

Order

Michigan Supreme Court
Lansing, Michigan

January 29, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-32

Michael F. Cavanagh
Stephen J. Markman

Proposed Amendments of Rule 3.210
of the Michigan Court Rules

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.210 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 also will 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 3.210 Hearings and Trials

(A) [Unchanged.]

(B) Default Cases.

- (1) ~~Default cases are governed by MCR 2.603.~~ This subrule applies to the entry of a default and a default judgment in all cases governed by this subchapter.
- (2) ~~A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on the default of the defendant because of failure to appear at the hearing or by consent. Every case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule.~~ Entry of Default.
 - (a) A party may request the entry of a default of another party for failure to plead or otherwise defend. Upon presentation of an affidavit by a party asserting facts setting forth proof of service and failure to plead or otherwise defend, the clerk must enter a default of the party.
 - (b) The party who requested entry of the default must provide prompt notice, as provided by MCR 3.203, to the defaulted party and all other parties and persons entitled to notice that the default has been entered, and file a proof of service.

- (c) Except as provided under subrule (B)(2)(d), after the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court under subrule (B)(3).
 - (d) The court may permit a party in default to participate in discovery as provided in Subchapter 2.300, file motions, and participate in court proceedings, referee hearings, mediations, arbitrations, and other alternative dispute resolution proceedings. The court may impose conditions or limitations on the defaulted party's participation.
 - (e) A party in default must be served with the notice of default and a copy of every paper later filed in the case as provided by MCR 3.203, and the person serving the notice or other paper must file a proof of service with the court.
- (3) ~~If a party is in default, proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court.~~Setting Aside Default. Except when grounded on lack of jurisdiction over the defendant or subject matter, a default may be set aside, before entry of the default judgment, upon verified motion of the defaulted party showing good cause.
- (4) ~~If the court determines that the proposed judgment is inappropriate, the party who prepared it must, within 14 days, present a modified judgment in conformity with the court's opinion.~~Notice of Hearing and Motion for Entry of Default Judgment.
- (a) A party moving for default judgment must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment upon the defaulted party at least 14 days before the hearing on entry of the default judgment, and promptly file a proof of service.
 - (b) Service under subrule (B)(4)(a) shall be made in the manner provided by MCR 3.203 or, as permitted by the court, in any manner reasonably calculated to give the defaulted party actual notice of the proceedings and an opportunity to be heard.
 - (c) If the default is entered for failure to appear for a scheduled trial or hearing, notice under this subrule is not required.
- (5) ~~If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it.~~Entry of

Default Judgment.

- (a) A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on the default of a party because of failure to appear at the hearing or by consent, and the case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule.
 - (b) Proofs for a default judgment may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court. Nonmilitary affidavits required by law must be filed before a default judgment is entered in cases in which the defendant has failed to appear. A default judgment may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator or other representative, except as otherwise provided by law.
 - (c) The moving party may be required to present evidence sufficient to satisfy the court that the terms of the proposed judgment are in accordance with law. The court may consider relevant and material affidavits, testimony, documents, exhibits, or other evidence.
 - (d) In cases involving minor children, the court may take testimony and receive or consider relevant and material affidavits, testimony, documents, exhibits, or other evidence, as necessary, to make findings concerning the award of custody, parenting time, and support of the children.
 - (e) If the court does not approve the proposed judgment, the party who prepared it must, within 14 days, submit a modified judgment under MCR 2.602(B)(3), in conformity with the court's ruling, or as otherwise directed by the court.
 - (f) Upon entry of a default judgment and as provided by MCR 3.203, the moving party must serve a copy of the judgment as entered by the court on the defaulted party within 7 days after it has been entered, and promptly file a proof of service.
- (6) Setting Aside Default Judgment.
- (a) A motion to set aside a default judgment, except when grounded on lack of jurisdiction over the defendant, lack of subject matter jurisdiction, failure to serve the notice of default as required by

subrule (B)(2)(b), or failure to serve the proposed default judgment and notice of hearing for the entry of the judgment under subrule (B)(4), shall be granted only if the motion is filed within 21 days after the default judgment was entered and if good cause is shown.

(b) In addition, the court may set aside a default judgment or modify the terms of the judgment in accordance with statute or MCR 2.612.

(7) Costs. An order setting aside the default or default judgment must be conditioned on the defaulted party paying the taxable costs incurred by the other party in reliance on the default or default judgment, except as prescribed in MCR 2.625(D). The order may also impose other conditions, including imposition of a reasonable attorney fee.

(C)-(D)[Unchanged.]

(E) Consent Judgment.

(1) At a hearing, any party may present to the court for entry a judgment approved as to form and content and signed by all parties and their attorneys of record.

(2) If the court determines that the proposed consent judgment is not in accordance with law, the parties shall submit a modified consent judgment in conformity with the court's ruling within 14 days, or as otherwise directed by the court.

(3) Upon entry of a consent judgment and as provided by MCR 3.203, the moving party must serve a copy of the judgment as entered by the court on all other parties within 7 days after it has been entered and promptly file a proof of service.

Staff Comment: These proposed amendments of MCR 3.210 would clarify default and default judgment procedures to be used in domestic relations cases. The proposed amendments also would allow parties to reach agreement on issues related to property

division, custody, parenting time, and support, and enter a consent judgment on those issues if the court approves. These proposed amendments were developed by a workgroup of family law practitioners and judges (assisted by SCAO staff) who were instrumental in creation of an earlier version of this proposal that had been published for comment. Following reconsideration of some provisions of the earlier version, members of the group reconvened and formulated a revised proposal, which is the subject of this publication order.

The staff comment is not an authoritative construction by the 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 May 1, 2014, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-32. 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.

January 29, 2014

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

Clerk