

Order

Michigan Supreme Court
Lansing, Michigan

November 28, 2018

Stephen J. Markman,
Chief Justice

ADM File No. 2017-17

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

Proposed Amendments of Rules 6.001,
6.006, 6.425, 6.427, 6.610, 7.202, and
7.208 and Proposed Addition of Rule
6.430 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.001, 6.006, 6.425, 6.427, 6.610, 7.202, and 7.208 and a proposed addition of Rule 6.430 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rule and Statutes

- (A) [Unchanged.]
- (B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.202, 6.425(E)(3), 6.427, 6.430, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 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, probable cause conferences, arraignments on the information, pretrial 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, and hearings on postjudgment motions to amend restitution.

(B)-(D) [Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(D) [Unchanged.]

(E) Sentencing Procedure.

- (1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:

(a)-(e) [Unchanged.]

- (f) order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate.

(2) Resolution of Challenges.

- (a) If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(~~ia~~) correct or delete the challenged information in the report, whichever is appropriate, and

(~~ii~~) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

- (b) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The

burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.

(3) [Unchanged.]

(F)-(G) [Unchanged.]

Rule 6.427 Judgment

Within 7 days after sentencing, the court must date and sign a written judgment of sentence that includes:

(1)-(8) [Unchanged.]

(9) the conditions incident to the sentence; ~~and~~

(10) whether the conviction is reportable to the Secretary of State pursuant to statute, and, if so, the defendant's Michigan driver's license number; and

(11) the dollar amount of restitution that the defendant is ordered to pay.

If the defendant was found not guilty or for any other reason is entitled to be discharged, the court must enter judgment accordingly. The date a judgment is signed is its entry date.

Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

(F) Sentencing

(1) For sentencing, the court shall:

(a)-(c) [Unchanged.]

(d) order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate. Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss

sustained by a victim as a result of the offense shall be on the prosecuting attorney.

[New] Rule 6.430 Postjudgment Motion to Amend Restitution

- (A) 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.
- (B) Filing. The moving party must file the motion and a copy of the motion with the clerk of the court in which the defendant was convicted and sentenced. Upon receipt of a motion, the clerk shall file it under the same case number as the original conviction.
- (C) 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.
- (D) Appearance. As permitted by MCR 6.006(A), the court may allow the defendant to appear by two-way interactive video technology to conduct the proceeding between a courtroom and a prison, jail, or other location.
- (E) Ruling. The court, in writing, shall enter an appropriate order disposing of the motion and, if the motion is granted, enter an order amending the restitution.
- (F) Appeal. An appeal from this subsection is processed as provided by MCR 7.100 *et seq.*, and 7.200 *et seq.*

Rule 7.202 Definitions

For purposes of this subchapter:

(1)-(5) [Unchanged.]

(6) “final judgment” or “final order” means:

(a) [Unchanged.]

(b) In a criminal case,

(i)-(iii) [Unchanged.]

(iv) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; ~~or~~

(v) a sentence imposed following revocation of probation; or

(vi) an order amending restitution.

Rule 7.208 Authority of Court or Tribunal Appealed From

(A)-(F) [Unchanged.]

(G) Stays and Bonds; Motions to Amend Restitution. The trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders. The trial court retains authority over motions to amend restitution filed pursuant to MCR 6.430, unless restitution is included as an issue on appeal.

(H)-(J) [Unchanged.]

Staff Comment: The proposed amendments would more explicitly require restitution to be ordered at the time of sentencing as required by statute, and would

establish a procedure for modifying restitution amounts. This published version was based on an original submission from the State Appellate Defenders Office, but includes additional revisions and alternative language as well.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-17. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

November 28, 2018

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

Clerk