

# Order

Michigan Supreme Court  
Lansing, Michigan

December 21, 2011

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2010-32

Michael F. Cavanagh  
Marilyn Kelly

Proposed Amendment of  
Rule 3.210 of the  
Michigan Court Rules

Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

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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 [www.courts.michigan.gov/supremecourt./resources/administrative/ph.htm](http://www.courts.michigan.gov/supremecourt./resources/administrative/ph.htm).

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 indicated in strikeover.]

## Rule 3.210 Hearings and Trials

(A) [Unchanged.]

(B) Default Cases.

(1) ~~Default cases are governed by MCR 2.603.—Application.~~ This subrule applies to the entry of a default and a default judgment in all cases governed by this subchapter. See MCR 3.201(A)(1) and (2).

(a) If a default is requested for failure to plead or otherwise defend as provided by these rules, subrule (B)(2) applies.

(b) If a default is ordered as a sanction under other rules, the order shall specify what actions the sanctioned party is prohibited from taking, and all other rights provided by law and these rules remain unrestricted.

- (c) A default establishes (i) the requesting party's right to relief, (ii) the truth of well-pled material facts, and (iii) entitles the requesting party to proceed to entry of a default judgment.
- (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 service and failure to plead or otherwise defend, the clerk must enter a default against the party.
- (b) The party who requested entry of the default must provide prompt notice that the default has been entered to the defaulted party and all other parties and persons as provided by MCR 3.203, and file a proof of service.
- (c) Once the default of a party has been entered, and before entry of the default judgment, that party may not file any pleadings, but may file a motion to set aside the default under subrule (B)(3).
- (d) A party in default may appear in a case under this subchapter by filing an appearance or motion, or by participating in any scheduled court proceedings, referee hearings, mediations, arbitrations, or other ADR proceedings. A party who has appeared in a case under this subchapter must be served with a copy of every paper later filed in the case.
- (e) If the default of a party has been entered for failure to plead or otherwise defend, that party may participate in all discovery as provided in Subchapter 2.300; may file motions; and is entitled to notice of and participation in all scheduled court proceedings, referee hearings, mediations, arbitrations, other ADR proceedings, friend of the court investigations, and trial.
- (f) If a default is ordered as a sanction under other rules, the court may impose limitations on the defaulted party's right to participate in the action.

- (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. A default may be set aside, before the entry of the default judgment, upon verified motion of the defaulted party showing good cause, or that the court lacks jurisdiction over the defendant or over the subject matter.
- (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) Notice shall be served in the manner provided by MCR 3.203 or by any manner permitted by the court which is 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, 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 on entry of the requested default judgment, 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 must 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 not otherwise admissible.
- (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 not otherwise admissible from either party, 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 in conformity with the court's ruling pursuant to MCR 2.602(B)(3), or as otherwise directed by the court.
- (f) Upon entry of a default judgment, 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, in accordance with MCR 3.203, 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 the court deems proper, including a reasonable attorney fee.

(C)-(D)[Unchanged.]

(E) Consent Judgment.

- (1) A party, or all parties, may present to the court for entry a judgment approved as to form and consent and signed by all parties.
- (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, 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, in accordance with MCR 3.203, and promptly file a proof of service.

Staff Comment: The proposed amendments of MCR 3.210 were submitted to this Court by the Michigan Judges Association after conclusion of its work and input from its Domestic Relations Committee. The proposal would govern the entry of default and default judgment in domestic relations cases and would cover and clarify related procedural issues. While this proposal adds provisions that may be found in Chapter 2 of the Michigan Court Rules, these proposed amendments of MCR 3.210 attempt to clarify procedures to be used in domestic relations cases. The proposed amendment of MCR 3.210 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 it.

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 April 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@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 at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, 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.

December 21, 2011

*Corbin R. Davis*

Clerk