a rehash of information and issues already known at the time the order was entered, the rule should permit amendment with information that was recently updated.

Accordingly, we propose the following language:

The court may amend an order of restitution entered under this section on a motion filed by the prosecuting attorney, the victim, or the defendant based upon new or updated information related to the injury, damages, or loss for which the restitution was ordered.

There is also concern regarding the procedure for victim notification and response to a Motion to Amend Restitution. The current proposal for MCR 6.430(C) provides:

Service and Notice of Hearing. If the defendant is the moving party, he/she shall serve a copy of the motion and notice of its filing on the prosecuting attorney and the prosecutor shall then serve a copy of the motion and notice upon the victim. If the prosecutor is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the victim. If the victim is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the prosecutor. The home address, home telephone number, work address, and work telephone number of the victim, if included on a motion to amend restitution, is nonpublic. Unless so ordered by the court, the filing and service of the motion does not require a response by the non-moving party. If the court orders the non-moving party to respond to the motion, the non-moving party shall comply with the time for service of the response as provided in MCR 2.119(C)(2). The court shall provide written notice of hearing on the motion to the defendant, prosecutor, and victim.

Here, prosecutors have two primary concerns. First, the rule should specifically permit response by either party as is typically allowed for other motions. Allowing just one party to present the issues to the court provides a very one-sided view. While an issue may seem very clear cut when presented from the perspective of one party, it may be very different when the other party is permitted to present his or her side. Accordingly, the parties should be permitted, but not required to file a response to a motion. This will allow clarification of the issues to be litigated in advance and may promote resolution of the issues by the parties, saving valuable court time.

Lastly, prosecutors often have the most current information regarding a victim's address. Thus, it makes sense for the prosecutor's office to notify the victim regarding any hearing date, rather than the court being required to do so.

Based on those concerns, we submit the following amendment:

Service and Notice of Hearing. If the defendant is the moving party, he/she shall serve a copy of the motion and notice of its filing on the prosecuting attorney and the prosecutor shall then serve a copy of the motion and notice upon the victim. If the prosecutor is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the victim. If the victim is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the prosecutor. The home address, home telephone number, work address, and work telephone number of the victim, if included on a motion to amend restitution, is nonpublic. The non-moving party is permitted but not required to respond. Unless so ordered by the court, the filing and service of the motion does not require a response by the non-moving party. If the court orders the non-moving party to respond Any response to the motion, ~~the non-moving party~~ shall comply with the time for service of the response as provided in MCR 2.119(C)(2). The court shall provide written notice of hearing on the motion to the defendant, and prosecutor, and victim. The prosecutor shall then serve notice of hearing upon the victim.

The amended language above protects the rights of the both the victim and defendant and ensures that the court is adequately informed of the issues prior to hearing. Accordingly, we request the court adopt the rules with the changes recommended above.

Thank you for your consideration.

Respectfully submitted,

Joseph Hubbell

Joseph Hubbell
Chair, PAAM Amicus and Court Rule Committee