

# Order

Michigan Supreme Court  
Lansing, Michigan

September 18, 2013

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2011-19

Michael F. Cavanagh  
Stephen J. Markman

Amendments of Rule 6.302  
and Rule 6.310 of the  
Michigan Court Rules

Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

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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 following amendments of Rule 6.302 and Rule 6.310 of the Michigan Court Rules are adopted, effective January 1, 2014.

[The present language is amended as indicated below; underlining indicates new text and strikeover indicates text that has been deleted.]

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A)-(B)[Unchanged.]

(C) A Voluntary Plea.

- (1) The court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement. If they have made a plea agreement, which may include an agreement to a sentence to a specific term or within a specific range, the agreement must be stated on the record or reduced to writing and signed by the parties. The parties may memorialize their agreement on a form substantially approved by the SCAO. The written agreement shall be made part of the case file.
- (2) [Unchanged.]
- (3) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a ~~specific sentence disposition~~ sentence to a specified term or within a specified range or a prosecutorial sentence recommendation, the court may
  - (a) reject the agreement; or
  - (b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to ~~the sentence a~~ specified term or within a specified range as agreed to—~~or~~ ~~recommended by the prosecutor;~~ or

- (c) accept the agreement without having considered the presentence report; or
- (d) take the plea agreement under advisement.

If the court accepts the agreement without having considered the presentence report or takes the plea agreement under advisement, it must explain to the defendant that the court is not bound to follow ~~the sentence disposition~~ an agreement to a sentence for a specified term or within a specified range or a recommendation agreed to by the prosecutor, and that if the court chooses not to follow an agreement to a sentence for a specified term or within a specified rangeit, the defendant will be allowed to withdraw from the plea agreement. A judge's decision not to follow the sentence recommendation does not entitle the defendant to withdraw the defendant's plea.

(4) [Unchanged.]

(D)-(F) [Unchanged.]

#### Rule 6.310 Withdrawal or Vacation of Plea

(A) [Unchanged.]

(B) **Withdrawal After Acceptance but Before Sentence.** Except as provided in subsection (3), after ~~After~~ acceptance but before sentence,

(1) [Unchanged.]

(2) the defendant is entitled to withdraw the plea if

- (a) ~~the plea involves a prosecutorial sentence recommendation or an agreement for a specific sentence~~ for a specified term or within a specified range, and the court states that it is unable to follow the ~~agreement or recommendation~~; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or
- (b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

- (3) Except as allowed by the trial court for good cause, a defendant is not entitled to withdraw a plea under subsection (2)(a) or (2)(b) if the defendant commits misconduct after the plea is accepted but before sentencing. For purposes of this rule, misconduct is defined to include, but is not limited to: absconding or failing to appear for sentencing, violating terms of conditions on bond or the terms of any sentencing or plea agreement, or otherwise failing to comply with an order of the court pending sentencing.

(C)-(E) [Unchanged.]

*Staff Comment:* The amendments of MCR 6.302 and MCR 6.310 eliminate the ability of a defendant to withdraw a plea if the defendant and prosecutor agree that the prosecutor will recommend a particular sentence, but the court chooses to impose a sentence greater than that recommended by the prosecutor. Further, the amendment clarifies that a defendant's misconduct that occurs between the time the plea is accepted and the defendant's sentencing may result in a forfeiture of the defendant's right to withdraw a plea in either a *Cobbs* or *Killebrew* case. In addition, the amendments require that a plea agreement (which may include a sentence agreement) must be stated on the record or reduced to writing. A form developed to accommodate this writing is available on the Court's website. The amendments also include various technical changes to reflect that a sentence agreement includes a sentence for a specific term or a sentence within a specific range.

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

CAVANAGH, J., would decline to adopt and would close the file.



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 18, 2013

Clerk