

# Order

Michigan Supreme Court  
Lansing, Michigan

September 21, 2016

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2016-24

Stephen J. Markman  
Brian K. Zahra

Proposed Amendment of  
Rule 9.115 of the  
Michigan Court Rules

Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 9.115 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 9.115 Hearing Panel Procedure

(A)-(E)[Unchanged.]

(F) Prehearing Procedure.

(1)-(4)[Unchanged.]

(5) Discipline by Consent.

(a) In exchange for a stated form of discipline and on the condition that the plea or admission is accepted by the commission and the hearing panel, aA respondent may offer to

(i) plead no contest or to admit all ~~essential~~ or some of the facts and misconduct alleged contained in the complaint or ~~any of its allegations~~ otherwise agreed to by the parties or

(ii) stipulate to facts and misconduct in a proceeding filed under subchapter 9.100 not initiated by a formal complaint.

~~in exchange for a stated form of discipline and on the condition that the plea or admission and discipline agreed on is accepted by the commission and the hearing panel. The respondent's offer shall first be submitted to the commission. If the offer is accepted by an agreement is reached with the commission, the administrator and the respondent shall prepare file with the board and the hearing panel a stipulation for a consent order of discipline that includes all prior discipline, admonishments, and contractual probations, if any, and file the stipulation with the hearing panel. At the time of filing, the administrator shall serve a copy of the stipulation upon the complainant.~~

(b) The stipulation shall include:

(i) admissions, which may be contained in an answer to the complaint, or a plea of no contest to facts sufficient to enable the hearing panel to determine the nature of the misconduct and conclude that the discipline proposed is appropriate in light of the identified misconduct;

(ii) citation to the applicable American Bar Association Standards for Imposing Lawyer Sanctions; and

(iii) disclosure of prior discipline.

~~If the stipulation contains any nonpublic information, it shall be filed in camera. Admonishments and contractual probations shall be filed separately and kept confidential until the hearing panel accepts the stipulation under this rule. At the time of the filing, the administrator shall serve a copy of the proposed stipulation upon the complainant. If the hearing panel approves the stipulation, it shall enter a final order of discipline. If not approved, the offer is deemed withdrawn and statements or stipulations made in connection with the offer are inadmissible in disciplinary proceedings against the respondent and not binding on the respondent or the administrator. If the stipulation is not approved, the matter must then be referred for hearing to a hearing panel other than the one that passed on the proposed discipline.~~

(c) Upon the filing of a stipulation for a consent order of discipline, the hearing panel may:

- (i) approve the stipulation and file a report and enter a final order of discipline; or
  - (ii) communicate with the administrator and the respondent about any concerns it may have regarding the stipulation. Before rejecting a stipulation, a hearing panel shall advise the parties that it is considering rejecting a stipulation and the basis for the rejection. The hearing panel shall provide an opportunity, at a status conference or comparable proceeding, for the parties to offer additional information in support of the stipulation.
- (d) If a hearing panel rejects a stipulation, the hearing panel shall advise the parties in writing of its reason or reasons for rejecting the stipulation and allow the parties an opportunity to submit an amended stipulation.
- (e) If a hearing panel rejects an amended stipulation, or if no amended stipulation is filed within 21 days after rejection of the initial stipulation, the matter shall be reassigned to a different hearing panel. Upon reassignment to a different hearing panel,
- (i) the stipulation and any amended stipulation shall be deemed withdrawn,
  - (ii) statements and stipulations made in connection with the stipulation and any amended stipulation shall be inadmissible in disciplinary proceedings against the respondent and not binding on either party, and
  - (iii) the newly assigned hearing panel shall conduct a hearing.

(G)-(M) [Unchanged.]

*Staff Comment:* The proposed amendment of MCR 9.115(F)(5) would clarify that a hearing panel shall be authorized to allow parties to submit an amended stipulation. If a hearing panel rejects an amended stipulation, the matter would be referred to a different hearing panel to conduct a hearing. This proposed language was submitted jointly by the Attorney Grievance Commission and Attorney Discipline Board.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 Office of Administrative Counsel in writing or electronically by January 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2016-24. 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.

September 21, 2016

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

Clerk